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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.06.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.No. 13572 of 2015

A.Chandrasekaran

... Petitioner

..Vs..

1. The Director
Institute of Road Transport
Taramani, Chennai.

2. The Principal
Institute of Road and Transport Technology
Sri Vasavi College Post,
Erode & District.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the first respondent vides his office Proc. No. 9829/A8/IRT/1993 dated 04.09.2014 and the consequential order vides Proc.No.9829/A8/IRT/1993 dated 26.11.2014 and quash the same and consequently, direct the first respondent to notionally promote the petitioner as per the recommendations of the second respondent and to pay the arrears of the monetary benefits to the petitioner within the time fixed by this Hon'ble Court by considering the petitioner's representation dated 04.03.2015.



For Petitioner :: Mr. Karthik

For Respondents :: Mr. A.Thayaparan

ORDER

The petitioner was called for an interview to the post of Junior Assistant on 03.04.1987. However, they were unfortunately designated as clerical trainees after having undergone the selection by way of an interview.

2. As per G.O.Ms.No. 479 Education, Science and Technology Department dated 26.04.1984, where under the respondent came to be established, it was specifically stated that staff recruitment should be confirmed as per the Government aided Engineering Colleges.

3. It was argued by the respondent before this Court on earlier occasion in W.P.No. 3017 of 1993 dated 16.06.2004 that the respondent institution is only a society and not a Government aided Engineering College. The said argument was rejected and this Court was pleased to hold as follows:-

“11. In the said background, the fact



that the minimum educational qualification for the post of Junior Assistant for Governmental Posts during the relevant period was only SSLC is not denied by the respondents.

12. The only ground on which the qualification of a degree is stated to be essential for the post of Junior Assistants is a resolution which is stated to have been adopted by the institute during the year 1986 itself and that for the post of Junior Assistants, the minimum educational qualification was a Degree from Universities recognised by the Tamil Nadu Government. Reference was also made to the proceedings in the context of appointment of the petitioners as Clerical Trainees while appointing the petitioners and that they having accepted such an appointment, the petitioners cannot now seek to agitate for being regularised as Junior Assistants.



13. It is not disputed that the petitioners though they have been classified as Clerical Trainees have been discharging the very same nature of duties discharged by the Junior Assistants, who have been regularly appointed being degree holders. Learned counsel for the petitioners had referred to the Circular issued by IRT on 14.9.1988 giving the details of allocation of duties and works relating to the Junior Assistants. The nature of the work assigned to each of the petitioners as assigned under the said Circular disclose that the petitioners were discharging the work of Junior Assistants only. This fact is not disputed by the respondents.

14. Therefore, having called the petitioners for interview for appointment to the post of Junior Assistant and after having selected them and appointed them to discharge the very same functions of a Junior Assistant, the stand of the respondents that they cannot be designated as Junior Assistants and that they will not also be entitled to



wages, pay and allowances on par with Junior Assistants, cannot at all be sustained. The principle of equal pay for equal work will be applicable notwithstanding the nomenclature of the posts as held by the petitioners. It is also not disputed that as on date all the petitioners are now graduates.”

4. On this reasoning, the earlier Writ Petition which had been filed for a Writ of Mandamus to direct proper placement as Junior Assistant was stood allowed.

5. Aggrieved by the same, the Writ Appeal was preferred in W.A.No. 3896 of 2004. The said Writ Appeal was dismissed on 04.07.2006. The learned Division Bench was pleased to hold as follows:-

“6. We have gone through the entire materials placed on record and we are satisfied ourselves that when the Government sanctioned the Engineering College run by the appellants through G.O.Ms.No. 479, Education, Science and Technology



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Department dated 26.04.1984, at column No.11, it prescribes that the staff recruitment should confirm to the rules and orders issued by Government for Government Aided Engineering Colleges. Therefore, the prescription of qualification of degree for the post of Junior Assistant through the minutes of the Engineering College by the appellants is contrary to the Government Order and Rules. Subsequently, the appellants have amended the Rules, which were approved by the Government, prescribing the minimum qualification as degree.

7. As seen from the facts and circumstances of the case, the respondents herein were appointed way back in the year 1987 and therefore, their service conditions are governed by the rules existed as on that date. Therefore, we have no reason to entertain the Writ Appeal. Accordingly, the Writ Appeal is dismissed. No costs.”

6. Not feeling satisfied with the order of the learned Single Judge



and the Division Bench, an appeal was filed before the Supreme Court in Special Leave Appeal (Civil) No.19495 of 2006. The said Special Leave Appeal also came to be dismissed on 21.04.2014. Instead of granting the relief of appointing the petitioner to the post on par with the date on which the juniors were promoted, the respondent regularised the service of the petitioner from 17.06.1989. This has been put in challenge before this Court.

7. According to the petitioner, the seniority list for the Engineering College as well as the medical college was one and the same. A direction was given by this Court to file an affidavit to that effect on 01.03.2023. In compliance with the same, an affidavit has also been filed.

8. Mr. A.Thayaparan, learned counsel representing Mr. Kala Ramesh appearing for the respondents 1 & 2 would submit that the facts stated in the better affidavit that Engineering and Medical Colleges were run by the same Society and the seniority list maintained for the employees were in common is not controverted. The seniority list of Superintendent as on 23.08.2008 shows that Mohamed Ilyas, a junior to the petitioner by 15 days (the petitioner was regularised on 17.06.1989 and Mohammed Ilyas was



regularised on 01.07.1989) was promoted as Superintendent. The petitioner was not promoted to the post of Superintendent. The respondent ought to have complied with the orders of this Court. Mohammed Ilyas, being a junior to the petitioner was made a superintendent but the said benefit, for reasons best known to the respondent, was not extended to the writ petitioner.

9. The orders of this Court in W.P.No. 3017 of 1993 and W.A.No. 3896 of 2004 makes it very clear that the petitioner ought to have been appointed as Junior Assistant having been called for the interview for that purpose and should not have been treated as clerical trainee. Consequently, following the order in the Writ Petition and in the Writ Appeal, I quash the impugned order by which the petitioner has been made only an Assistant and that too after a period of 19 years.

10. It is only a half way house approach followed by the respondents. They should have implemented the order of the Court in letter and spirit. Therefore, the respondent shall issue orders appointing the writ petitioner as a Superintendent with effect from 18.09.2008 ie., the age of which his Junior, Mohamed Ilyas was promoted as Superintendent.



11. It is made clear that the promotion is only notional. The petitioner will not entitled to the salary from that date till his date of his retirement.

12. With the above direction, this Writ Petition stands allowed. No costs.

02.06.2023

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Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

1. The Director
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V. LAKSHMINARAYANAN, J.,



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