



W.P.No.34194 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.34194 of 2022

V. Palanivelu

...Petitioner

Vs.

The Director
BCG Vaccine Laboratory
Guindy, Chennai 600 032

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other appropriate Writ or order or direction directing the respondent to comply with the order passed in W.P. No.33691/2012 dated 24.02.2017 and consequential contempt Petition No.973/2018 and Sub-Application No.136/2021 in Contempt Petition No.973/2018, to pay the promotional benefits with all consequential benefits with effect from 22.08.2006 to 13.07.2017.

For Petitioner : Mr.G. Mohanarangan

For Respondent : Mr. K. Srinivasamurthy, SPCCG



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ORDER

(R.HEMALATHA, J.)

By consent, the Writ Petition is taken up for final hearing.

Mr.K.Srinivasamurthy, SPCCG, accepts notice on behalf of the respondent.

2. Heard Mr.G. Mohanarangan, learned counsel appearing for the petitioner and Mr.K.Srinivasamurthy, learned SPCCG appearing for the respondent.

3. The present petition is filed for issue of Writ of Mandamus directing the respondent to comply with the orders dated 24.02.2017 passed in W.P. No.33691/2012 and the orders passed in Contempt Petition No.973/2018 and Sub-Application No.136/2021 and to direct the respondent to pay the promotional benefits with all consequential benefits with effect from 22.08.2006 to 13.07.2017.

4. The brief facts of the case of the petitioner is as follows:

- i. The petitioner was appointed as an office peon in the respondent department on 24.08.1991 and his services were regularised as



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- ii. As per the seniority list as on 01.01.1998, the writ petitioner was placed at Sl. No.8. According to the Writ Petitioner, the respondent issued orders of promotion dated 17.01.2008 to the posts of Technician and Mechanic to R. Narayanan and K.K. Joseph, respectively who were juniors to him.
- iii. The name of the petitioner was not at all considered though he was fully qualified for promotion to the said post of technician.
- iv. Therefore, he filed O.A. No.789 of 2008 before the Central Administrative Tribunal, Madras Branch, in which the orders dated 17.01.2008 passed by the present respondent was set aside with a direction for grant of promotion to the petitioner to the post of Mechanic from the date of promotion granted to his junior K.K.Joseph with all consequential benefits.
- v. Thereafter, the present Writ Petitioner filed a review petition in R.A. No.17/2010 in O.A. No.789/2008 to review the orders passed by the Tribunal on 12.03.2010 and to direct the respondent to promote him as Technician with effect from the date of promotion of R. Narayanan with all consequential benefits and not as mechanic as done by the



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respondent. The said Review Application was rejected vide orders dated 25.06.2010 by the Central Administrative Tribunal, Madras Bench.

vi. Challenging the said orders, the present Writ Petitioner filed W.P. No.33691/2012 in which the following orders were passed by a Division Bench of this Court on 24.02.2017.

We, therefore, modify the orders passed by the learned Tribunal and allowed the claim of the petitioner to the extent that he ought to be also considered for promotion to the post of Technician in the scale of pay Rs.4000 - 6000 with effect from 22.08.2006 when the third respondent was promoted, provided the proposed Recruitment Rules have not been finalised as yet and the petitioner is even otherwise qualified within the frame work of the existing Rules governing the promotion to the post of Technician and in any event, the claim of the petitioner has to be considered one way or the other and the same to be done within a period of two months from the date of receipt of a copy of this order and any decision taken shall be communicated to the petitioner forthwith."

vii. Consequently, the respondent herein, reconsidered the claim of the present writ petitioner. However, the claim of the present Writ



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Petitioner was rejected on the ground that he is not qualified within the frame work of the existing rules governing promotion to the post of Technician. The reasons given in the said orders is extracted hereunder.

5.The Recruitment Rules for the post of Technician was published against S.No.8 in the Gazette of India dated 04.07.1981 under Part II - Section 3 - Sub section (i) GSR 619.

The above Recruitment Rules under items 1, 5 and 12 stipulate as below.

