



W.P.No.15093 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.12.2022
Pronounced on	08.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.15093 of 2018
and
W.M.P.No.17851 of 2018

S. Alfred Xavier

...Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner,
Director of Technical Education,
Chennai-600 025.

3.Government Polytechnic College,
Rep. by its Principal,
Nagercoil.

4.E.M.Srinivasan

5.Hebziba Angela Durairaj

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the first respondent bearing G.O.Ms.No.23, Higher Education (I2) Department, dated 25.01.2018 to quash the same insofar as non inclusion of the name of the petitioner above Mr.E.M.Srinivasan in the 28th place and consequently direct the first respondent to incorporate the petitioner name in Serial No.28 in the seniority list above Mr.E.M.Srinivasan for the post of Principal in order to get promotion to the post of Upgraded Senior Lecturer with effect from 03.02.1999, upgraded Head of Department with effect from 03.02.2009 and Principal with effect from 25.01.2018 respectively.

For Petitioner	: Mr.A.R.Suresh for Mr.K.Sannjay
For R1 to R3	: Mr.T.Chezhiyan, Additional Government Pleader
For R4 & R5	: No Appearance



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ORDER

WEB COPY Heard Mr.A.R.Suresh, learned counsel for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents 1 to 3.

2. The brief facts of the case are as follows:-

2.1. The petitioner herein was originally inducted as an Instructor under the official respondents/Government Polytechnic College on contract basis, with one artificial break between every academic year. The post of Instructor was redesigned thereafter as 'Lecturer'.

2.2. Through G.O.Ms.No.334, Education, Science and Technology (I2) Department, dated 28.04.1995, the services of the petitioner and similarly placed lecturers were regularised with effect from the date of the said Government Order i.e., on 28.04.1995. The respondents 4 and 5 were also regularised through the same Government Order and were placed in the ranks below the petitioner in the seniority list. Since the petitioner claimed regularisation from the date of his initial appointment i.e., from 21.12.1990, he had preferred applications in O.A.Nos.1485 to 1489 of 2004 and by an



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order dated 06.04.2004, the Tamil Nadu Administrative Tribunal, Chennai (hereinafter referred to as “Tribunal”) had declared the entitlement of the petitioner and others for regularisation of their services from the date of their initial appointments. Though the order of the Tribunal had become final, the Government had not implemented the order immediately and ultimately on 19.01.2012, G.O.Ms.No.6, Higher Education (I2), dated 19.01.2012 came to be passed, regularising the services of the petitioner from the date of his initial appointment. In the said Government Order, the Government had also advised the Director of Technical Education (DOTE) to forward and submit a requisition seeking for condonation of the artificial break in the services of the petitioner during his contract period. Though DOTE had sent their recommendations on 28.01.2015, 14.03.2016, 30.07.2016 & 30.08.2017, seeking for condonation of the break in services of the petitioner, the same was considered only on 24.11.2017 through G.O.Ms.No.338, Higher Education (I2), dated 24.11.2017.

2.3. It is the case of the petitioner that in view of the inordinate delay on the part of the Government in considering the Tribunal's order dated 06.04.2004, for regularising the petitioner's services from the date of his



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initial appointment, he was deprived of the promotion to the posts of Senior Lecturer, Head of the Department (HoD) and Principal.

2.4. When the regular approved panel for the year 2017-18 for the post of Principal was prepared through G.O.Ms.No.22, Higher Education (I2) Department, dated 25.01.2018, the petitioner's name was omitted therein. In the same G.O.Ms.No.22, liberty was granted to the HoDs / UGHoDs, whose names were not included in the regular panel for the post of Principal in Government Polytechnic Colleges for the year 2017-18, for preferring an appeal for inclusion of their names within two months from the date of issue of the panel as per Section 45 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. However, on the same day, another Government Order in G.O.Ms.No.23, Higher Education (I2) Department, dated 25.01.2018, came to be passed, granting promotions and postings to 30 HoDs / UGHoDs, without awaiting for objections from the aggrieved persons. Challenging these two Government Orders, the present Writ Petition has been filed with a consequential prayer to incorporate the petitioner's name in Serial No.28 in the seniority list, above the fourth respondent herein, who is claimed to be his junior for the post of Principal and to promote the



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petitioner to the post of Principal, together with notional promotions to the posts of Lecturer, Senior Lecturer and HoD on completion of the periods stipulated in the service regulations in the respective posts.

