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Writ Appeal No.2752 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.09.2023

Delivered on : 12.12.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.2752 of 2018 &
CMP .No.22708 of 2018**

1. Government of Tamil Nadu
Rep., by its Secretary,
Tourism and Culture Department,
Fort St., George,
Chennai – 600 009.

2. The Commissioner,
Department of Art and Culture,
Greenways Road,
Chennai – 28.

3. The Principal,
Government College of Architecture and
Sculpture,
Mamallapuram,
Kancheepuram District

... Appellants

Vs

1. R. Elangovan (deceased)
2. E. Kanagam

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3.E.Suresh

4.E.Subhashini

... Respondents

RR2 to 4 brought on record as LR's of the deceased sole respondent vide order of the Court dated 25.07.2019 made in CMP.No.18061 of 2019 in W.A.No.2752 of 2018.

PRAYER Writ Appeal filed under Clause 15 of Letter Patent against the order dated 08.02.2018 made in W.P.No.7775 of 2012.

For Appellant : Mr.S.Kumaravel

For Respondents : Mr.R.Balan Haridas for RR1 to 4
R1 - Deceased

JUDGMENT

Mr.K.KUMARESH BABU.,J.

This Intra-Court Appeal has been preferred being aggrieved against the order made in W.P.No.7775 of 2018 dated 08.02.2018, passed by the learned Single Judge directing the appellants to grant benefit of regularisation to the respondent with effect from the date on which the respondent had acquired qualification in Bachelor's Degree in Fine Arts (B.F.A) with all attendant benefits and to set aside the order of the second appellant in NA.KA.No.5167/B3/2010 dated 15.02.2012.

2.The brief facts of the case is that, the first respondent joined in the



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service of the third appellant college as a Skilled Assistant in the year 1982.

In the year 2000, the first respondent was promoted as an Instructor and subsequently he obtained a Bachelor's Degree in Fine Arts (B.F.A.) during July 2001. The case of the first respondent is that on acquiring a Bachelor's Degree in Fine Arts, he is entitled to be appointed as a Lecturer on regular basis with effect from the date on which he acquired the B.F.A qualification in terms of G.O.Ms.No.430, Education Department, dated 11.04.1991. The first appellant issued G.O.Ms.No.67, Art, Culture and Tourism Department, dated 06.04.2010, by regularising the services of the first respondent as a Lecturer from the date of issuance of the Government Order with monetary benefits.

3.It is the further case of the first respondent that, the Government had restricted the benefit of regularisation and monetary benefits from the date of issuance of the G.O.Ms.No.67, dated 06.04.2010 and not from the date of acquiring the degree qualification. Thereafter based on the directions issued by this Court in W.P.No.26082 of 2010, the second appellant passed an order dated 15.2.2012, stating that as per G.O.Ms.No.534, Higher



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Education Department, dated 19.11.2004, the pay has to be fixed only from the date of issuance of the order of promotion. The first respondent was promoted to the post of Lecturer only on 06.04.2010, so the said date will only be reckoned for the grant of benefit of regularisation and monetary benefits. Challenging the order of the second appellant, the first respondent has filed a Writ Petition and the learned Single Judge had directed the appellants to regularise the services of the first respondent from and when he had obtained the degree qualification. Aggrieved against the order of the learned Single judge, the appellants has preferred this appeal.

4.We have heard Mr.S.Kumaravel, learned Additional Government Pleader appearing for the appellants and Mr.Balan Haridas, learned counsel appearing for the respondents 2 to 4.

5. The learned Additional Government Pleader, would submit that the first respondent was only appointed as an Skilled Assistant and at the time of appointment, he possessed his qualification as a Diploma holder in Traditional Sculpture and Architecture and he did not possess any degree



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qualification. He would further submit that on acquiring the degree qualification, the first respondent cannot claim his promotion to the post of Lecturer, as there was no vacant post available in the third respondent college and there were other seniors with degree qualification before entering into service who were holding the post of Instructors. It was the second appellant who had sent a recommendation to the Government seeking to upgrade the post of the first respondent and the Government by G.O.Ms No.67 dated 06.04.2010 issued order for upgradation.

