



W.P.No.40228 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.40228 of 2016
and W.M.P.Nos.34251 & 34252 of 2016

Rammesh

...Petitioner

Vs.

- 1.State of Tamil Nadu Rep. by
The Secretary to Government,
Higher Education Department,
Secretariat, Chennai – 600 009.
- 2.The Director of Technical Education,
Directorate of Technical Education,
Guindy, Chennai – 600 025.
- 3.The Additional Director of Technical Education,
Directorate of Technical Education,
Guindy, Chennai – 600 025.
- 4.The Principal,
Ramakrishna Mission Polytechnic College,
New No.66, Sir P.S. Sivasami Salai,
Mylapore,
Chennai – 600 004.

Respondents



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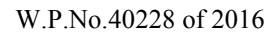
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Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in his proceedings in Letter (D) No.332, dated 27.09.2016 and quash the same and direct the respondents to give promotion temporarily to the post of Instructor or redesignated post of Instructor viz., Associate Lecturer with effect from the date of promotion given to his juniors with all monetary and service benefits.

For Petitioner	: Mr.R.Jayaprakash
For Respondents	: Mr.A.Anandan Government Advocate for R1 to R3

ORDER

The relief sought for in the present writ petition is to quash the proceedings of the 1st respondent dated 27.09.2016 and to direct the respondents to give promotion temporarily to the petitioner to the post of Instructor, or redesignated post of Instructor, viz., Associate Lecturer with effect from the date of promotion given to his juniors.



47. It is an admitted fact that the post of Instructor was originally a post to be filled by direct recruitment. It was made a promotional post by amending the service rules vide G.O.Ms.No.1364 dated 16.08.1988. The Government meanwhile issued G.O.Ms.No.1081 dated 19.08.1989 for revising the pay scales but in the process the Government also discontinued the post of Instructor. When the Government refused to promote the persons citing the said G.O.Ms.No.1081 dated 19.08.1989, they approached this Hon'ble Court and by series of Judgments and orders this Hon'ble Court allowed the writ petitions by holding that the Government could not abolish a post covered by service rules by a mere executive



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order. The Hon'ble Court rightly held that an executive order cannot override the statutory rules. It was under the said circumstances that the Government was constrained to issue several G.O.s' promoting the beneficiaries of the said orders and that too under the threat of Contempt proceedings.

48.The Government has filed the present writ appeals and is contesting the writ petitions stating that the abolition of the post of Instructor was necessitated because of the policy decision of the Government to implement the AICTE guidelines, which mandated that the entry level post for teaching staffs in Government polytechnic and special institutions should be Lecturer. The Government had made it lucid vide several G.O.s' passed by it that the post of Instructor was abolished. It was a conscious policy decision taken by the Government in view of implementation of the AICTE guidelines. The Government issued G.O.M.S. 184 dated 15.10.2014 by omitting/abolishing the post of Instructor. Therefore the lacuna that existed in the earlier round of litigations was cured by the passing of the said G.O. To be more precise, the executive order earlier passed was replaced by the amended rules. Therefore the contention of the



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Government that by the issue of the said G.O the order of this Hon'ble Court becomes non-feasible for compliance needs to be considered. Whatever may have been the position earlier, the subsequent development in the form of issuance of G.O.M.S.No.184 dated 15.10.2014 changes the equation. The Respondents have not challenged G.O.M.S.No.184 dated 15.10.2014, therefore as per the existing Service Rule there is no post of Instructor. In the absence of the said post, we are of the view that there cannot be a direction to the Government to consider the Respondents claim for promotion to a non-existent post.

49.It is settled legal position that no person has a vested right for promotion. No doubt a person has a right to be considered for promotion but not a vested right. The status of an employee is governed by the Service Rules only and there is no right outside the service rules. It is pertinent to refer here to Judgment of the Hon'ble Supreme Court in Roshan Lal Tandon's Case 1968(1)SCC185.

50.The counsel for the respondents relied on the following Division Bench Judgment of this Hon'ble Court to



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drive home, the point that the issue is no longer res integra and is settled by these judgments in W.A.No.1039 of 2006, W.A.No.207 of 2022, W.A.No.807 of 2015, W.A.(MD) Nos.772 of 2010, 814 of 2011 and 23 of 2012 and W.A.No.547 of 2015.

51.We would have agreed with the counsel for the respondents, if not for G.O.Ms.No.184 dated 15.10.2014. In the earlier litigations, this Hon'ble Court was pleased to pass orders against the Government because the Service Rules provided for promotion to the Post of Instructor and also identified the feeder posts. It was only on the basis of an executive order (G.O.Ms.No 1081 dated 19.08.1989) that the Government claimed to have abolished the post of Instructor. But now the Government has amended the Service Rules vide G.O.Ms.No.184 dated 15.10.2014 exercising its power under Article 309 of the Constitution.

