



W.P.(MD)No.8794 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.8794 of 2016

and

W.M.P(MD)No.6992 of 2016

K.Durai Rajan

... Petitioner

vs.

1. The Accountant General,
Office of the Accountant General,
261, Annasalai, Chennai – 600 018.
 2. The Commissioner,
Government Data Centre,
Anna University Campus,
Gandhi Mandapam Road,
Chennai-600 025.
 3. The Commissioner of Technical Education,
The Director of Technical Education,
Guindy, Chennai – 600 025.
 4. The Principal,
Sankar Institute of Polytechnic,
Sankar Nagar,
Tirunelveli District – 627 357.
- ... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent herein in Proceeding Order No.56227/C3/2010 dated 05.01.2011, quash the same and further direct the 3rd respondent herein to regularize the service of the petitioner in the 4th respondent college from the date of initial appointment, viz., 07.04.2001 and consequently place the petitioner under the Old Pension Scheme w.e.f. 07.04.2001.

For Petitioner	: Mr.A.Ajith Geethan
For R-1	: Mr.P.Gunasekaran, Standing Counsel
For R-2 & R-3	: Mr.S.Kameswaran, Government Advocate (Civil Side)
For R-4	: No Appearance

ORDER

This Writ Petition has been filed to quash the impugned proceedings issued by the 3rd respondent, dated 05.01.2011 in Proceeding Order No.56227/C3/2010 and sought for further direction to the 3rd respondent to regularize the service of the petitioner in the 4th respondent college, from the date of initial appointment, viz., 07.04.2001 and consequently place the petitioner under the Old Pension Scheme w.e.f. 07.04.2001.



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2. The brief facts as stated in the affidavit is that are that, in the 4th respondent Institution, one Lab Assistant fell vacant on 01.02.1999, due to retirement of previous incumbent Mr.Pushpaneswaran. Among the list of eligible candidates, the Staff Selection Committee selected the petitioner and the 3rd respondent granted permission on 27.03.2001 to appoint the petitioner for the above said post and the 4th respondent college has appointed the petitioner on 07.04.2001. The petitioner has completed Probation period on 07.04.2003 and thereafter, the 3rd respondent while regularize the service wrongly regularized the from 07.04.2003, instead of 07.04.2001, vide proceedings, dated 05.01.2011.

3. The College has submitted a representation to the respondents for obtaining account number under the Teacher Provident Fund Scheme, i.e., Old Pension Scheme, since the petitioner's appointment was made in the sanctioned post, since 07.04.2001. The 3rd respondent has rejected the proposal, vide proceedings, dated 27.07.2011, stating that the petitioner is not eligible under the Old Pension Scheme as per the Government Letter No.43459/Finance (Pension) Department, dated 31.07.2008 and his service was regularized only after



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01.04.2003. In view of the same, the 2nd respondent Data Centre, though agreed his appointment was on 07.04.2001, wrongly placed the petitioner under the Contributory Pension Scheme (CPS) Account Number i.e., New Pension Scheme, bearing Account No.950157. The contention of the petitioner is that, since the petitioner was appointed on 07.04.2001 itself in the permanent sanctioned post, the 3rd respondent ought to have regularized the petitioner's appointment from the date of completion of probation.

4. The respondents have denied the claim of the petitioner, stating that the petitioner was regularized, only after 01.04.2003. Hence, the petitioner was not entitled to the Old Pension Scheme. The petitioner inadvertently challenged the proceedings of the 3rd respondent, by way of filing writ petition in W.P(MD)No.19999 of 2015, but the said proceeding was passed by the 1st respondent and thereafter, the petitioner has withdrawn the said Writ Petition. The respondents vide, impugned proceedings, dated 05.01.2011 has declined the claim of the petitioner, stating that the 4th respondent college has granted post to the petitioner from 07.04.2001 on temporary basis only. Thereafter, the petitioner's appointment was granted an approval only from 01.04.2003. The



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impugned order also states that the petitioner has acquired the relevant educational qualification subsequently and hence the service was regularized from 07.04.2003 and therefore, approval was granted from 07.04.2003. Aggrieved over the same the instant Writ Petition is filed.