<i>S.No.8</i>	<i>(Item No.1) Name of Post</i>	<i>(Item No.5) Whether selection post for non selection post</i>	<i>(Item No.12) In case of Rectt. by promotion deputation/transfer, grades from which promotion/deputation/transfer to be made.</i>
	<i>Technician</i>	<i>Non selection</i>	<i>Promotion from Mechanics of the B.C.G. Vaccine Lab, Guindy, Madras with not less than 5 years regular service in the grade.</i>

6. In accordance with the existing Recruitment Rules, the post of Technician is a Non selection post and Mechanics of the B.C.G. Vaccine Lab, Guindy, Chennai with not less than 5 years regular service in the grade are eligible for promotion as Technicians.



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7. Shri Palanivelu was promoted retrospectively on 19.03.2011 to the Grade of Mechanic with all consequential benefits with effect from 22.08.2006 as per the order of the Hon'ble Central Administrative Tribunal dated 12.03.2010 in O.A.No.789 of 2008. Shri. Palanivelu had not completed 5 (five) years of regular service in the grade of Mechanic as on 22.08.2006, to become eligible for the promotion of Technician as per the existing Recruitment Rule.

viii. Thereafter, the present petitioner filed a Contempt Petition No.973/2018. Since the respondent had contended that the order of this Court in W.P.No.33691/2012 was complied with, the Contempt Petition was closed on 26.02.2020. Thereafter, the present Writ Petitioner filed a Sub Application No.136 /2021 to reopen the Contempt Petition No.973/2018 which was closed on 26.02.2020. The said petition was disposed of by this Court vide orders dated 30.04.2021 with the following observation.

"This sub application is filed to re-open the contempt petition, which was closed on 26.02.2020.



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2.As the contempt petition has already been closed, if the petitioner is of the view that the benefits conferred in the order passed has not been given fully, the remedy open to the petitioner is to file a separate writ petition. We may note that the contempt petition has already been closed by us after taking note of the office orders dated 05.04.2017 and 01.08.2017 produced by the Special Panel Counsel appearing for the respondent. According, this sub application stands closed giving liberty to the petitioner to take a recourse of law that is available to him".

5. Now the petitioner has filed the present Writ Petition contending that the respondent has not complied with the orders passed in W.P.No.33691/2012 and also the orders passed in Sub-application 136/2021 in Contempt Petition 973/2018.

6. The contention of Mr.G. Mohanarangan, learned counsel appearing for the petitioner is that a Division Bench of this Court in W.P.No.33691/2012 had directed the present respondent to consider the case of the petitioner for promotion to the post of Technician in the scale of 4000-6000 with effect from 22.08.2006. However, the petitioner has not been



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promoted to the post of Technician by the respondent.

7. Per contra, Mr. K. Srinivasamurthy, learned SPCCG appearing for the respondent would contend that the orders passed by this Court has been complied with by the respondent by passing an order dated 05.04.2017 and the Contempt Petition was also closed based on this. Therefore, the Writ Petitioner cannot once again agitate that the orders passed in W.P.No.33691/2012 has not been complied with.

8. It is seen from the records that a Division Bench of this Court in W.P. 33691/2012 had directed the respondent to consider the case of the petitioner one way or the other within the frame work of the existing Rules governing the promotion to the post of Technician within a period of two months from the date of receipt of a copy of the said order. Accordingly the respondent has passed a detailed order on 05.04.2017. The Writ Petitioner has not challenged this order and on the contrary he has filed the present Writ Petition stating that the orders passed in W.P. No.33691/2012 has not been complied with by the respondent. Even in the Sub Application No.136/2021 in the Contempt Petition No.973/2018, this Court directed the petitioner to file a separate Writ Petition if he is aggrieved by the orders passed by the respondent. The petitioner has not challenged the orders dated



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05.04.2017 in the present Writ Petition.

9. In the circumstances, the Writ Petition fails and is therefore dismissed. No Costs.

(V.M.V.,J.)

(R.H.,J.)

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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V.M.VELUMANI, J.
and
R. HEMALATHA, J.
bga

To

The Director
BCG Vaccine Laboratory
Guindy, Chennai 600 032

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