3. The learned counsel for the petitioner submitted that after the Tribunal had passed orders on 06.04.2004, the official respondents were mandated to regularise the services of the petitioner from 21.12.1990 and owing to their inaction and delay in implementing the order of the Tribunal, the petitioner was deprived of his regular promotions to the posts of Senior Lecturer and HoD on completion of 10 years of service in each of the posts. Hence, he sought for notional promotions of Senior Lecturer and HoD and consequential notional promotion to the post of Principal.

4. Per contra, the learned Additional Government Pleader placed reliance on G.O.Ms.No.37, Higher Education (B1) Department, dated 13.02.2018 and submitted that the qualifications prescribed for the appointment to the post of Principal of Government Polytechnic Colleges is Ph.D., Degree, among other qualifications and since the petitioner does not possess Ph.D., degree qualification, he is ineligible to be promoted to the post



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of Principal. He further submitted that since the petitioner did not serve as HoD in the Polytechnic College, which is the essential qualification for being promoted to the post of Principal, he is not entitled for the same.

5. I have given careful consideration to the submissions made by the respective counsels.

6. G.O.Ms.No.1081, Education (J1) Department, dated 19.08.1989, prescribes the qualifications for the various posts for the Government Polytechnic Colleges. As per the said Government Order, an Associate Lecturer, who has completed 10 years of services and possesses First Class Bachelor degree in Engineering, can be promoted as a Senior Lecturer. A Lecturer, who has completed 10 years of service and possesses either a Master's degree or Bachelor's degree in Engineering, is eligible for promotion as Head of the Department. Likewise, the HoD with a Master's degree in Engineering and experience of five years of service will be eligible to become a Principal of Polytechnic or Special Diploma Institutions.



7. As per G.O.Ms.No.1081, the candidates, who at the time of their recruitment as Associate Lecturer, possess a Ph.D., or M.E., degree, will be sanctioned four or two advance increments respectively, along with the benefit of corresponding years of service for purpose of promotion. The existing Associate Lecturers without research degree and those similarly situated, recruited in future, will be eligible for a similar benefit in service for the purpose of promotion. The petitioner herein had completed his Master's Degree in M.E., (Computer Science) in April, 1998.

8. If the qualifications prescribed for the aforesaid posts are applied to the case of the petitioner herein, in the light of G.O.Ms.No.1081, dated 19.08.1989, it is seen that the petitioner's services in the post of Lecturer that was regularised on 21.12.1990, he ought to have been promoted to the post of Senior Lecturer on 03.02.1999, by applying the 2 years weightage period. Consequently, he would be eligible for promotion to the post of HoD on 03.02.2009 and for the post of Principal on 25.01.2018. Had he been awarded with these promotions at the relevant eligible time, his candidature would have been included in the approved panel for the year 2017-18 for the post of Principal in G.O.Ms.No.22, dated 25.01.2018. However, though the



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petitioner had the benefit of the order of the Tribunal dated 06.04.2004, which directed the official respondents herein to regularise the services of the petitioner from 21.12.1990, the same came to be effectively implemented only on 24.11.2017, after about 13 years. There is absolutely no explanation either in the impugned order or in the counter affidavit filed by the official respondents with regard to the inordinate delay. The resultant effect on the petitioner, owing to this delay was that, he was deprived of the promotion to the post of HoD, which is an essential qualification for being included in the approved panel for promotion to the post of Principal.

9. It is not in dispute that the fourth and fifth respondents herein are juniors to the petitioner and that their names were included in the seniority list and panel prepared in G.O.Ms.No.22, dated 25.01.2018 and G.O.Ms.No.23, dated 25.01.2018, while the petitioner's name was omitted. This apart, when the seniority list in G.O.Ms.No.22, dated 25.01.2018 was issued, the Government had granted two months time from the date of issue of the panel for the aggrieved HoDs/UGHoDs to raise their objections, in accordance with Section 45 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. However, without waiting for such



objections, on the same day, the promotional panel, through the impugned G.O.Ms.No.23, dated 25.01.2018, came to be issued, granting promotions and postings to 30 HoDs/UGHoDs. Such a procedure would amount to an irregularity affecting the Fundamental Rules of natural justice.