52.In this context we would like to point out that even if the respondents prayer is allowed, then it is only the Service Rules in force now that would apply and not the Old Rules. It is settled law that abolishing a Post under the Service Rules is the Prerogative of the Government. The policy decision of the



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Government would not be interfered with, unless it is found to be arbitrary and perverse. We deem it appropriate to refer to the latest Judgment of the Hon'ble Supreme Court in the case of State of Himachal Pradesh and Other Vs. Raj Kumar and others reported in 2022 SCC Online SC 680.

53.The Hon'ble Supreme Court at paragraph No.70 of the Judgment on an analysis of more than 15 Judgments formulated the following propositions.

“1.There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.

2.It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the “rule in force” as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible



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candidates.

3.The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

4.The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.



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5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.”

54. We shall now examine here the reasons of the Government for abolishing the post of “Instructor”. It is seen that as a consequence of implementing the AICTE guidelines which mandated that entry level post for teaching in Government and Government aided Polytechnics would be lecturer, the post of “Instructor” had to be abolished and the Government also surrendered 307 posts. Moreover the restructuring and reorganizing of the cadre structure necessitated the abolition of the said Post. We are therefore of the considered view that the Government was justified in abolishing the post.

55. The learned counsel for the respondent relied on the following Judgments to contend that when certain persons are granted relief by Court of Law, the Government cannot deny the same to similarly placed persons.



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“1.Maharaj Krishan Bhatt and Another Vs. State of Jammu and Kashmir and Other reported in 2008 (9) SCC 24; and

2.M.P.Singh Bargoti Vs. State of Madhya Pradesh and another reported in AIR 2015 SC556.”

56.There is no quarrel on the legal proposition but we find that under the facts of the present cases, the said Judgments are not applicable. As discussed above the scenario in the present case has changed due to the passing of the Amended Rules.

*57.We may in this context refer to the Judgment of the Hon'ble Supreme Court in the case of **Col. B.J. Akkara (Retd.) Vs. Government of India and Others** reported in (2006) 11 SCC 709. The Hon'ble Supreme Court while considering the issue whether the Government of India having accepted and implemented the decision of the Delhi High Court on similar issue was required to extend similar benefit to the Defense Service Medical Officers held as follows:*



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“26.The said observations apply to this case. A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the noncomprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a 'pick and choose' method only to exclude petitioners on account of malafides or ulterior motives. Be that as it may. On the facts and circumstances, neither



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the principle of res judicata nor the principle of estoppel is attracted. The Administrative Law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29.10.1999 (corresponding to the Defence Ministry circular dated 11.9.2001) has been upheld and that decision has attained finality will not come in the way of State defending or enforcing its circular dated 11.9.2001.”

58.The counsel for the respondent submitted that by abolishing the post of Instructor the Government had shut the only avenue for promotion to them. We are unable to accept the respondents submission. As already stated nobody has a vested right to promotion, but only a right to be considered for promotion.

59.The learned counsel relied on the following Judgments for the proposition that the employer has a duty to create promotional avenue for his employees. AIR 1980 SC 444, 1989(4) SCC 635, 1990 Supp SCC 688, 2004 (9) SCC 65.



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60. We are again of the view that the said Judgments are not applicable for the all reasons discussed supra. It is also relevant to note that in most of the cases the respondents availed atleast one promotion.

61. In so far as the prayer of some of the respondents that they should be considered for the Post of lectures is concerned, we are of the view that the entry level post of lectures is not a Promotion Post and therefore the respondents claim cannot be accepted.

62. In the light of the above discussion, we are not inclined to accept the submission of the respondents. We are of the view that the respondents claim cannot be countenanced for the reason that the post of Instructors is now abolished and the post of the Lecturer is made an entry level post and due to the abolition of the said post it may not be possible to fix the pay scale for the post of Instructor. We are therefore of the view that no purpose would be served if the respondents claim is allowed. On the contrary it may lead to confusion in extending the benefits.



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63.In view of the declaration of law by the Honble Supreme Court in the above referred Judgment we allow the writ appeals and dismiss the writ petition. In the circumstances of the case, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions stands closed.

3.In view of the judgement of the Division Bench cited *supra*, no further consideration is required and accordingly, the writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

03.11.2022

Index : Yes
Internet : Yes
Speaking order : Yes
SSR

To

1.The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai – 600 009.



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S.M.SUBRAMANIAM, J.

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