



W.P.(MD).No.16582 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16582 of 2019

and

W.M.P(MD)Nos.13221 & 13224 of 2019

V.Murugesan

... Petitioner

Vs.

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

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

3.The Secretary cum Correspondent,
Kamaraj Polytechnic College,
Palavilai-629 501,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent in Letter No.37673/C2/2016 dated 11.09.2018 and the consequential proceedings in Letter No.39734/C2/2018 dated 12.11.2018, quash the same, and further



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direct the 2nd respondent Commissioner to approve forthwith the appointment of petitioner as Skilled Assistant (Chemistry) in 3rd respondent College namely, Kamaraj Polytechnic College, w.e.f. The date of his appointment viz., 17.11.2015, with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Mr.Isaac Mohanlal
Standing Counsel
for M/s.Isaac Chambers

For R1 & R2 : Mr.D.Sadiq Raja
Additional Government Pleader

For R3 : Mr.N.Dilip Kumar

ORDER

This writ petition has been filed to quash the impugned order, dated 11.09.2018 with a consequential direction to direct the 2nd respondent / Commissioner to approve the appointment of the petitioner as Skilled Assistant (Chemistry) in 3rd respondent college.

2. The 3rd respondent college is a recognized aided private institution. The petitioner is having SSLC, ITI (Fitter) and National Apprenticeship Certificate and various other qualifications. One sanctioned post of Skilled



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Assistant (Chemistry) fell vacant on 01.01.2010 due to the voluntary retirement of the incumbent, namely T.Suseela on 31.12.2009 and the said voluntary retirement was approved on 15.02.2010. The college submitted necessary proposal to the Commissioner of Technical Education seeking permission to fill up the Skilled Assistant (Chemistry) post along with various few other posts. The Commissioner vide letter dated 23.10.2014 has granted permission to fill up the 6 posts of Skilled Assistants including one post of the Skilled Assistant (Chemistry). The college issued newspaper notification in Tamil Daily 'Thina Thanthi' and English daily 'The Indian Express' on 04.04.2015 inviting applications from the eligible candidates. The qualifications prescribed thereunder is SSLC pass and Industrial Training Institute Certificate National Trade Certificate/National Apprenticeship Certificate in Fitter Trade or General Mechanic Trade. The college also requested the District Employment Exchange Office, Nagercoil to sponsor the list of eligible candidates. The employment exchange has issued non-availability certificate on 25.09.2015.

3. The contention of the petitioner is that he was already working in the 3rd respondent college in self-financing section from 02.04.2006. As on the date of notification, the petitioner has put into 9 years of experience as Skilled



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Assistant. Along with 5 other candidates, the petitioner has also submitted an application. The Scrutiny Committee had held that the other 5 candidates were not having required educational qualifications. The college invited the petitioner for interview on 17.11.2015 at 9.30 a.m. and the petitioner appeared before the Scrutiny Committee. The petitioner was found to have all qualifications except age. In the recruitment process notification, it has been prescribed that the candidate should be 36 years as on the date of notification. However, as on the date of notification, the petitioner was having 38 years old. The selection committee found that the petitioner is eligible for the said post based on his other qualification, hence, recommended to relax the age. The 2nd respondent Director vide letter, dated 03.09.2016 denied approval stating as per G.O.Ms.No.220, Higher Education Department, dated 27.05.2009, the age limit for the Skill Assistant should be 36 years. Since the petitioner has crossed the age, the respondent had declined approval. However, the petitioner was appointed by the college and he is continuing in the said post till now. The petitioner submitted various petitions before the Chief Minister's Special Cell and other authorities, but nothing was forthcoming. Aggrieved over the impugned order the present writ petition is filed.