10. A learned single Judge of this Court, in the case of ***S.Shanmuga Kumari Vs. The Chairman, V.O.Chidambaranar Port Trust, Tuticorin and others*** passed in ***W.P.(MD) Nos.11457 to 11470 of 2015, dated 21.06.2019***, has dealt with this procedure, in the following manner:-

"4.This Court is of the considered opinion that the fixation of seniority is a service condition of the employees in view of the fact that the seniority list is the source for grant of further promotion to the higher posts. In the event of errors in the seniority list, the same will affect the promotional opportunity of the employees, who all are allowed to get the promotion to the higher posts. Thus, the authorities competent must be sensitive and prepare the seniority lists with cautiousness and publish the same, enabling the employees to get their promotion in the higher posts in accordance with their entitlement as per the rules. The establishment of the Port Trust must be careful and cautious while preparing



the seniority list in order to avoid discriminations and to avoid further complications and denial of promotion to the senior employees, who all are waiting for further promotions. All these aspects are to be taken into account while preparing the final seniority lists.

5. The procedure to be followed by any establishment as a matter of fact is that the draft/provisional seniority list must be published based on the service records of the employees and in accordance with rules in force. Considering the date of appointment or the promotion in the feeder category, the draft seniority lists are to be prepared by the establishment and such draft seniority list must be published and communicated to all concerned for the purpose of receiving objections/appeals, if any grievances exists to the employees. On receipt of any objections/appeals from the employees, the same is to be considered carefully and a speaking order is to be passed enabling the management either to reject the objections or to allow the objections. In the event of allowing such objections submitted by the aggrieved employees, their seniority is to be reconsidered and accordingly they must be placed in the proper place in the final seniority list."



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11. In the background of the orders passed by the Tribunal in O.A.Nos.1485 to 1489 of 2004, dated 06.04.2004, which have become final and the Government had belatedly implemented the orders only on 24.11.2017, the petitioner's candidature requires to be notionally included in the seniority list, as well as in the promotional panel for the post of Principal, as well as for notional promotion to the posts of Senior Lecturer and HoD.

12. Ruling 17 of Fundamental Rule 27 of the Tamil Nadu Government provides that, in cases where a Government servant has been overlooked for promotion to the next higher post, but subsequently promoted to that higher post, after restoration of his original seniority, his pay shall be fixed on the date of assumption of charge in the higher post, on par with the pay of his junior, provided he has drawn the same rate of pay as his junior in the lower post from time to time. The Ruling also provides for payment of the arrears of pay and allowances consequent of fixation of pay with effect from the date of assumption of charge in the higher post.

13. Ruling 13 of Fundamental Rule 6 provides that a Government servant has has compulsorily to wait for orders of posting, such period of



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waiting shall be treated as duty and during such period, he shall be eligible to draw the pay plus special pay which he would have drawn had he continued in the post he held immediately before the period of compulsory wait or the pay plus special pay which he will draw on taking charge of the new post, whichever is less.

14. By applying the aforesaid Rulings, it requires to be held that the petitioner, who was entitled for promotion to the posts of Senior Lecturer, HoD and Principal, would be entitled for all the service and monetary benefits, by holding that he was made to "compulsorily wait" from the date of his entitlement.

15. For all the foregoing reasons, there shall be a direction to the first and second respondents herein to pass orders, notionally promoting the petitioner to the post of Senior Lecturer, with effect from 03.02.1999; for the post of Head of the Department, with effect from 03.02.2009; and notionally include his name in the seniority list, as well as the promotional panel in G.O.Ms.No.23, dated 25.01.2018, in the 28th place, immediately above the name of the fourth respondent herein and grant notional promotion to the



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post of Principal, with effect from 25.01.2018, together with all the service and monetary benefits, including the arrears of pay. Such orders shall be passed, atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

16. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.02.2023

Internet:Yes
Neutral Citation:Yes
Speaking order

DP/HVK



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To

- 1.The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner,
Director of Technical Education,
Chennai-600 025.
- 3.The Principal,
Government Polytechnic College,
Nagercoil.



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M.S.RAMESH,J.

DP/HVK

PRE-DELIVERY ORDER MADE IN

W.P.No.15093 of 2018

and

W.M.P.No.17851 of 2018

08.02.2023