



W.A.(MD)No.788 of 2013

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 13.03.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**

**AND**

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A.(MD)No.788 of 2013**

**and**

**M.P.(MD)No.1 of 2013**

1.The Commissioner of Technical Education,  
The Directorate of Technical Education,  
Guindy-600 025, Chennai.

2.The Principal,  
Government Polytechnic,  
Thoothukudi District.

... Appellants

**Vs.**

1.A.Henry Daniel  
2.M.F.Thangaraja

... Respondents

**PRAYER:** Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 30.03.2012 made in W.P.(MD)No.14252 of 2010 on the file of this Court.



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For Appellants : Mr.D.Sadiq Raja,  
Additional Government Pleader  
For R2 : Mr.G.Prabhu Rajadurai

### **JUDGMENT**

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This Writ Appeal is directed against the order of the learned Single Judge dated 30.03.2012 made in W.P.(MD)No.14252 of 2010.

2.The writ petitioner, who is the 2<sup>nd</sup> respondent herein, passed SSLC and was appointed as Laboratory Assistant in Government Polytechnic, Thoothukudi on 18.06.1973. He was assigned duty in the Mechanical Department and he worked in the said department till July, 1975, then he was transferred to Wiring and Winding Section, which comes under the Electrical Department. In November, 1978, he was transferred to Hydrolics Lab, which comes under the Civil Department. Thus, he served in three departments as Laboratory Assistant and he attained the age of superannuation on 30.09.2011 and retired. When the writ petitioner claimed promotion to the post of Workshop Instructor while he was serving in the



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Government Polytechnic, Thoothukudi, the request of the writ petitioner was rejected through the impugned order dated 26.07.2010, which was under challenge in the Writ Petition.

3.It was the case of the appellants, who are the respondents 1 and 2 in the Writ Petition that the writ petitioner in order to get the post of Workshop Instructor had to complete the required experience in the particular department.

4.This aspect has been considered by the learned Single Judge in detail in the order impugned herein, where the learned Single Judge, having taken note of the earlier orders passed by this Court at various occasions, of course, on the similar point, has held that insofar as the belated acquiring of the experience in the particular department is concerned, the writ petitioner was not posted continuously in the department and if at all any such delay is occurred in gaining the experience, for which, only the employer is to be blamed not the employee.



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5.In this context, even though G.O.Ms.No.2100, Education, dated 18.09.1981 was heavily relied upon by the learned Additional Government Pleader appearing for the appellants, that point also was taken care of by the learned Single Judge, where the learned Single Judge has dealt with the same in the following Paragraph:-

*“5.The second respondent has filed counter affidavit stating that the petitioner attained the age of superannuation and retired from service on 30.9.2011. He was awarded selection grade and special grade on completion of ten years and twenty years of service. His pay was revised and fixed in the higher scale of pay as per the relevant Government Orders. The next avenue of promotion for the post of Lab Assistant is the post of Workshop Instructor. As per the special rules for the Tamil Nadu Technical Educational Subordinate Service (old) issued in G.O.Ms.No.2100 Education, dated 18.9.1981, for promotion to the post of Workshop Instructor, following are the required qualifications:*

*(i) A pass in 8th Standard in a recognised School*

*(ii) Experience as skilled operator for a total period of not less than seven years in a recognised Workshop, of which at least two years service must be actually in the Workshop of a technical educational institution.*



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*As per the revised Adhoc rules issued in G.O.Ms.No.220 Higher Education Department dated 6.7.2009 for promotion to the post of Workshop Instructor following are the qualifications prescribed:*

*(a) Diploma in Mechanical or Electrical and Electronics Engineering or Electrical Engineering;*

*(b) (i) An Industrial Training Institute Certificate / National Trade Certificate / National Apprenticeship Training Certificate in Mechanical/ Electrical subjects;*

*(ii) Practical experience for a period of not less than three years in a recognised Mechanical/Electrical Workshop not below the rank of skilled Operative/ Assistant;*

*Provided appointment shall be made to the post from among the holders of (I) Diploma qualification and (ii) Non-Diploma qualification mentioned above in the ratio 1:4 subject to the availability of adequate number of Diploma holders. It is further stated in the counter affidavit that the crucial date for preparing the panel for promotion is 1st September of every year. Accordingly for the year 2008-2009, the crucial date of 1.9.2008 was taken and the petitioner's name was not considered as he did not complete seven years experience in a recognised Workshop as per the old rule and petitioner obtained the required experience only on 30.6.2009. The new rule came into force from 6.9.2009 as per which the petitioner is not qualified. Hence the second respondent prayed for dismissal of the writ petition."*



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6.The learned Single Judge also having taken note of the earlier judgment in **(2011) 8 MLJ 317** in the matter of **S.Krishnakumar Vs. State of Tamil Nadu**, and also the common order dated 04.09.2007 made in W.P.Nos.47872, 47885 of 2006 and 7791 of 2007, had come to the conclusion that the earlier decisions made in this regard as quoted herein above have made it very clear by way of the settled principle that for such kind of delay if anything caused, the employee cannot be blamed, it should be fastened on the employer only and ultimately, the learned Single Judge has come to the following conclusion in the impugned order:-

*“The said order is followed in the decision reported in (2012) 1 MLJ 634 (S.Sasisivanandam v. District Collector, Thoothukudi District), wherein it is held that when the matter of posting of an employee to a particular post lies in the domain of the concerned authority, the employee cannot be blamed for non-acquiring of required service qualification and denial of promotion on that ground is not justified.*

*13.Thus, the reason stated in the impugned order for not considering petitioner's name for promotion as Workshop Instructor is contrary to the well settled principle of law. The Adhoc rules issued on 6.7.2009 is applicable to future vacancies after the issuance of the said Adhoc rules. Nowhere in the said*



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*rules it is stated that the said rules are applicable with retrospective effect. In the said rules it is specifically stated that the said rules shall come into force on 6th July, 2009.*

*14.The petitioner has made out a case for considering his name for inclusion in the panel for promotion for the post of Workshop Instructor in the second respondent Polytechnic. Petitioner having retired on 30.9.2011, respondents 1 and 2 are directed to give notional promotion to the petitioner from the date on which his junior was given promotion i.e., with effect from 1.12.2010 and promote him notionally enabling him to get revision of pension. Since the petitioner has not served in the promotional post, he is not entitled to get difference in salary from the date of notional promotion till his retirement, i.e, from 1.12.2010 to 30.9.2011.*

*The writ petition is allowed in part as above. No costs. Connected miscellaneous petitions are closed.”*

7.We have gone through the order of the learned Single Judge, which is impugned herein and heard both sides.

8.As has been rightly held by the learned Single Judge, the writ petitioner though was entitled to such promotion during his entire service period, that was denied. Subsequently, when he moved the said Writ



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Petition, the points discussed herein above have been taken care of by the learned Single Judge in the order impugned of course based on the earlier precedents in this regard.

9. Therefore, we do not find any reason to interfere with the said view taken by the learned Single Judge. In view of the above, this Writ Appeal fails and it is liable to be dismissed, accordingly, it is dismissed. As a result, the benefit that has been accrued pursuant to the allowing of the Writ Petition shall be calculated and be extended to the writ petitioner by the appellants within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

**(R.S.K., J.) & (K.K.R.K, J.)**

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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**AND**

**K.K.RAMAKRISHNAN, J.**

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