



W.P.(MD).No.16967 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16967 of 2016

and

W.M.P(MD)No.12289 of 2016

P.Rajan

... Petitioner

Vs.

1.The General Manager,
Kanyakumari District Cooperative Milk
Producers Union,
K.P.Road, Nagercoil.

2.The Commissioner,
Dairy Development Department,
Mathavaram Milk Colony,
Chennai-51.

3.The Secretary to Government,
Education Department,
Chennai-9.

... 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 proceedings of the 2nd respondent in Rc.No. 17313/N2/2015 dated 04.04.2016 and quash the same and direct the 1st and 2nd respondents to issue necessary order for the re-fixation of petitioner's seniority



W.P.(MD).No.16967 of 2016

and to give Junior Executive (Office) notional promotion from the date of conducting personnel committee meeting i.e. on 11.01.2016 and Executive (office) notional promotion from the date on which the junior gets elevated to Executive (Office) i.e. on 26.07.2019 respectively and to calculate and draw the monetary benefits of the Junior Executive (Office) and Executive (Office) promotion pay with retrospective effect along with 18 percent interest and also to sanction subsequent promotion based on his revised seniority.

*(Prayer amended vide Court order, dated 12.12.2022 in
W.M.P(MD)No.20521 of 2022)*

For Petitioner : Mr.M.Sengu Vijay

For R1 : Mr.K.Prabhu
Additional Government Pleader

For R2 & R3 : Mr.A.Baskaran
Additional Government Pleader

ORDER

This petition has been filed to quash the impugned order, dated 04.04.2016 and direct the respondents to promote the petitioner for the post of Junior Executive.



W.P.(MD).No.16967 of 2016

WEB COPY

2. Pending writ petition, the petitioner had filed an amendment application to amend the prayer, wherein he sought to quash the impugned order, dated 04.04.2016 with a consequential relief, directing the 2nd respondent to issue necessary order for re-fixation of petitioner's seniority and grant promotion to the post of Junior Executive (Officer) notionally from the date of conducting personal committee meeting i.e., on 11.01.2016 and Executive (Office) notional promotion from the date on which his junior was elevated as Executive (Office) on 26.07.2019 and calculate the monetary benefits to the said post with 18% interest.

3. The petitioner after completing 10th standard, joined 2 years foundation course conducted by Annamalai University through distant Education, which is equivalent to Higher Secondary (+2) as per G.O.Ms.No. 219 Personal and Administrative reforms (personal R), dated 30.03.1988. Thereafter, he graduated as B.B.A. and undergone Cooperative training. He was appointed as Senior Factory Assistant on 01.01.1996, which is the feeder category to the post of Junior Executive as per rules. The petitioner was confirmed on 13.02.1997 and regularized from that date and he was working as Senior Factory Assistant for more than 20 years. The qualification fixed for the



W.P.(MD).No.16967 of 2016

post of Junior Executive is to complete Senior Factory Assistant and other equivalent post for a period of 3 years. Then the person should possess any Degree or Diploma in Cooperative Management and exemption was granted for B.A.(Co-op) and B.Com.(Co-op) from possessing cooperative training. The ratio for the feeder category is fixed as 1:1:1. The 1st respondent vide communication, dated 26.06.2015 called for applications for promotion to the post of Junior Executive and the petitioner has submitted an application. Since the 1st respondent did not take any steps to promote the qualified employees, on 14.10.2015, representation was submitted to the 2nd respondent for considering promotion to the post of Junior Executive. Without considering the petitioner's representation, the 1st respondent has taken emergent steps to fill up the post of Junior Executive category by way of direct recruitment. The appointment by direct recruitment and the appointment by transfer shall be made in the ratio of 1:1:1. The petitioner is working as Junior Executive for more than 5 years without the salary to the said post. 9 vacancies were available. The respondents were taking emergent steps to recruit direct recruitment, but has not taken steps to promote the in-service candidates even though the petitioner is having 20 years of experience and 5 years of experience as Junior Executive itself. Aggrieved over the same, petitioner had filed W.P(MD)No.1860 of 2016 for



