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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. NO.29314 OF 2010

AND

M.P. NO.1 OF 2010

M.Kandasamy

... Petitioner

Vs.

1. The Principal Secretary/Commissioner,
Directorate of Technical Education,
Chennai - 25.

2. The Secretary to Government,
Higher Education Department,
Chennai - 9.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records connected in Letter No.31766/P2/2008-1, dated 14.7.2009 of the 1st respondent and quash the same in so far as the petitioner is concerned and direct the respondents to promote the petitioner as Instructor as per the Rules with all benefits.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mrs.V.Yamuna Devi,
Special Government Pleader

ORDER

This writ petition is filed by the petitioner seeking for a writ of Certiorarified Mandamus to call for the records connected in Letter No.31766/P2/2008-1, dated 14.7.2009 of the 1st respondent and quash the same in so far as the petitioner is concerned and direct the respondents to promote the petitioner as Instructor as per the Rules with all benefits.



2. Today, when the matter is taken up for hearing it is submitted by the learned counsel for the petitioner and the counsel for the respondents that the issue that arises for consideration is similar to the issue raised in W.P.No.8449 of 2010. The learned counsel for the petitioner submits as was done in the other writ petition that there has been subsequent orders of this Court wherein appointments had been made for the post of Instructor and relied upon the following orders to support his contention.

- A. W.A.No.1909 of 2010 dated 22.08.2011.
- B. W.P.No.848 and 2008 dated 23.02.2010
- C. W.P.Nos.8327 and 8220 of 2011 dated 25.09.2012
- D.W.P.No.25216 of 2011 dated 22.03.2017
- E. W.P.No.22626 of 2009 dated 24.08.2017.

It was thus submitted by the learned counsel for the petitioner that the petitioner is also entitled to be appointed as Instructor.

3. In response, Mrs.V.Yamuna Devi, Special Government Pleader, contended that prayer itself may be difficult to maintain inasmuch as the post of Instructor has been dispensed with.

4. The learned counsel for the petitioner limits his prayer and submits that he may be permitted to make a representation for being considered for the Post of Instructor in accordance with law to which course the learned counsel for the respondents consented and submitted that if a representation is filed they will consider the same in accordance with law. It was however submitted by the counsel for respondents that there has been instances in the past where appointments have been made erroneously on a misconception of the legal position relating to appointments/ promotions to the post of Instructors. The respondents may not have any such anxiety for the law is settled that there cannot be any claim on the basis of an illegal order for Article 14 is a positive concept, in this regard it may be relevant to refer the decision of the Hon'ble Supreme Court in the case of Basawaraj v. Land Acquisition Officer reported in (2013) 14 SCC 81 and the relevant portion is extracted hereunder:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said



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provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705] , Anand Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565] , K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937] .) "

5. It is submitted by both the counsels in unison that the directions issued in W.P. No.8449 of 2010 may also be issued in this writ petition. Therefore, this Court does not propose to enter into the merits of the matter.

6. In view of the above, the petitioner may submit his representation to the 1st and 2nd respondents for being considered for the post of Instructor (Civil) within a period of 3 weeks from the date of receipt of copy of this order. The 1st and 2nd respondents shall pass orders on the same within a period of twelve weeks from the date of receipt of such representation made by the petitioner after considering the same on merits and in accordance with law. If the petitioner had attained superannuation, but found entitled for promotion as Instructor, the 1st and 2nd respondents shall also consider granting notional promotion with attendant benefits, from the date on which the petitioner is found to be entitled to such promotion.



7. With the aforesaid direction, this writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Tsg

To

1. The Principal Secretary/Commissioner,
Directorate of Technical Education,
Chennai - 25.
2. The Secretary to Government,
Higher Education Department,
Chennai - 9.

+1cc to Mr.G.Elanchezhiyan, Advocate, S.R.No.21248
+1cc to the Special Government Pleader, S.R.No.21348

W.P. No.29314 of 2010
and
M.P. Nos.1 and 2 of 2010

SKM(CO)
PM/28/04/2022