



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)Nos.12927 of 2016 and 2151 of 2018

and

W.M.P. (MD)Nos.9740 to 9742 of 2016

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W.P. (MD)No.12927 of 2016:

K.Vincent

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
Health and Family Welfare Department,
Secretariat, Chennai.
- 2.The Director,
Public Health and Preventive Medicine,
Chennai-600 006.
- 3.The Deputy Director of Health Services,
Madurai,
Madurai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records pertaining to the impugned seniority list of Refrigeration Mechanic as on 01.01.2016 in R.No.701/E2/S2/16, dated 06.01.2016 on the file of the second respondent and quash the same as illegal to the extent of non-inclusion of the petitioner in the said seniority list and consequently to direct the respondents to promote the petitioner to the post of Cold Chain Officer in the Tamil Nadu Public Health Service by fixing the seniority in the post of Refrigeration Mechanic.

W.P. (MD)No.2151 of 2018:

K.Vincent

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
Health and Family Welfare Department,
Secretariat, Chennai.
- 2.The Director,
Public Health and Preventive Medicine,
Chennai-600 006.
- 3.The Deputy Director of Health Services,
Madurai, Madurai District.

... Respondents



Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus to direct the second respondent to appoint the petitioner in the post of Refrigeration Mechanic with all monetary benefits to the petitioner with effect from the year 2008, within the time period stipulated by this Court.

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For Petitioner
in both petitions : Mr.T.Lajapathi Roy

For Respondents
in both petitions : Mr.M.Muthugeethaiyan
Special Government Pleader

* * * * *

COMMON ORDER

Since both the writ petitions are filed by the same petitioner and the facts relating to both petitions are interconnected, both the Writ Petitions are disposed of by this common order.

2. W.P.(MD)No.12927 of 2016 is filed seeking for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned seniority list of Refrigeration Mechanic as on 01.01.2016 in R.No.701/E2/S2/16, dated 06.01.2016 on the file of the second respondent and quash the same as illegal to the extent of non-inclusion of the petitioner in the said seniority list and consequently to direct the respondents to promote the petitioner to the post of Cold Chain Officer in the Tamil Nadu Public Health Service by fixing the seniority in the post of Refrigeration Mechanic.

3. W.P.(MD)No.2151 of 2018 is filed seeking for issuance of a writ of mandamus to direct the second respondent to appoint the petitioner in the post of Refrigeration Mechanic with all monetary benefits to the petitioner with effect from the year 2008, within the time period stipulated by this Court.

4. The case of the petitioner is that the petitioner was appointed as Walk-in-Cooler Attendant vide proceedings dated 01.07.1987 and joined duty on 06.07.1987. Thereafter, he was transferred and posted as Refrigeration Attendant at the Cold Storage Unit in the campus of Food Analysis Laboratory at Madurai on 01.12.1990. The petitioner completed his probation period in the year 1995 and he also passed High Secondary and National Trade Certificate examination in the trade of Refrigeration and Air Conditioning at the Government ITI, Madurai in the year 1983 and he already experienced for two years in the same field and possessed the service certificate issued by the Madurai Co-operative Milk Producers' Union Ltd., Madurai for the training in Refrigeration Services from 14.03.1983 to 31.03.1983 at Government I.T.I. Madurai.



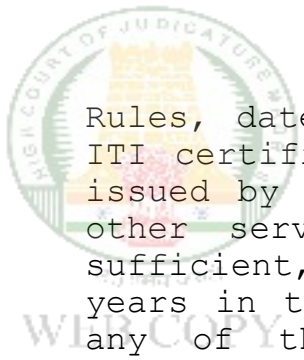
5. In the meanwhile, many others were appointed as Refrigeration Mechanics by direct recruitment and by recruitment by transfer from any other services without asking the petitioner's willingness. Immediately, the petitioner sent a representation dated 17.01.1991 to promote the petitioner in the vacant post of Refrigeration Mechanic. However, for non-consideration of the representation, the petitioner filed an application before the Administrative Tribunal in O.A.No.2269 of 2003 and the Tribunal, vide order dated 04.07.2003, directed the respondents to consider the petitioner for promotion as Refrigeration Mechanic and the same was also rejected.

6. Further, after completion of 5 years in maintenance and repair of Refrigeration Equipments in the Government Department, again, the petitioner made a representation dated 28.10.2008 seeking promotion to the post of Refrigeration Mechanic and the same was not considered for a long time and therefore, the petitioner approached this Court by filing writ petition in W.P.No.28072 of 2008. This Court, vide order dated 25.11.2008 directed the second respondent to consider the representation of the petitioner, however, the same was also rejected.

7. Though the petitioner completed 33 years of service as Refrigeration Assistant, there is no promotion available to the petitioner. Further, the respondents issued Adhoc Rules for the post of Refrigeration Mechanic on 17.11.2005. The qualification for the post of Refrigeration Mechanic is minimum general educational qualification and experience for a period of not less than five years in the maintenance and repair of refrigeration equipments in any of the Government Departments. Though the petitioner possessed necessary educational qualification viz., ITI certificate in the trade of Refrigeration and Air Conditioning issued by the Government and had experience for more than five years in the maintenance and repair of refrigeration equipments, even the respondents did not dispute the experience possessed by the petitioner in their counter affidavit, particularly at page No.5, inner paragraph No.5, not granting promotion in favour of the petitioner is not sustainable. Thereby the petitioner filed the present writ petitions seeking for the above stated relief.

