

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 06.01.2021

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.4692 of 2010
and
M.P.Nos.2 and 3 of 2010

A.Jayaveeran .. Petitioner

Vs

1.The Member Secretary,
Pondicherry Institute of
Post Matric Technical Education,
(PIPMATE)
(Sponsored by the Government of Puducherry),
Lawspet, Puducherry - 605 008.
Rep. by Union of India.

2.B.Ramani ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Notification dated NIL of the First Respondent and quash the same to the extent of recommendation of the provisional appointment of the second Respondent to the post of Lecturer in Mechanical Engineering and to consider the Petitioner for the said post.

For Petitioner : Ms.S.Rajeni Ramadas

For Respondents : Mr.T.M.Naveen
for Mr.T.P.Manoharan for R-1
Mr.V.Ajayakumar for R-2

WEB COPY
O R D E R

The notification dated 18.12.2008 (the Notification) of the first Respondent communicating the provisional selection of the second Respondent for the post of Lecturer is challenged by the Petitioner in this writ petition.

2. The Petitioner completed the B.Tech. (Mechanical Engineering) degree from Pondicherry Engineering College in May 2000 and M.Tech. (Energy Technology) degree from the aforesaid college in June 2004. He was working as a Lecturer

for about three years in S.K.P. Engineering College and belongs to the Scheduled Caste (SC). Applications were called for from eligible candidates by the first Respondent for appointment to the post of Lecturer in the Polytechnic Colleges functioning under the Pondicherry Institute of Post Matric Technical Education (PIPMATE) at Puducherry, Karaikal, Yanam and Mahe through the Notification. Out of the posts for which the Notification was issued, one post was reserved under the SC quota for a Lecturer in Mechanical Engineering. The educational qualification prescribed for the said post is a first class bachelor's degree in the appropriate branch of engineering/technology.

3. The Petitioner's name was sponsored by the Employment Exchange, Puducherry and the same was communicated by the first Respondent through memorandum dated 30.01.2009. On that basis, the Petitioner applied for the said post and participated in the written competitive examination, which was conducted on 13.12.2009. Subsequently, he was called for document verification and a personal interview and he attended the same on 01.02.2010 and 02.02.2010 respectively. Pursuant to the above-mentioned selection process, the first Respondent issued the impugned Notification which was published on the internet on 22.02.2010. By the Notification, the list of candidates who were provisionally selected for the post of Lecturer in various disciplines was communicated. Upon perusal thereof, the Petitioner found his name in the reserve list whereas the second Respondent was provisionally selected. Upon further verification, the Petitioner discovered that the second Respondent did not possess the requisite educational qualification of a bachelor's degree in engineering as of the prescribed date. The case of the Petitioner is that the second Respondent completed his B.E. degree only after the last date prescribed in the Notification. Therefore, the Petitioner filed the present writ petition to challenge the Notification whereby the second Respondent was provisionally selected for the post of Lecturer in Mechanical Engineering under the SC quota.

4. By an interim order dated 08.03.2010, an interim stay was granted as regards the aforesaid post which remains in force as on date.

5. I heard Ms.Rajeni Ramadass, the learned counsel for the Petitioner; Mr.T.M.Naveen, the learned counsel for the first Respondent; and Mr.V.Ajayakumar, the learned counsel for the second Respondent.

6. The learned counsel for the Petitioner contended that the Petitioner possessed the prescribed educational qualifications. In support thereof, she referred to the B.Tech.(Mechanical Engineering) degree certificate issued on

29.03.2001 by the Pondicherry University and the M.Tech. (Energy Technology) degree certificate dated 21.01.2006 of the Pondicherry University. In this connection, she also referred to the notification dated 18.02.2008 inviting applications for the post of Lecturer and pointed out that the said notification specified the last date for receipt of the filled-up application with testimonials as 5.00 p.m. on 12.01.2009. As regards the second Respondent, she pointed out that it is recorded in the Report of the Committee of Faculty Members for Assessing the Eligibility of the Candidature for the post of Lecturer in Various Disciplines that the second Respondent's result was awaited as on the closing date for applications. It was also recorded that his provisional certificate was submitted on 17.04.2009 and that he was not eligible on the closing date. She also referred to the communication dated 26.03.2010 from the Annamalai University wherein it is mentioned that the second Respondent submitted the project work for the B.E. Mechanical Engineering degree on 21.02.2009 and that the results of the B.E. Mechanical Engineering degree course were published on 04.03.2009. She also referred to the communication dated 18.05.2011 from the Annamalai University stating that the provisional certificate was issued to the second Respondent on 04.03.2009 and that the degree certificate was issued to him on 22.12.2009. On this basis, she submitted that the second Respondent was not eligible to be considered for the post of Lecturer as of the last date prescribed in the notification. Consequently, she contended that the Petitioner, who is listed at Serial No.1 as the reserve candidate in the impugned Notification, should be selected instead of the second Respondent.

