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W.A.No.3019 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.11.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN

AND

THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.3019 of 2023

AND

C.M.P.No.25003 of 2023

1.The Secretary to Government
Higher Education Department
Chennai-9

2.The Additional Director of Technical Education
Guindy
Chennai 600 025

.. Appellants

Vs.

S.Muthiah

.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent Act, against the order dated 16.09.2010 passed in W.P.No.48456 of 2006.

For Appellants : Mr.Silambanan
Additional Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader



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JUDGMENT

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(Judgment of the court was delivered by R. MAHADEVAN, J.)

The challenge made in this writ appeal is to the order dated 16.09.2010 passed by the learned Judge in W.P.No.48456 of 2006.

2. This writ appeal came to be filed by the Government under the following circumstances:

The respondent, who had joined the services of the appellant Department as Boiler Foreman on 01.08.1973. Subsequently, he passed Diploma in Mechanical Engineering in April 1986, as a result of which, he was promoted as Instructor (Mechanical) on 12.12.1988 and continued in the said post. While so, stating that from the date of possessing the diploma qualification, he is entitled to get promotion as Instructor (Mechanical), but he was given promotion only during the year 1988, the respondent filed an application in O.A.No.2054 of 2001 before the Tamil Nadu Administrative Tribunal, which was transferred to the file of this Court and numbered as W.P.No.48456 of 2006, seeking a direction to the appellant Department to promote him as Instructor as per G.O.Ms.No.1363, Education Department, dated 16.08.1988, on completion of diploma qualification with effect from 1986 and to give



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consequential promotion as Associate Lecturer as given to one

Vinayagamorthy vide G.O.Ms.No.472, Higher Education Department, Dated 10.09.1988, who is his junior and fix his pay on par with his junior and pay arrears. By order dated 16.09.2010, the learned Judge following the earlier order dated 30.10.2006 passed in WP.No.4660 of 2005, which was affirmed by the Division Bench vide judgment dated 08.04.2008 in W.A.No.261 of 2008, disposed of the said writ petition and the operative portion of the same reads as under:

“6. In the light of the Division Bench judgment, the petitioner having passed the Diploma in Mechanical Engineering in April, 1986, the petitioner is entitled to get the relief as prayed for. Necessary order is directed to be issued by the 1st respondent within a period of three months from the date of receipt of a copy of this order.”

Aggrieved by the same, the appellant Department is before this Court with the present appeal.

3. Amongst many other grounds raised in the appeal, the learned Additional Advocate General appearing for the appellants has mainly highlighted the grounds that the learned Judge ought not to have directed the appellants to pass necessary orders to get relief as prayed for by the respondent in the writ petition. According to the learned Additional Advocate General,



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mere acquisition of the qualifications prescribed for a particular post would not

automatically confer a right to be considered for promotion and it depends upon the availability of the vacant posts and the seniority position of the respondent in the post of Boiler Foreman. Elaborating further, it is submitted that though the respondent claimed that he was eligible to be considered for appointment to the post of Instructor in the year 1986 itself, no materials have been placed before the writ Court to show that he has reached the zone of consideration. It is also submitted that though the respondent possesses the requisite educational qualification and experience, as per the amendment issued in G.O.Ms.No.1364, Education Department, dated 16.08.1988 to the Special Rules for the Tamil Nadu Technical Educational Subordinate Service in the year 1986 itself, yet, his promotion is governed by the panel of list of approved candidates prepared on the crucial date and estimate of vacancies arrived at for the relevant panel year as per General Rule 4 and fixation of seniority as prescribed in General Rule 35 of the Tamil Nadu State and Subordinate Service Rules. Hence, the learned Additional Advocate General prayed to set aside the order of the learned Judge and thereby, allowed this writ appeal.

4. After hearing the learned Additional Advocate General appearing for the appellants and upon perusal of the documents enclosed in the typed set



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of papers, it could be seen that though this writ appeal was filed by the appellant Department in the year 2011, they have not taken any steps to get it numbered and listed for admission within the reasonable time. After a lapse of 12 years, the writ appeal was numbered as WA No.3019 of 2023 and has come up today “for admission”. There is no sufficient cause putforth on the side of the appellants for such an inordinate delay and laches attributed on their part. It is settled law that the court helps the vigilant and not the indolent; and the delay in moving the petition / application is also a relevant factor, for which the court may refuse to grant the relief [Refer: ***Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project [(2008) 17 SCC 448]***]. On this ground alone, this writ appeal is liable to be dismissed.

5. Even on merits, this court is of the opinion that the learned Judge, after following the earlier orders passed in the similar cases, which were also affirmed by the Division Bench, has granted the relief as sought for in the writ petition, in favour of the respondent. Further, there was no dispute on the side of the appellants, with respect to the qualifications possessed by the respondent and his eligibility for the post in question. Hence, there is no reason to interfere with the order so passed by the learned Judge.



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6. In such view of the matter, the writ appeal deserves to be dismissed and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D, J.] [M.S.Q, J.]

03.11.2023

Neutral Citation : Yes

gya

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