6.He would further submit that, the learned Single Judge had failed to note that in G.O.Ms No.1081, dated 19.08.1989, was issued in connection with the pay revision of Teachers in Government/Government Aided Polytechnics, wherein the Government had stated that the recruitment to Instructor posts in Polytechnics be discontinued and existing Instructors to be promoted as Lecturers as and when they acquire degree qualification, and the same cannot be applicable to the third appellant college as because a separate G.O.Ms No.430 was issued for the Teachers of Architecture and Sculpture College, in the year 1991.



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7.The learned counsel would submit that promotion to a particular post can only be given considering the seniority, requisite qualification and availability of vacant post. He would further submit that in the Technical Education Department as per G.O.Ms.No.534, Higher Education Department, dated 19.11.2004, the recruitment of Instructors was stopped and existing Instructors with degree qualification were promoted as Lecturers from 19.08.1989 or from the date of initial appointment or from the date of acquiring degree, whichever is later and pay was fixed only from the date of issue of G.O.Ms.No.534, 19.11.2004. It is further submitted that G.O.Ms.No.534, is only applicable to the Instructors in Technical Education Department who were appointed till 01.12.1997. The first respondent was promoted to the post of Instructor from the post of Skilled Assistant only in the year 2001 and he was not directly appointed as an Instructor. Thereafter as per the recommendation of the second appellant, the Government issued an order in G.O.Ms.No.67, Tourism and Culture Department, dated 06.04.2010, by which three posts of Instructors were upgraded, out of three, one being the first respondent and his pay was fixed from the date of issue



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of the Government Order.

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8.He would submit that one Thiru R.Neelamegam, was appointed as Instructor on 04.08.1986, and his services were regularised retrospectively w.e.f. 04.08.1986. He was promoted as Lecturer on 17.01.2001, as there was a vacant post. Due to considerable delay in regularisation in the post of Lecturer due to non-framing of adhoc rules, he filed W.P.No.21724 of 2015 and based on the order passed in the Writ Petition his services were to be regularised w.e.f. 17.01.2001. The first respondent cannot seek benefit based on that order, as this is a different case. He would further submit that as per G.O.Ms.No.67, dated 06.04.2010, the order of upgradation as Lecturer was given to the first respondent by considering his representation, even when there was no vacancy in the post, for which the first respondent has no rights to claim the same from the year when he had obtained the degree qualification.

9.Countering his arguments, the learned counsel for the respondents would submit that the first respondent has completed his Diploma in Traditional Sculpture and Architecture during the year 1978, and joined in



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the third Appellant college during the year 1982 as a Skilled Assistant and subsequently promoted as Instructor in the year 2000. The second appellant had made recommendations to upgrade the services of the first respondent as Lecturer. He would further submit that the post of Instructor has been abolished in all the Technical Institutions and the Instructors with degree qualification have been upgraded as Lecturer, based on G.O.Ms.No.430, Education Department dated 11.04.1991.

10.The learned counsel for the respondents would submit that the first appellant had issued G.O.Ms.No.67, Art, Culture and Tourism Department, dated 06.04.2010, based on this Government Order, the service of the first respondent has been upgraded as Lecturer from the date of issuance of the G.O., with monetary benefit. He would further submit that while upgrading the post of Instructor in all the Technical Institutions, the same has been done from the date when the Instructor had acquired the bachelor's degree qualification. But in the G.O.Ms.No.67 dated 06.04.2010, a prospective upgradation was only given for the post of Lecturer. It is further contended that the G.O issued by the first appellant cannot be given effect from prospective date, which would deprive the past services rendered by the first



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respondent after acquiring the bachelor's degree.

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11.He would further submit that, while upgrading the post of Instructor in all the Technical Institution, the same has been done from the date when the concerned Instructor had acquired the Degree qualification and denying the same to the first respondent is in gross violation of Article 14 of the Constitution of India as the first respondent had worked as a Lecturer from July 2001.

12.He would submit that in the case of Instructor working in Polytechnic Colleges and Special Institutions, Instructors were promoted as Lecturer from 19.8.1989 or from the date of their initial appointment or from the date of acquiring the required qualification and the pay in the promoted post has been directed to be fixed from the date of issuance of the Government Order in G.O.Ms.No.534, dated 19.11.2004.

