



W.A.No.2700 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
24.4.2023	28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

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1. The State of Tamil Nadu
rep. by its Secretary to Govt.,
Higher Education Dept.,
Secretariat, Chennai 600 009.
 2. The Commissioner of Technical
Education,
Directorate of Technical Education,
Chennai 600 025.
- ... Appellants/Respondents

Vs.

V.Vijayamareeswari ... Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent to set aside the order dated 15.03.2018 passed in W.P.No.11126 of 2013.

For Appellants : Mr.P.Anandakumar, G.A.
For Respondent : Mr.T.K.Premkumar

JUDGMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)



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The short facts leading to filing of this Intra Court Appeal are as follows:

The writ petitioner was selected and appointed as Junior Instructor in Electronics and Communication Engineering Department under 10 (a) (1) of General Rule and posted in Government Polytechnic for Women, Chennai - 20 by order dated 30.1.1975 passed by the Joint Director of Technical Education and the respondent/petitioner joined duty in the said post on 7.2.1975. Thereafter, the respondent was selected by Tamil Nadu Public Service Commission and appointed as Junior Instructor in Government Polytechnic College on 13.8.1975. The respondent/petitioner was upgraded as Associate Lecturer on 5.10.1993 and was promoted as Senior Lecturer on 14.11.2005 with effect from 1991 onwards and then promoted as Head of Department and joined on 6.10.2006. After serving various places as Head of Department, by order dated 6.10.2006, the respondent/petitioner was promoted as Principal of Government Polytechnic College on 26.9.2012 and the respondent/petitioner was permitted to retire from service on attaining the age of superannuation on 30.9.2012.

(ii) The grievance of the respondent/petitioner is that even though the petitioner's name was included in the regular panel for the post of Senior Lecturer during the year 1991-1992 as per G.O., dated 14.11.2005 in the order of seniority, One R.Palanisamy and C.Sakaranarayanan who were juniors



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to the petitioner, their names were included in the panel for the post of Senior Lecturer during the year 2002-2003 and 2003-2004 respectively and subsequent promotion to the post of Head of Department, was given to the aforesaid two individuals along with the petitioner on 6.10.2006. However, while considering the candidature for the post of Principal, the aforesaid two individuals were granted promotion on 28.10.2010, the writ petitioner's name was not considered for promotion to the post of Principal.

(iii) Being aggrieved, the respondent/petitioner has made a representation to the second appellant. On the said representation, the second appellant has passed the impugned order dated 30.5.2011.

(iv) Challenging the said order, the respondent has filed the writ petition in W.P.No.11126 of 2013 before this Court.

(v) The relevant portion of the order passed by the learned Single Judge in W.P.No.11126 of 2013 reads as follows:

"16. That apart, a perusal of the government order in G.O.Ms.No.123, Higher Education (I2) Department, dated 15.05.2017, shows that the government had made it clear that services rendered in the post of upgraded Head of Department as equal to the services rendered in the post of regular Head of Department. The operative portion of the said government order reads as under:

"5. The Director of Technical Education has sent proposal requesting to issue orders treating the



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services rendered by the Lecturers of Government Polytechnic Colleges in the post of upgraded HODs as equal to the services rendered as regular HODs, since all the upgraded HODs possessed the qualification and experience for the post of Principal.

6. The Government after careful consideration of the above request and recommendation, direct that the services rendered by the Lecturers of Government Polytechnic Colleges in the Post of upgraded HODs be treated as equal to the services rendered in the regular HOD, pending issuance of amendment to the post of Adhoc Rules for the post of HOD such that the feeder category to the post of HOD is Lecturer."

17. In the light of the above said Government Order, if the service rendered by the petitioner as upgraded Head of Department from 28.06.2000 is taken as qualifying service of regular Head of Department for promotion to the post of Principal, the petitioner ought to have been promoted as Principal way back in 2006, in the available vacancy. On this score, the reasoning given by the respondent authority in the impugned order to the effect that the petitioner has not completed five years of service in the post of Head of Department is untenable."