8. Learned Counsel appearing for the petitioner would submit that though the petitioner is doing the same service by attending the duty of refrigeration mechanics and also possessed the ITI certificate in the trade of Registration and Air conditioning issued by the Government, the petitioner was not given promotion to the post of Refrigeration Mechanic and hence, he would pray for appropriate orders.

9. Learned Special Government Pleader appearing for the respondents would submit that even a bare perusal of the Adhoc



Rules, dated 17.11.2005, it is clear that the petitioner possessed ITI certificate in the trade of Refrigeration and Air-conditioning issued by the Government and for recruitment by transfer from any other service, only minimum general education qualification is sufficient, however, experience for a period of not less than five years in the maintenance and repair of Refrigeration equipments in any of the Government Departments is mandatory. Since the petitioner is not having the experience for a period of five years in the maintenance and repair of refrigeration equipments, he is not entitled for promotion to the post of refrigeration mechanic. Unless the petitioner possessed the experience, he cannot be promoted to the post of Refrigeration Mechanic and the posts of the Refrigeration Attendant and Attendant to Walk-in-Cooler are not the feeder categories to the post of Refrigeration Mechanic. Hence, the prayer sought for by the petitioner cannot be considered and hence, the learned Special Government Pleader would pray for dismissal of the writ petitions.

10. Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials placed on record.

11. The facts relating to the present case are not in dispute. The educational qualifications of the petitioner is also not in dispute and initially he was posted as Registration Attendant at the Cold Storage Unit and at that relevant point of time, the Adhoc Rules for the post of Refrigeration Mechanic is not available. The Adhoc Rules are framed on 17.11.2005. In the said Rules, the qualification prescribed for the post of Refrigeration Mechanic is as follows:

Methods of Appointment	Qualification
(1)	(2)
1. by direct recruitment	i. The minimum general educational qualification. ii. an ITI certificate in the trade of Refrigeration and Air conditioning issued by the Government and iii. Experience for a period of not less than one year in the maintenance and repair of Refrigeration and Air Conditioning equipments.
2. by recruitment by transfer from any other service	i. the minimum general education qualification ii. experience for a period of not less than five years in the maintenance and repair of Refrigeration equipments in any of the Government Departments.



12. On a perusal of the above said Rules, the minimum educational qualification is ITI certificate in the trade of Refrigeration and Air conditioning issued by the Government. In the present case, the petitioner possessed the ITI certificate. The only criteria raised in the writ petition is that the petitioner did not possess the experience for maintenance and repair of Refrigeration and Air conditioning equipments.

13. At this juncture, it is relevant to extract hereunder the relevant paragraph of the counter affidavit filed by the second respondent, which is as follows:

" Even though, the petitioner possess required ITI Certificate in the trade of Refrigeration and Air-Conditioning qualification and 15 years of experience in the installation and maintenance of refrigeration equipment, without amending the adhoc rules, the petitioner cannot be promoted as Mechanic Refrigeration & Cold Chain Officer."

14. On a perusal of the counter affidavit, it would make it clear that the petitioner possessed the required ITI certificate in the trade of Refrigeration and Air-Conditioning and 15 years of experience in the installation and maintenance of refrigeration equipment. When the respondents themselves admitted that the petitioner possessed the prescribed educational qualification as well as the experience, denying promotion to the petitioner is unjust and unreasonable. It also appears that the petitioner was retired from service on 30.03.2020. Hence, this Court is inclined to issue the following directions to the respondents.

" The respondents are directed to promote the petitioner as Refrigeration Mechanic and pay the notional benefits, for which the petitioner is eligible from the date of his eligibility till the date of his retirement. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order."

15. With the above directions, W.P.(MD)No.2151 of 2018 is disposed of. No costs.

16. With regard to W.P.(MD)NO.12927 of 2016 is concerned, admittedly, the petitioner was not even promoted to the post of Registration Mechanic and unless the petitioner was promoted to the post of Refrigeration Mechanic, calling for the impugned seniority list for inclusion of the petitioner in the panel, is unsustainable one and hence, the prayer sought for in the writ petition cannot be considered. Accordingly, the same is dismissed. No costs.



Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary,
Health and Family Welfare Department,
Secretariat, Chennai.
- 2.The Director,
Public Health and Preventive Medicine,
Chennai-600 006.
- 3.The Deputy Director of Health Services,
Madurai,
Madurai District.

+2 CC to Mr.T.LAJAPATHI ROY, Advocate (SR-3671,3670
[F] dated 08/02/2021)

+1cc to SPL GP Sr.No.3799

W.P(MD)Nos.12927 of 2016 and 2151 of 2018

05.02.2021

VB (23.02.2021) 6P 7C