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4. The 2nd respondent has filed a counter stating the 3rd respondent is a Government Aided Polytechnic College and is managed by the Governing Council which is the statutory body constituted under Grant-in-Aid-Code issued vide G.O.Ms.No.1282 Education Department, dated 26.07.1967. The Skilled Assistant post fell vacant on 01.01.2010. All Government Aided Polytechnic Colleges should follow communal roster and other recruitment regulation prescribed for the said post. Both internal candidates and external candidates fulfilling the required qualifications and experience as per the norms prescribed, shall appear for interview. Internal candidates who are already working in the same institution, fulfilling the qualification prescribed for the post are permitted to appear for the interview for the appointment to the higher post. It is directed that in case selection is made for appointment from external candidates, communal rotation is to be strictly adopted by following Rules of Reservation, whereas it is not required in the case of internal candidates. The most suitable candidate among the internal and external candidates appearing for the interview will be selected by duly constituted “Staff Selection Committee”. As far as Aided Polytechnic Colleges are concerned, all appointments should be made based on G.O.Ms.No.1282, Education Department, dated 26.07.1967. The post of Skilled Assistant is a sanctioned



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post. Hence, the 2nd respondent allowed the 3rd respondent to fill the post based on certain conditions and one such condition is to follow General Turn communal roaster for the academic year 2014-2015. The petitioner was temporarily working in self-financing section from 02.04.2006. The petitioner was selected by the Staff Selection Committee and the college submitted the necessary proposal to the 2nd respondent in the proforma. The Director of Technical Education had rejected the same, since the petitioner is 38 years as on 1st July 2015. The 2nd respondent after scrutinizing the documents and particulars of the petitioner, has rejected the petitioner's appointment following the Government Letter No.6299/C1/2017-3 dated 05.07.2018, since the petitioner is 38 years as on 1st July 2015. Therefore, the claim of the respondent is that the petitioner is not entitled to since he is over age. Moreover, the college has not followed the communal rotation and also has not followed priority category. Hence, the respondents prayed to reject the case of the petitioner and dismiss the writ petition.

5. The 3rd respondent has also filed counter stating the petitioner was selected as per rules and regulations and the conditions prescribed by the 2nd respondent in a strict manner. The non-availability certificate was issued by the



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Nagercoil Employment Exchange Office. In fact, the said employment exchange has circulated a letter to all other employment exchanges to grant a list of candidates. Since the employment exchange has not submitted any list of candidates, the 3rd respondent proceeded further to call for candidates from the open market. Thereafter, the college issued paper publication in Tamil as well as English. Since there were no candidates for the said post with the requisite qualification, the petitioner being an internal candidate was selected and appointed in the said post. The only disqualification the petitioner is having is that he is over age, that is 2 years above the prescribed age limit. It is further submitted that the post fell vacant in the year 2010 itself and if the 2nd respondent has granted prior permission in the year 2010 itself, the petitioner would be the correct candidate including age. Then, age relaxation would not be an issue at all. Therefore, the college submitted that the petitioner is eligible candidate and only a relaxation for age is required. Hence, the 3rd respondent prayed to allow the writ petition.

6. Heard Mr.Isaac Mohanlal, learned counsel for the petitioner, Mr.D.Sadiq Raja, learned Additional Government Pleader for the respondents 1 and 2 and Mr.N.Dilip Kumar for 3rd respondent.



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7. The issue in this writ petition is whether the impugned order refusing to grant age relaxation is sustainable in law. The learned counsel appearing for the respondents 1 and 2 vehemently submitted that the college has not conducted the selection process properly. The college has invited applications through notification by stating the applications are invited for the post of General Turn, especially, in priority category of women widow. Since the 3rd respondent college has restricted in calling for the eligible candidates, only limited candidates have applied. The 3rd respondent in order to accommodate the petitioner, has played a foul play in the selection process. There are several eligible men candidates. Since the 3rd respondent has specifically stated it is priority for women, less number of applications were received. However, this claim of the 2nd respondent was refuted by the petitioner by stating the college has received applications from both men and women along with the writ petitioner, namely A.Jegan (male), V.Anu Danie (female) S.Kani (female) N.Sivabalan (male) K.Chithiravathi (female). Therefore, this Court is of the considered opinion that the contention of the respondent that none of the male candidate had applied, is incorrect. Moreover, the respondents have misunderstood the “priority category of women” in general turn. The general



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turn is the category applicable to all candidates, meritorious candidate would be selected, if merit is equal among two candidates, then the priority rule would be applied to select women candidate. Therefore, all candidates are eligible to participate in the selection process irrespective of gender. Hence the plea of the respondents is irrelevant.