2. Counter affidavit has been filed by the respondent wherein it is stated that she was promoted as Head of Department (Electronics and Communication Engineering) by order of the Government issued in G.O.Ms.No.334, Higher Education (12) Department, as per panel approved on



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29.9.2006. However, the order passed in the aforesaid G.O. was not given retrospective effect from 2001. When the respondent is eligible for consideration for the post of Head of Department from 2001, the Government without considering the respondent's name, has simply stated in G.O.Ms.No.200 dated 4.7.2006 that no qualified person was available from 1994 to 2005. Further, it is stated that the appellants after a lapse of 14 years, had prepared three panels to the post of Senior Lecturer/Electronics and Communication Engineering (i) for the year 1990-91 (2 vacancies) (ii) for the year 1991-92 (7 vacancies) and (iii) for the year 1993-94 (one vacancy), as per the orders issued in G.O.Ms.No.458 dated 14.11.2005. There is an inordinate delay of 14 years in preparing the panel for Senior Lecturer. The delay is on the part of the appellants and therefore, the respondent/petitioner cannot be held responsible. The writ petitioner along with D.Arumugamudali and S.Govindarajan submitted a representation to the second appellant/respondent on 15.6.2009 requesting him to furnish panel list for promotion to the post of Principal in Government Polytechnic Colleges stating that they were all seniors and their seniority is undisputed. In reply to the aforesaid representation, it was stated that only two Government Polytechnic Colleges have regular principals out of 22 Government Polytechnic Colleges and the remaining 20 posts are lying vacant. The respondent also requested second appellant to consider five posts of Principal may be filled by considering the



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undisputed candidates/Senior HODs like the respondent/petitioner. However, no action has been taken by the appellants. The appellants have issued an order in G.O.Ms.No.345 dated 28.10.2010 and issued a regular panel consisting the following names for the post of Principal, Government Polytechnic Colleges for the year 2010-2011.

1. Thiru C.Sakaranarayanan
2. Thiru R.Palanisamy
3. Thiru S.Govindarajan
4. Thiru K.Marimuthu
5. Thiru T.Venkataraman
6. Thiru R.Sornakumar
7. Thiru P.Kamatchi

The aforesaid persons were promoted and appointed as Principal, Government Polytechnic Colleges, vide G.O.Ms.NO.346, Higher Education (12) Department, dated 28.10.2010. Moreover, Tvl. C.Sankaranarayanan and R.Palanisamy who are juniors to the respondent/petitioner, were granted promotion without considering the petitioner's name.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. The issue involved in the appeal is that whether the respondent/writ petitioner is eligible for promotion to the post of Principal in Government Polytechnic Colleges as on crucial date 1.3.2010.

5. In G.O.Ms.No.458 dated 14.11.2005 issued by Higher Education department, it is stated as under:



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"ORDER:

The Government approve the following regular panels for the post Senior Lecturer (Electronics and Communication Engineering) consisting of the names of the Upgraded Senior Lecturers/Electronics and Communication Engineering against each panel year in Government Polytechnic Colleges in the order of seniority as detailed below:

For the year 1990 - 1991 : 2 vacancies

- 1. Tmt. N.R.Nagalakshmi*
- 2. Selvi S.Girija*

For the year 1991 - 1992 : 7 vacancies

- 1. Tmt.G.Soundari*
- 2. Tmt.N.Tamilmani*
- 3. Tmt.V.Vijayamareswari*
- 4. Tmt.C.Eswari*
- 5. Tmt.M.Vanithamani*
- 6. Tmt.R.Hemalatha*
- 7. Thiru C.Nandhan*

For the year 1993 - 1994 : 1 vacancy

- 1 Thiru T.R.Thayalan*

For the year 2000 - 2001 : 1 vacancy

- 1 Thiru A.Sabanayagam*
-"*

6. Placing reliance on the aforesaid G.O.Ms.No. 458 dated 14.11.2005, the appellant/writ petitioner claims to consider her service in the post of Senior Lecturer retrospectively from the year 1992, subsequent promotion to the post of Head of Department in the year 2001 and promotion to the post of Principal retrospectively from the year 2006.



