

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.8449 of 2010
and
M.P. Nos.1 and 2 of 2010

R.Thirumalai Muthiah

... Petitioner

Vs.

1. The Director/Commissioner of Technical Education,
Office of the Director of Technical Education,
Chennai - 600 025.

2. The Government of Tamil Nadu,
represented by Secretary to Government,
(Higher Education),
Fort St. George, Chennai 600 009.

3. The Tamilnadu Polytechnic College,
represented by its Principal,
Madurai - 625 011

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus Calling for the records connected with the letter issued by the 2nd respondent under letter No.773/C1/2009/13 dated 24.09.2009, quash the same and consequently direct the respondents 1 and 2 to promote the petitioner as instructor (Mechanical) with effect from 09.12.2005 with all the attendant service and monetary benefits.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr. Vadivelu Dheenadhaylan,
1 and 2 Additional Government Pleader

ORDER

This writ petition is filed seeking for a writ of certiorarified mandamus challenging the order/letter of the second respondent dated 24.09.2009 in reference No.773/C1/2009-13 and to further direct the Respondents 1 and 2 to promote the

petitioner as instructor with effect from 09.12.2005 with all the attendant benefits.

2. The petitioner has been working in the 3rd respondent college since 1981. The petitioner joined the 3rd respondent on 21.08.1982 as a skilled assistant. The petitioner obtained diploma in mechanical engineering in April 1981 and a degree in mechanical engineering in April 2001. It is the case of the petitioner that he was eligible for consideration for promotion as work shop Instructor on obtaining Diploma in Engineering. The petitioner was ultimately promoted as work shop Instructor with effect from 08.12.2003. The next avenue for promotion is Instructor (Mechanical). The petitioner had raised a number of grounds relating to his entitlement to promotion as an Instructor. We do not intend to deal with the same, as the same may not be relevant for disposing of this writ petition.

3. The petitioner had earlier filed a writ petition in W.P.No.22719 of 2005 praying to appoint the petitioner as lecturer on par with the junior to the petitioner Mr.O.G.Dharmipathi, inasmuch as the petitioner possessed the requisite educational qualification to be appointed as lecturer. This Court was pleased to permit the petitioner to make a detailed representation before the Second Respondent herein pointing out their claim along with copy of the judgment in W.A.No.207 of 2002 dated 01.08.2002 and the G.O.M.S.No.95 dated 25.03.2008 which was relied upon by the petitioner and the first respondent was directed to consider the claim of the petitioner in the light of the Division Bench judgment in W.A.No.207 of 2002 and G.O.M.S.No. 95 dated 26.03.2008 and pass orders within a period of three months.

4. Pursuant thereto the petitioner made a representation on 18.02.2009 with the relevant material and sought promotion as Lecturer while bringing to the notice of the Government that vacancies were available to the post of Lecturer.

5.The petitioner submits that the representation was disposed by the second respondent vide impugned order 24.09.2009 stating that his request to promotion as Lecturer is not feasible for the reasons set out therein which is not adverted to as the same may not be necessary to dispose of this writ petition.

6. Aggrieved by the above impugned communication/order of the 2nd respondent the petitioner has filed the present writ petition for a prayer directing the respondents 1 and 2 to forthwith appoint the petitioner as Instructor mechanical in any of the Government Polytechnic college with effect from

09.12.2005. The learned counsel for the petitioner at the time of hearing submitted 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 petitioners that the petitioners were also entitled to be appointed as instructor.

7. In response the learned counsel for the respondents Mr.Deenadhayan contended that subsequent to filing of this writ petition the petitioner had also filed W.P.No.22719 of 2005 praying for similar relief with minor modifications and submitted a tabular column wherein it was shown that the writ petitions has been subsequently filed with minor modifications which was clearly impermissible. It was further submitted by the learned counsel for the respondent on instructions that prayer itself may be difficult to maintain inasmuch as the post of Instructor has been dispensed with.

8. 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 respondent 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 as a positive concept, in this regard it may be relevant to refer the decision in reported in (2013) 14 SCC 81 in Basawaraj v. Land Acquisition Officer 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 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] .) "

9. The learned counsel for the petitioner submits and undertakes to withdraw the other writ petition in W.P.No.14147 of 2018 filed by him and a memo is also filed to that effect and taken on record.

10. In view of the above, the petitioner may submit his representation to the first and second respondents for being considered for the post of Instructor within a period of 3 weeks from the date of receipt of such copy of this order. The first and second 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 in accordance with law. If the petitioner had attained superannuation, but was entitled for promotion as Instructor, the first and second 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.

11. With the above directions this writ petition is disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

smn

To

1. The Director/Commissioner of Technical Education,
Office of the Director of Technical Education,
Chennai - 600 025.
2. The Secretary to Government
Government of Tamil Nadu, (Higher Education),
Fort St. George, Chennai 600 009.
3. The Tamilnadu Polytechnic College,
Madurai - 625 011

+1cc to M/s.G.Elanchezhiyan, Advocate, S.R.No.5480
+1cc to the Government Pleader, S.R.No.5622

W.P. No.8449 of 2010
and
M.P. Nos.1 and 2 of 2010

KSM(CO)
SB(11/03/2022)