7. The learned counsel for the first Respondent University submitted that the last date for submission of applications was extended from 20.01.2009 to 16.02.2009. He further submitted that the general body of the first Respondent held a meeting on 28.01.2009. At the said meeting, it was resolved that the second Respondent, who was within the age limit as on 20.01.2009, should be treated as eligible although he submitted his provisional certificate on 17.04.2009. According to the learned counsel for the first Respondent, the general body is empowered to grant such relaxation and such relaxation was granted in view of the fact that the second Respondent is an in-service candidate.

8. The learned counsel for the second Respondent made submissions to the effect that the second Respondent was a duly qualified candidate inasmuch as he completed the 7 semester B.Tech. degree course in November 2008, which is prior to the last date specified in the notification. In support of this contention, he referred to the provisional certificate of the second Respondent which mentions that the second Respondent passed the B.Tech. Mechanical Engineering

degree examination held in November 2008. He also referred to the merit list for the mechanical engineering branch, wherein the second Respondent's name is at Serial No.4, and it is stated that the second Respondent obtained 66.3 marks in the aggregate; whereas, the Petitioner is at Serial No.15 and it is stated that he obtained 59.7 marks in the aggregate. On this basis, he contended that the second Respondent not only possessed the requisite educational qualification before the prescribed closing date but scored higher marks than the Petitioner. His next contention was that the general body of the first Respondent has the requisite power to relax the conditions. In exercise of such power, no relaxation was extended as regards the educational qualification or even the marks of the second Respondent and the limited relaxation was only with regard to the time limit. The learned counsel for the second Respondent further submitted that the Petitioner had not challenged the power of the general body and, therefore, the impugned Notification is valid. The third contention of the learned counsel was that the second Respondent is a SC candidate from Puducherry whereas the Petitioner has not adduced any evidence that he is a SC candidate from Puducherry. The Hon'ble Supreme Court held that the qualification of persons as SC is State-specific and, therefore, an applicant for a post in Puducherry should fulfill the condition of being a member of a SC in Puducherry. Because the Petitioner does not fulfill this requirement, the writ petition is liable to be rejected. His last contention was that out of the 5 posts reserved for Lecturers in Mechanical Engineering, 3 posts were in the general category, one post in the OBC category, and one post in the SC category. Out of the three posts in the general category, one person who was selected did not accept the post and, therefore, there remains one vacancy in the general category. Accordingly, he submitted that both the candidates could be accommodated by selecting the second Respondent under the general category because he scored higher marks than the Petitioner.

9. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

10. The short question that arises for consideration is whether the second Respondent possessed the requisite educational qualification as per the notification issued by the first Respondent. In order to answer this question, it is necessary to examine the notification carefully. Upon perusal of the notification, I find that the prescribed educational qualification for the post of Lecturer is a first class bachelor's degree in the appropriate branch of Engineering/Technology. In the case at hand, the applications of the Petitioner and the second Respondent were for appointment to the post of Lecturer in Mechanical Engineering.

Consequently, the prescribed educational qualification is a first class bachelor's degree in Mechanical Engineering. The notification further states as follows in clause 2 thereof:-

"The applications shall be in the format given and the following testimonials shall be attached therewith.

(i) Attested copies of educational qualifications.

(ii) Attested copy of proof for date of birth (Birth Certificate)

(iii) Attested copy of Caste Certificate issued by the competent authority on or after 18.06.2008 (in respect of reserved category only)

(iv) Attested copies of mark lists of all semesters (I to VIII semesters) of B.Tech/B.E.(for engineering subjects) and I and II year of Master's Degree in Non-engineering subjects."

11. It also specified the last date for receipt of the filled-up application as 20.01.2009. By memorandum dated 30.01.2009, the last date for the receipt of the filled-up application was extended up to 16.02.2009. From the prescription in the notification inviting applications, as amended by the above-mentioned memorandum, it is evident that the requisite educational qualification should have been obtained by the candidates on or before 16.02.2009. Therefore, it remains to be considered whether the Petitioner and the second Respondent possessed the prescribed educational qualification as on 16.02.2009. As regards the Petitioner, the B.Tech. degree certificate in Mechanical Engineering was issued on 29.03.2001. Therefore, it is beyond doubt that the Petitioner possessed the prescribed educational qualifications much in advance of the last date, namely, 16.02.2009. Turning to the second Respondent, the provisional certificate of the second Respondent was issued on 04.03.2009. This is admittedly beyond the prescribed last date for submission of the application, namely, 16.02.2009. The learned counsel for the second Respondent contended that the provisional certificate specifies that he passed the B.E. Mechanical Engineering degree examination held in November 2008 and, therefore, he obtained the prescribed educational qualification prior to the last date specified in the notification. This contention is untenable for the reason that it is not sufficient that the candidate takes the final examination before the prescribed time limit under the notification; the candidate should have passed the final degree examination as of the cut-off date. In the present case, the documents on record reflect that the second Respondent completed the project work on 21.02.2009 and the

