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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.389 of 2020

T.P.Subramaniam ...Appellant/Respondent
Vs.

1. The Secretary to Government of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai-600 009.
2. The Commissioner of Technical Education,
53, Sardar Patel Road,
Guindy, Chennai-600 025.
3. The Merger Committee,
Directorate of Technical Education,
53, Sardar Patel Road,
Guindy, Chennai-600 025.
4. The Commissioner of Sugar,
Periyar Building,
690, Anna Salai,
Nandanam,
Chennai-600 035.
5. The Managing Director-cum-Chairman,
Dharmapuri District Co-operative Sugar
Mills Polytechnic College,
Palacode, Dharmapuri-636 808.
6. The Principal,
Government Polytechnic College,
Co-operative Sugar Mills Campus,
Palacode, Dharmapuri-636 808. ...Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 17.02.2020 in W.P.No.19439 of 2018.

Prayer in WP.19439 of 2018: Writ petition filed under Article
226 of the Constitution of India, praying for the issuance of
Writ of Certiorarified Mandamus, calling for the records of the



first respondent in Letter No.7997/B2/2019-1, dated 12.06.2019 and the second respondent communication in letter No.47901/H3/2018, dated 27.06.2019 and quash the same and consequently direct the first respondent to sanction the Junior Draughting Officer/ Draughtsman Grade III post and absorb the petitioner as Junior Draughting Officer/Draughtsman Grade III Post in the sixth respondent Government Polytechnic College, Palacode or in any other nearby Government Polytechnic Colleges, along with all the attendant, monetary and other service benefits from the date of first respondent G.O.(Ms)No.26 dated 31.08.2018 with interest.

(Prayer Amended as per order dated 03.02.2020 made in WMP.No.2817 of 2020 in WP.No.19439 of 2018)

For Appellant : Mr.S.Sathiaseelan
For Respondents : Mr.R.Neelakandan
State Government Counsel

J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

Questioning the correctness of the order of the writ Court dated 17.02.2020 made in W.P.No.19439 of 2018, the instant appeal is instituted.

2. The appellant is the writ petitioner in W.P.No.19439 of 2018, who had challenged the order of the first respondent dated 12.06.2019 and sought a consequential direction to the first respondent to sanction the Junior Draughting Officer/Draughtsman Grade III post and absorb him as Junior Draughting Officer/Draughtsman Grade III in the sixth respondent Government Polytechnic College, Palacode.

3. The writ petitioner had initially joined the fifth respondent College in the year 1987 as Pump Operator on 01.07.1987. He was regularized in the post on 06.07.1989 and vide proceedings dated 27.11.2006, he was promoted as Draughtsman/Civil with a revised pay scale. He continued to serve the institution till 03.07.2018 as Draughtsman for about 31 years without break or blemish. While so, by G.O.Ms.No.26, dated 30.01.2018, Dharmapuri District Co-operative Sugar Mills Polytechnic College (DDCSM), Palacode, run by the Sugar Mills was agreed to be converted into the Government Polytechnic College, subject to the conditions stipulated therein. As per the said Government Order, absorption of 87 staff, including 43 teaching, 24 technical posts, 14 administrative staff and six basic staff was sanctioned.

3.1. The petitioner claims that he is one among the 43 teaching staff. A time table was also prepared for Civil



Engineering Department specifying period allotted to the petitioner, namely, CED-I and CED-II. However, the post in which the petitioner was serving was excluded by the Merger Committee. It was the Merger Committee that was constituted by the second respondent, which decided the absorption and accommodation of the regular staff of the Polytechnic College as against the sanctioned post. Though the petitioner claimed that he was fully qualified to be the regular staff and had the required qualification to be absorbed into the sixth respondent Government Polytechnic College, he was excluded from being absorbed. The writ petitioner was also kept away from the services from 02.07.2018. The sixth respondent had not informed the petitioner of any reason for keeping him away from the services from July 2018.

3.2. According to the writ petitioner, the first respondent did not wait for the report of the Merger Committee before taking the decision and passed the impugned order on 12.06.2019. The first respondent had passed the impugned order rejecting the request of the petitioner to absorb him as Government employee in Government Polytechnic College or any appropriate Government Polytechnic College as Draughtsman Civil, upon considering his representations dated 03.07.2018 and 09.07.2018. Based on the same, the Director of Technical Education had communicated to the petitioner vide letter No.47901/H3/2018, dated 27.06.2019 that his representations could not be considered favourably as the post of Junior Draughting Officer/Draughtsman Grade III has not been sanctioned in the Government Polytechnic College, Palacode and there is also no rule to absorb the petitioner in any other Government Polytechnic College. Aggrieved by the same, the writ petition was filed.