13.Considering these Government Orders the regularisation of services of the first respondent should be made from the year 2001 as and when he had acquired his Bachelors degree and the regularisation cannot be



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from the year 2010, based on G.O.Ms.No.67. Therefore, he would contend that there is no infirmity in the order passed by the learned Single Judge and the writ appeal is to be dismissed.

14.We have heard the submissions on either sides and perused the materials available on record.

15.The issue involved in this Intra Court Appeal is as to whether the first respondent herein would have to be regularised as a Lecturer by upgrading the post of Instructor on the date on which he had obtained his degree in Bachelor of Fine Arts.

16.Before advertng to the issue involved, it would be useful to relook into the relevant dates, for better appreciation of the lis, which are as follows:-

Details of the first respondent:-

- | | | |
|------|---|--|
| 1982 | - | Appointed as a Skilled Instructor in the third respondent college. |
| 2000 | - | The first respondent was promoted |



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as an Instructor

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- The first respondent acquired
Bachelor degree in Fine Arts (BFA)

06.04.2010 - The first appellant was regularised
in service as a Lecturer along with monetary be-
nefits with effect from the date of issuance of the
Government Order.

Relevant Govt Orders:-

- 19.08.1989 - G.O.Ms.No.1081 Education Dept.,
- 11.04.1991 - G.O.Ms.No.430 Education Dept.,
- 19.11.2004 - G.O.Ms.No.534
- 06.04.2010 - G.O.Ms.No.67

G.O.Ms.No.1081:-

17.The aforesaid Government Order had been issued by the Educa-
tion Department wherein pay scales to Teachers in Polytechnics and Special
Diploma Technical Institutions were ordered. It is relevant to note that the
third appellant herein was originally under the Technical Education
Department as a Special Institution. The aforesaid Government Order had
also prescribed a recruitment and qualification criteria for the post of



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Associate Lecture, Lecturer and the Head of the Department, Principal,
Instructors and others.

G.O.Ms.No.430:-

18.G.O.Ms.No.430 was issued in the year 1991 wherein after considering the request of various members of the teaching staff of the third appellant college, considering the fact that the incumbent Teachers who were working at the relevant point of time would not be able to complete their degree, as it is the only institution which is offering the specialised course in the subject of Sculpture and Temple Architecture had decided to fit in those persons into the revised pay scales based on the length of service irrespective of the other considerations.

G.O.Ms.No.534:-

19.The aforesaid Government Order provided for upgrading the post of Instructor to the post of Lecturer of all the 236 Instructors those who were working in the Polytechnic college and Special Institutions from 19.08.1989 or from the date of their initial appointment provided they were holding the degree qualification or from the date of them acquiring the



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required qualification.

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G.O.Ms.No.67:-

20. Under the aforesaid Government Order, the first respondent was holding the post which was upgraded to Lecturer from Instructor and ordered entitlement of monetary benefits from the date of issuance of the Government Order.

21. From a perusal of the Government Orders enumerated above, it could be seen that, originally the Government had issued Orders in G.O.Ms.No.1081, fixing pay scales of Teachers in the Polytechnic and Special Diploma Technical Institution which included the third appellant. Thereafter, under G.O.Ms.No.430, on considering the request of the teaching staff had decided to fit those persons who have not completed the degree in view of the request stated therein fitted such persons into the revised pay scales based on their length of service. Again by another order in G.O.Ms.No.534, considering the request of the 236 Instructors who were working in the Polytechnic colleges and Special Institutions under the



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Director of Technical Education, the Government upgraded their post to the post of Lecturer on and from 19.08.1989 i.e., the issuance of G.O.Ms.No.1081, or from their initial date of appointment provided they were holding the degree qualification or from the date of such Instructors acquiring the degree qualification. It is also to be noted that the aforesaid Government Order envisages monetary benefits from the date of issue of the order of upgradation.

22. From the facts of the case, it could be ascertained that the deceased first respondent herein was promoted as an Instructor in the year 2000, and had acquired a degree in the year 2001. The Government in G.O.Ms.No.67, under which deceased first respondent was upgraded as a lecturer from Instructor and was entitled for monetary benefits from the date of issuance of the said Government Order.