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7. The second respondent in his letter dated 30.5.2011, has stated as under:

"vide G.O.Ms.No.458 dated 14.11.2005, the regular panel for the post of Senior Lecturer/Electronics and Communication Engineering was issued for 11 members including the petitioner and promotional orders were also issued on 14.11.2005. It is pertinent to note that, "in the said Government order, it was stated that they were considered to have been appointed as Senior lecturer from the year in which their names were incorporated in the Government Order. As per this, the name of Tmt. V.V.Vijayamareeswari was included in the panel year 1991-1992, but the promotional order was issued only on 14.11.2005.

The individual had not served in the post of Senior Lecturer during 2001 which was the feeder category to Head of Department. Rather, she had joined in the post of Senior Lecturer only on 23.12.2005."

8. A perusal of the aforesaid letter clearly shows that Government issued orders, duly considering the welfare of teaching community, that their services of Senior Lecturer could be taken from the date of inclusion of their names in the regular panel order. Though respondent's name was included in the panel year 1991-1992, she joined as Senior Lecturer only on 23.12.2005 and her service in the post of Senior Lecturer was taken only from 23.12.2005. Further, the Government vide G.O.Ms.No.334 dated 29.9.2006, approved the panel for the post of Head of Department (Electronic and Communication



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Engineering) for 2005-2006 by including four names including the respondent.

It is further stated in the aforesaid G.O. that the Government direct that above four Senior Lecturers (E.C.E.) be promoted as Head of Department (E.C.E.) in the Government Polytechnic Colleges, from the date of their taking charge. The respondent joined in the post of Head of Department only on 9.10.2006. As per G.O.Ms.No.334 dated 29.9.2006, the service of the respondent as Head of Department could be counted only from 9.10.2006. Therefore, on crucial date i.e. on 1.3.2010, the respondent has not completed 5 years in the post of Head of Department which is mandatory for promotion to the post of Principal as per G.O.Ms.No.1486 dated 20.11.1968. The respondent has completed 5 years service as Head of Department only on 9.10.2011. Whereas the respondent's Juniors viz., Tvl. C.Sankaranarayanan and R.Palanisamy who possessed M.E. Degree qualification, require only three years experience as Head of Department for promotion to the post of Principal and they have completed three years service as Head of Department as on crucial date i.e. 1.3.2010. Therefore, they were promoted to the post of Principal during the year 2010. If the respondent claims that her service as Senior Lecturer should be counted from the year 1992, she ought to have challenged G.O.Ms.No.334 promoting the respondent and three others to the post of Head of Department, wherein it is clearly stated that promotion is with effect from the date of their taking charge. The respondent joined in the said



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post on 9.10.2006 F.N. without any objection. Therefore, the respondent has completed five years service as Head of Department only on 9.10.2011. Therefore, the respondent now, cannot claim promotion to the post of Head of Department retrospectively from the year 2001 and consequently, promotion to the post of Principal from the year 2006.

9. The Writ Court while dealing with the issue, has not taken into account the eligibility criteria for promotion to the post of Principal, Government Polytechnic Colleges, the qualification obtained by the writ petitioner as well as their juniors, and also the fact that without challenging the G.O.Ms.No.334 dated 29.9.2006, the respondent has filed the instant writ petition, seeking promotions retrospectively, passed the impugned order.

10. Such view of the matter, this Court finds some force in the contention of the appellants. Therefore, we are inclined to interfere with the order passed by the Writ Court and consequently, the order passed by the Writ Court is liable to be set aside and accordingly, set aside. In fine, the writ appeal stands allowed. No cost.

(D.K.K.J.) (K.G.T.J.)
28.06.2023

Speaking/Non Speaking order
Index: Yes
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To

1. The Secretary to Govt., Govt. of Tamil Nadu,
Higher Education Dept., Secretariat, Chennai 600 009.
2. The Commissioner of Technical Education,
Directorate of Technical Education, Chennai 600 025.



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**D.KRISHNAKUMAR, J.
AND
K.GOVINDARAJAN THILAKAVADI, J.**

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**Pre-Delivery Judgment in
W.A.No.2700 of 2018**

Dated: 28.06.2023



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