4. The learned State Government Counsel submitted that the post of the petitioner was not sanctioned one and therefore, the Merger Committee could not consider the same. The learned Government Counsel also relied on the decision of the Division Bench in W.A.No.3926 of 2019, which was considered by the learned Single Judge. Based on the above referred Division Bench judgment, the writ Court had directed the Merger Committee to decide the case of the writ petitioner and intimate the decision to him and the Government. It was further observed by the writ Court that the writ petitioner had put in long number of years of service and he cannot be kept away from service, all of a sudden only on the ground that the post was not sanctioned and directed the petitioner to submit a representation to the Merger Committee along with the required documents and the Merger Committee was directed to take appropriate decision on the claim of the petitioner. The decision taken by the Merger Committee shall be placed before the Government and the Government was directed to pass appropriate orders based on the recommendations



of the Merger Committee. Aggrieved by the said direction given by the Writ Court, the above appeal has been preferred.

5. It is the only contention of the learned counsel for the appellant that admittedly the post was not sanctioned and the Merger Committee would negative the writ petitioner's claim in the absence of the sanctioned post. On the said apprehension, the order passed in the Writ Petition is challenged. It is further apprehended by him that the Merger Committee itself is constituted by the first respondent Government and without setting aside the order passed by the first respondent dated 12.06.2019, the Merger Committee will once again would furnish the same as a reason for rejecting the claim of the writ petitioner. In this regard, the impugned order in the writ petition dated 12.06.2019 is usefully quoted hereunder :

"I am directed to invite attention to the reference fourth cited and to state that the Government have examined the representations of the petitioner Thiru.T.P.Subramaniam dated 03.07.2018 and 09.07.2018, based on your report, the Government have decided to reject the petitioner's request to absorb him as Government Employee in Government Polytechnic College, Palacode/Appropriate Government Polytechnics as Draughtsman (Civil) vide Government Letter in the reference fourth cited, since the post of Junior Draughting Officer/ Draughtsman Grade-III has not been sanctioned in Government Polytechnic College, Palacode by the Government and there is no rule provision for the absorption in any other Government Polytechnics.

2. I am, therefore, to request you to include the particulars regarding disposal of the representations of the petitioner dated 03.07.2018 and 09.07.2018 vide Government Letter (D) No.152, Higher Education (B2) Department, dated 12.06.2019 and there is no rule provision for the absorption of the petitioner in any other Government Polytechnic Colleges and then to file Counter Affidavit in W.P.No.19439 of 2018 on behalf of Principal Secretary, after vetted by Special Government Pleader, High Court of Madras, Chennai, if needed."

6. The learned counsel for the appellant also invited the attention of this Court to the time table for 2018 issued by the Government Polytechnic College, Palacode, wherein, it is mentioned that one T.Prabha, Lecturer/Civil and T.P.Subramaniam, Draughtsman, who is the appellant herein, are allotted for CED I. Therefore, it cannot be accepted that the Civil Engineering Department does not require the services of the Draughtsman. The



learned Government Advocate mentioned that the Lecturer appointed herself has taken the role of the Draughtsman and there is no separate post for Draughtsman. Besides, when there is no requirement for the said post of Draughtsman, the same could not have been sanctioned and the petitioner could not have been absorbed in the second respondent College.

7. As per G.O.Ms.No.26, dated 30.01.2018, the Merger Committee shall be constituted for absorption and accommodation of regular staff of DDCSM Polytechnic College in the above created posts and the Committee shall decide terms and conditions of their absorption, staff shall be absorbed only against the sanctioned post and excess staff will not be taken over till such time, the final terms and conditions are decided the staff will be paid only the existing pay scales, as they are presently drawing.

8. Admittedly, the post of the appellant is a regular post and though the regular staff and their corresponding posts were sanctioned in the above Government Order, the post of Draughtsman Grade III alone was not sanctioned for unknown reasons. Though the Writ Court had directed to reconsider the case of the writ petitioner by the Merger Committee, since the order impugned passed by the first respondent dated 12.06.2019 was not specifically set aside by the learned Single Judge, it is argued that the Merger Committee would once again reject the claim of the petitioner on the ground that the post is not sanctioned.

9. In view of the above contentions raised by the learned counsel for the appellant, we are of the view that the order of the first respondent dated 12.06.2019 has to be set aside. Accordingly, it is set aside. The other directions as has been given in paragraph 12 of the Writ Court order would stand confirmed.

10. We would like to add that de hors the fact that the post of Draughtsman is not sanctioned as had been stated in the impugned order of the first respondent, the Merger Committee is directed to decide and consider the qualifications of the appellant by scrutinizing the required documents and also the requirement of the post of Draughtsman for the Civil Engineering Department. Based on the recommendations of the Merger Committee, the first respondent is directed to consider either sanctioning the post of Draughtsman or deploying him in any other Government Polytechnic College or for a suitable post in any other establishment under the second respondent.



11. With the above directions, the writ appeal is allowed in part. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai-600 009.
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+1 CC to The Government Pleader, Sr.No. 38006.

W.A.No.389 of 2020

RLD(CO)
LS(24/08/2021)