23. It would also be relevant to ascertain the facts based upon which one Mr.Neelamegam was granted certain benefits which was sought to be applied to the deceased first respondent by the Writ Court. The said Neela-



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megam was originally appointed as an Instructor on part-time basis on 04.08.1986 and he was promoted as Lecturer on 17.01.2001, as he was already holding a bachelor's degree. Even before the Government Order in G.O.Ms.No.534, was issued the said Neelamegam was holding the post of a Lecturer. Further the orders passed by this Court was only directing regularisation of services both in the post of the Instructor and the post of the Lecturer.

24. Admittedly, the deceased first respondent herein on the date of his initial appointment did not possess a bachelor's degree and he had obtained such degree in the year 2001 only. The deceased first respondent was promoted as an Instructor in the year 2000 and continued to work as an Instructor till the date of G.O.Ms.No.67, in the year 2010. It is true that when G.O.Ms.No.534 was issued the deceased first respondent was working as an Instructor holding a bachelor's degree. It is not explained by the appellants as to why the first respondent was not upgraded as a Lecturer based upon G.O.Ms.No.534. We are not satisfied with the reasons given by the appellants that, there was no vacant post so as to upgrade the post of



Instructor held by the first respondent as a Lecturer. A thorough reading of G.O.Ms.No.534, does not envisage such upgradation only when there are vacancies. The aforesaid Government Order in clear terms had provided that such Instructors who were presently working would be entitled for upgradation to the post of Lecturers on and from 19.08.1989 (issuance of G.O.Ms.No.1081) or from the date of initial appointment provided they had degree qualification or from the date from which they acquired the required qualification. In the present case on hand, on the date of issue of the Government Order, the first respondent was holding the post of an Instructor with a degree qualification this fact had not been disputed by the appellants.

25. When that being so, the post of Instructor that had been held by the first respondent would have to be automatically upgraded as a Lecturer. In view of the aforesaid findings and reasonings, we are of the view that the appellants cannot contend that the deceased first respondent would be entitled for upgradation and the pay for the upgraded post only from the year 2010 i.e., issuance of G.O.Ms No.67. We hold that the deceased first respondent is entitled for upgradation in the post of Lecturer from the date of issuance of the Government Order in G.O.Ms.No.534, i.e.,



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19.11.2004. Since such entitlement of the first respondent had not been considered by the appellants in the proper prospective as per G.O.Ms.No.534, they also cannot be heard to say that he would be entitled for the pay in the upgraded post only from the date of issuance of G.O.Ms.No.67, i.e., 06.04.2010. It is not the fault of the first respondent, it is the fault of the appellants in wrongly applying the Government Order in G.O.Ms.No.534. In the case of the deceased first respondent, as we have found that he is entitled to be upgraded to the post of Lecturer on the date of issuance of G.O.Ms.No.534, we are of the view that he would be entitled to pay as on the date of issuance of the aforesaid Government Order, dated 19.11.2004.

26.The learned Single Judge had directed the appellants to grant the benefit of regularisation with effect from the date on which the first respondent had obtained degree qualification with all attendant benefits. The said direction issued by the learned Single Judge is contrary to the Government Order in G.O.Ms.No.534, and to that effect the order of the learned Single Judge is modified by holding that the deceased first respondent-



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ent would be entitled to the post of Lecturer only from July 2007 as held by the learned Single Judge, but his pay in the upgraded post will be from 19.11.2004., i.e., the date on which G.O.Ms.No.534, was issued, since the circular envisages that the pay in the promoted post will be fixed from the date of issuance of the orders, as we have already held that it was the fault of the appellants in not applying the said G.O., in proper prospective in the case of the first respondent.

27.In view of the above, the order of the learned Single Judge is confirmed, but however not on the reasons stated therein, but for the aforementioned reasons and the direction issued by the learned Single Judge is also modified to the extent indicated above.

28.In fine, the Writ Appeal is partly allowed on the above terms. Consequently connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

(R.S.K.,J.)

(K.B., J.)

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Speaking Order/Non Speaking Order

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