5. The respondents have filed a counter stating that the petitioner was appointed as Lab Assistant in the vacant post which was previously occupied by one Mr.Abdul Jaffer. The petitioner's name was sponsored by the District Employment Exchange and the Staff Selection Committee has selected the petitioner through an interview. The selection was also approved by the Commissioner of Technical Education on 27.03.2001, subsequently, the petitioner has joined duty on 07.04.2001. As per ***G.O.Ms.No.2100, Education Department, dated 18.09.1981***, the Special Rules for the Tamil Nadu Technical Educational Subordinate Service, the following qualifications were prescribed for the post of Lab Assistant/Skilled Assistant:

- (i). Pass in VIII std in a recognized School and
- (ii) Practical experience for a period of not less than two years in a workshop or lab, relating to the post concerned”.



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The petitioner did not possess two years practical experience in the Work Shop (or) Lab at the time of recruitment and hence, his services were regularized only from 07.04.2003 i.e., on his completion of two years service from 07.04.2001 to 06.04.2003, after fully qualified for that post, vide Director of Technical Education proceedings, dated 05.01.2011. Hence, the petitioner was not eligible for Old Pension Scheme. Earlier the petitioner was posted as Lab Assistant / Lab Attender under consolidated payment as management employee, not approved by the Directorate of Technical Education and therefore, could not be taken into consideration as experience qualification for the post of Lab Assistant under the Special Rules. Since the petitioner was working under consolidated pay post, the said service could not be counted for the practical experience qualification. Hence, the petitioner's service in the post of Lab Assistant could not be taken into account and the petitioner is not eligible for the post of Lab Assistant without experience qualification. Hence, they prayed to dismiss the Writ Petition.



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6. Heard Mr.A.Ajith Geethan, learned counsel appearing for the Petitioner and Mr.P.Gunasekaran, learned Standing Counsel for the 1st respondent and Mr.S.Kameswaran, learned Government Advocate (Civil Side), appearing for the respondent Nos.2 & 3 and perused the records.

7. The petitioner was initially appointed on 07.04.2001. The petitioner has produced some experience certificate issued by the same Institution, where the petitioner was serving as Lab Assistant from 12.01.1995 to 29.03.1999. After perusing the records, the Selection Committee has recommended the petitioner's name for appointment in the said vacant post and was appointed on 07.04.2001. The third respondent while approving the petitioner has declined to accept the experience certificate, but granted approval by stating that the petitioner should work as Lab Assistant from 07.04.2001 to 07.04.2003, thereafter the petitioner would be fully qualified to be posted as permanent employee. The petitioner accepted the same and joined the service, the probation was also declared after completion of two years. The petitioner's appointment was regularized, vide proceedings, dated 05.01.2011, however, the regularization was granted only from 07.04.2003, instead of 07.04.2001. The



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reasons stated by the respondents are that the petitioner was not having two years experience as stated in the Rule. In the counter the respondents further stated that the experience that the petitioner claims is only experience under the same institution for consolidated pay, the said consolidated post was not approved by the official respondents and hence the same cannot be accepted. The reasoning stated by the respondents is absolutely erroneous. The Rule only states the candidate should possess experience and it is not stating the candidate should have served in a regular post in time scale of pay. The claim of the respondents are due to wrong interpretation of provisions. Hence the said contention of the respondents cannot be entertained.

8. For the reasons stated above, this Writ Petition is allowed with the following directions:

(i). The respondents are directed to grant regularization from 07.04.2001 and consequential benefits shall be carried out, within a period of eight weeks from the date of receipt of a copy of the order.



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(ii) The learned counsel appearing for the petitioner submitted that 10% was deducted from the salary of the petitioner. The respondents are directed to refund the same.

(iii)After passing of Orders, the same may be forwarded to the first respondent for necessary modification for granting pension under the Old Pension Scheme. No Costs. Consequently, connected miscellaneous petition are also closed.

Index : Yes / No
Internet : Yes
ksa

10.10.2022

To

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2. The Commissioner of Technical Education,
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S.SRIMATHY, J

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