



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.04.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

WEB COPY

W.P. (MD)No.2291 of 2015

Kanagaraj

... Petitioner

vs.

1.The Commissioner/Director,
Directorate of Technical Education,
Chennai - 600 002.

2.The Correspondent,
Nadar Mahajan Sangam Kamaraj Polytechnic,
Pazhavalai,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 1st respondent in Memo No.56728/C2/2011, dated 22.01.2015 and to quash the same as illegal and further to direct the 1st respondent to approve the petitioner's promotion proposal, dated 23.06.2014.

For Petitioner	: Mr.S.Chellapandian
For R1	: Mr.V.Om Prakash
	Government Advocate (Civil side)
For R2	: No appearance

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed in Memo No.56728/C2/2011, dated 22.01.2015 and further to direct the 1st respondent to approve the petitioner's promotion proposal, dated 23.06.2014.

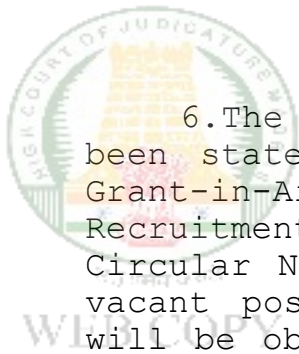
2.The brief facts of the case are that the second respondent Institution was established in the year 1982, vide G.O.Ms.No.1783, Education, dated 09.08.1982. It is a Government Aided Polytechnic rendering technical education for the students. While issuing the said G.O., the Government has sanctioned two Assistants and three Junior Assistants posts. The petitioner was appointed as Junior Assistant along with two persons on 20.09.1982. The appointment was approved on 11.06.1989.



3.The contention of the petitioner is that the next avenue of promotion to the petitioner is Assistant. The petitioner has passed the Account Test for Subordinate Officers Part 1 and he has worked as Junior Assistant for the past three years and hence the petitioner is fully qualified to hold the post from 07.02.1991. In the second respondent Institution, two sanctioned Assistant posts were available but the second respondent appointed all the five candidates including the petitioner as Junior Assistant. Later, the second respondent intended to fill up those posts by virtue of promotion. The petitioner and other three Junior Assistants were considered for the said post. Among the four eligible candidates, two persons namely, Chandrasekar and Paramarthalingam, who worked as Junior Assistants were promoted as Assistants since they were senior to the petitioner. The second respondent promised the petitioner that they will consider in future. After 18.07.1988, the Governing Council of the College could not constitute the Selection Committee. Subsequently, on 30.09.2006, one Chandrasekaran, who was promoted as Assistant in the year 1998 has voluntarily retired from the service and the post fell vacant from 01.10.2006. Since the petitioner is the only eligible internal candidate, the petitioner requested the second respondent to honour the earlier promise and asked him to promote the petitioner as Assistant.

4.Accordingly, the petitioner was appointed as Assistant in the said Institution with effect from 01.10.2006, vide order, dated 01.05.2011. Necessary proposal was submitted to the first respondent through letter, dated 09.02.2011, for approval. The first respondent rejected the same on the ground that the promotion was not made in accordance with G.O.Ms.No.1282, dated 26.07.1967 and circular, dated 3.01.1989, since the said promotion was not through the Staff Selection Committee constituted by the Governing Council of College. As stated earlier the Selection Committee was not constituted from 1998 till date.

5.The contention of the petitioner is that various non-teaching posts fell vacant during the period 1998-2004, five non-teaching staffs who were working in the cadre of Workshop Instructor prayed for promotion for the post of Instructors. When the claim was not considered by the respondents herein, the aggrieved persons have filed a Writ Petition in W.P.No.9111 of 1997 and this Court allowed the petition, vide, dated 10.09.2004, directing the respondent to consider the claim of the petitioner. Aggrieved over the same, respondents therein, filed a Writ Appeal in W.A.No.207 of 2002 and the same was dismissed, vide order, dated 01.06.2007. Pursuant to the said judgment, the first respondent approved all the promotions without insisting the procedures contemplated either in G.O.Ms. No. 1282, dated 26.07.1967 or circular, dated 03.01.1989 or G.O.Ms.No.95, dated 26.03.2008. Since in the similar situation, this Court has ordered to grant promotion, the petitioner is seeking a direction to direct the respondents to approve the promotion.



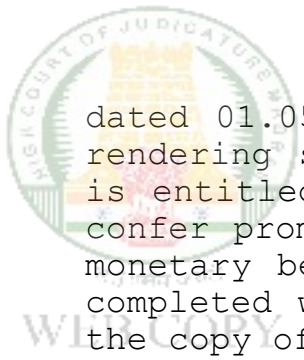
6.The respondents submitted written instructions wherein it has been stated that as per G.O.Ms. No. 1282, dated 26.07.1967 i.e. Grant-in-Aid Code wherein the appointments are made by Direct Recruitment through Staff Selection Committee. As per the DTE's Circular No. 4323 / C2 / 1988 dated 03.01.1989 while filling up a vacant post, list of eligible candidates duly following rotation will be obtained from the employment exchange, then interview will be conducted. The internal candidates will be permitted to compete with the external candidate in the interview. The Selection Committee will select the eligible candidate and it will be sent to Directorate of Technical Education. Since there were four candidates in the earlier round, the seniors were considered and they were granted promotion. Since there were no vacancy available, the second respondent has not granted any promotion to the petitioner in the year 2006. One post fell vacant due to voluntary retirement of one Chandrasekaran. The second respondent has granted promotion to the petitioner with effect from 01.10.2006, vide order, dated 01.05.2011. The respondents have declined to grant approval, since the promotion was not granted through Selection Committee.

7.Heard Mr.S.Chellapandian, the Learned Counsel for the petitioner and Mr.V.Om Prakash Learned Government Advocate (Civil side) for the respondents and perused the records.

8.Based on the available vacancy the petitioner was promoted to the post of Assistant. However, the 1st respondent has not approved the promotion since the promotion was not granted by the Selection Committee. It is seen from the records that the School has never constituted any Selection Committee from 1998 till date. If it is the mistake of the Management the same cannot be fasten on the petitioner. The first respondent ought to have directed the second respondent to constitute the Selection Committee and if not constituted then penal action ought to have been initiated.

9.The employee has legitimate expectation if he is qualified for promotion. The 2nd respondent has not constituted Selection Committee and that cannot be a sole ground to deny promotion. As rightly pointed out by the petitioner, earlier occasion there were no Selection Committee and promotion were granted and the same was approved by the 1st respondent. Now the 1st respondent cannot deny the approval. It is seen from the records that the petitioner was aged about 53 years at the time of filing this Writ Petition and now the petitioner has attained superannuation. At this stage denying promotion will seriously prejudice the rights of the petitioner. Therefore, this Court is of the considered opinion the impugned order is liable to be set aside.

10.Hence the impugned order is set aside and the first respondent is directed to approve the petitioner's promotion from 01.10.2006 onwards and confer service benefits to the petitioner. The College has promoted the petitioner, vide order,



dated 01.05.2011 with effect from 01.10.2006 and the petitioner is rendering service in the promoted post. Therefore, the petitioner is entitled to monetary benefits. The respondents are directed to confer promotion with effect from 01.10.2006 and confer service and monetary benefits to the petitioner and the said exercise shall be completed within a period of six weeks from the date of receipt of the copy of the order.

11.With the above direction, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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

The Commissioner/Director,
Directorate of Technical Education,
Chennai - 600 002.

W.P. (MD)No.2291 of 2015
05.04.2022

RS (12.05.2022) 4P-2C