8. The next contention that was raised by the 2nd respondent is that the age relaxation cannot be granted to the petitioner, since he is an in-house candidate. The 3rd respondent in order to accommodate the petitioner, has accepted the application of the petitioner. The petitioner's application ought to be rejected in the threshold itself, since he is overaged. In other words, the petitioner's application ought to be rejected in preliminary scrutiny itself. Since the petitioner is in-house candidate, the 3rd respondent had received the application. However, the Learned Senior Counsel submitted that the Tamil Nadu State and Sub-ordinate Service Rules prescribes age relaxation, if there is an in-house candidate. Rule 12 (d) of the said Rule is extracted hereunder:

12. (d) The maximum age limit prescribed in special rules shall not apply-

(i) to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Class and Denotified communities or of destitute widows of all castes



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to a post included in a service for which the Special Rules prescribe a qualification lower than a degree of any University mentioned in Schedule II to this part, if such candidate possesses a general educational qualification which is higher than that referred to in sub-rule (a) and he is otherwise qualified for appointment; or

(ii) to the appointment to a post included in a service of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Classes and Denotified communities or of destitute widows of all castes who holds a degree of any University mentioned in Schedule II to this part, if the degree he holds is not lower than the degree prescribed in the Special Rules for appointment to such post and if he is otherwise qualified for appointment.

Since the petitioner is having higher qualification than the prescribed qualification, then the maximum age limit will not apply. Therefore the contention of the official respondents is erroneous.

9. This Court is of the considered opinion that the in-house candidates shall always be granted priority. Moreover, in Tamil Nadu Private School Regulation Act and Rule, it is stated that the in-house candidates should be granted opportunity if they are qualified to the said post. Under Rule 15(4), the qualified in-house candidate shall be considered for the post, if the candidate is



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qualified, rather than going for direct recruitment. But the respondent institution is a Polytechnic College and the said Act are not applicable. The Grant-in-Aid-Code alone is applicable and in the said Code, under selection of staff, it is stated that the staff should be selected by Selection Committee constituted in accordance to the general orders of the Government/Director from time to time. The general order that is covering this issue is G.O.Ms.No. 220, Higher Education (B1) Department, dated 06.07.2009. In this Government Order, it only prescribes to follow the roster system with the age limit as 36 years. But the Grant-in-Code is not prohibiting the appointment from in-house candidate. If the in-house candidate is available, then the institution should appoint the said person, which can avoid further financial stress on the government. Therefore, this Court is of the considered opinion that the in-house candidate shall be given preference than the outside candidate. On this angle also, the petitioner is entitled to gain.

10. In this present case, the post fell vacant in the year 2010 itself. If the government has granted permission in the year 2010 itself, the petitioner would have been selected, because he would be within the age limit. Since the government has given permission after lapse of 4 years, this issue has arisen.



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Since, the petitioner is in-house candidate for more than 10 years and serving in the said institution, the petitioner is having every right to claim that he is entitled to be considered. The Selection Committee has also considered the petitioner's case and has held the petitioner is eligible except for the age limit. If a person is over qualified, then the Government has issued relaxing the age also. Hence, the petitioner is entitled to be considered for relaxation.

11. Hence, the impugned order is set aside. The 1st respondent is directed to grant age relaxation to the petitioner and the consequential service and monetary benefits shall be granted from the date of appointment. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

12. With the above directions, this Writ Petition stands allowed. No costs. Connected miscellaneous petitions are closed.



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To

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- 2.The Commissioner,
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