results of the B.E. degree examination were published only on 04.03.2009 which is also the date of issuance of the provisional certificate. Consequently, it is clear that the second Respondent did not possess the requisite educational qualification as of the cut-off date. This leads to the question as to whether the general body was empowered to relax the condition on the ground that second Respondent is an in-service candidate. The learned counsel for the first Respondent referred to the general body meeting on 28.01.2009 in order to contend that such power is vested in the general body. In respect of notifications by public authorities for recruitment, the settled legal position is that recruitment should be in terms of the notification inviting applications for the post inasmuch as the said document is the basis on which applications are invited, and should contain all applicable terms and conditions. Therefore, the said notification should have specified that the general body reserves the power to relax the prescribed time limit for fulfilling the prescribed educational qualification. Upon perusal of the notification inviting applications for the post of Lecturer, I do not find such power being reserved for exercise by the general body. In the absence of such prescription in the notification, the relaxation of the prescribed requirement by the general body is arbitrary and invalid.

12. The learned counsel for the second Respondent also contended that the Petitioner did not adduce evidence that he is a SC candidate from Puducherry. As regards this contention, it should be borne in mind that the first Respondent is entrusted with the responsibility of verifying the caste certificate and, upon such verification, has concluded that the Petitioner is entitled to be considered under the aforesaid category. Moreover, the SC status of the Petitioner is not the subject matter of this writ petition. The last contention of the learned counsel for the second Respondent was that one vacancy in the general category was not filled up and that both the Petitioner and the second Respondent may be accommodated by moving the second Respondent into the general category in the available vacancy. This cannot be done in a direct recruitment pursuant to the notification inviting applications. Notwithstanding this conclusion, in accordance with applicable rules, it is open to the first Respondent to create a promotional avenue for in-service candidates to fill up any available vacancies.

13. For the aforesaid reasons, this writ petition is liable to be allowed. Accordingly, the impugned notification is quashed as regards the provisional selection of the Second Respondent as a lecturer in Mechanical Engineering instead of the Petitioner. As a corollary, the Petitioner is entitled to be selected as a Lecturer in Mechanical Engineering by way of

direct recruitment. Nevertheless, this order shall not preclude the filling-up of any vacancy that remains after the direct recruitment process by way of promotion of in-service candidates in accordance with applicable rules. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rrg

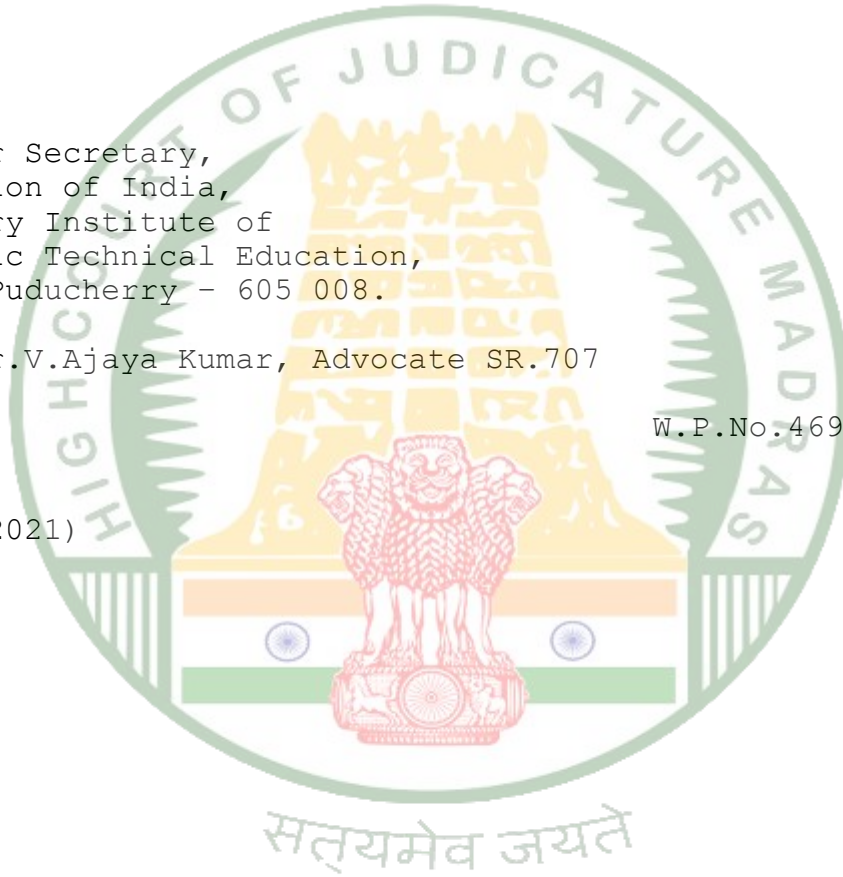
To

The Member Secretary,
rep by Union of India,
Pondicherry Institute of
Post Matric Technical Education,
Lawspet, Puducherry - 605 008.

+1cc to Mr.V.Ajaya Kumar, Advocate SR.707

W.P.No.4692 of 2010

KK(CO)
CB(01/02/2021)



WEB COPY