W.P.(MD).No.16967 of 2016

Mandamus. This Court vide order, dated 28.01.2016 directed the 2nd respondent to dispose of the representation in accordance to law. The 2nd respondent passed the impugned order by stating the petitioner is not qualified, since the petitioner is having foundation course and has not completed Higher Secondary Course. As per G.O.Ms.242 Higher Education (P1) Department, dated 18.12.2012, the person should possess 10+2+3 and foundation course is not equivalent to +2. Since the petitioner has not completed 10+2, the petitioner is not entitled to be considered for promotion. Aggrieved over the same, the present writ petition has been filed.

4. The respondents have filed a counter stating admittedly, the petitioner is not having +2 i.e., Higher Secondary Course. The foundation course was not recognized as per G.O.Ms.No.242, dated 18.12.2012. Since the petitioner is seeking promotion subsequent to passing of this Government Order, the petitioner is not entitled to consider for the said promotion. Hence, the respondents prayed to dismiss the writ petition.



W.P.(MD).No.16967 of 2016

WEB COPY

5. Heard Mr.M.Senguvijay, learned counsel appearing for the petitioner, Mr.K.Prabhu, learned counsel appearing for R1 and Mr.A.Baskaran, learned Additional Government Pleader appearing for R2 and R3.

6. The petitioner has completed foundation course prior to 1996. As on the date of completion of the foundation course, the said course was very much recognized as equivalent to +2, as per G.O.Ms.No.219 Personal and Administrative Reforms (Personal R) dated 30.03.1988. Based on this qualification, the petitioner was appointed as Senior Factory Assistant on 01.01.1996. Thereafter, there was a change in policy by the Government by issuing G.O.Ms.No.242, dated 18.12.2012, wherein it has cancelled the recognition granted to the foundation course and pre-foundation course as equivalent to 10th and 12th. The respondents have declined the promotion, since the petitioner is having only foundation course and not having Higher Secondary Course. Any person is entitled to promotion only if he is having the education qualification as 10+2+3. Since the petitioner is not having +2, the petitioner was declined to consider for promotion.



W.P.(MD).No.16967 of 2016

WEB COPY

7. The issue of pre-foundation course and foundation course was considered by the Hon'ble Division Bench in ***Mohamed Hasan Refayee Vs. TNPSC and another*** in W.A.No.213 of 2018, dated 19.07.2019. It has been held that candidates completed pre-foundation course and foundation course prior to 18.08.2009 are eligible for promotion. The Candidates who were appointed prior to 18.08.2009 with pre-foundation course and foundation course cannot be terminated. Since from the date of issuance of G.O.Ms.No. 107, Personnel and Administrative Reforms Department, dated 18.08.2009, the pre-foundation course and foundation course was held to be not eligible. In other words the pre-foundation course and foundation course were recognized prior to the cancellation of such recognition through G.O.Ms.No.107.

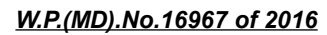
8. However the subsequent Division Bench in W.A.No.497 to 500 of 2012 (***P.Thavam and Others Vs. The State of Tamil Nadu***) vide order, dated 05.07.2022 reported in ***2022-III-LLJ-487(Mad)*** has fixed the cut off date as 20.11.2017. The Hon'ble Division Bench has held that the government constituted Equivalency Committee to analyze the issue and report the same. Then the Committee had submitted a report that the pre-foundation course and foundation is not equivalent to 10th and 12th. The government had accepted the



W.P.(MD).No.16967 of 2016

report through G.O.Ms.No.107, P&AR Department, dated 18.08.2009. Subsequently, through G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, has declared that pre-foundation course and foundation is not equivalent to 10th and 12th. Hence the Hon'ble Division Bench had held since through G.O.Ms.No.107, the government had only accepted the Equivalency Committee's report, but it is only through G.O.Ms.No.144, the Government has declared that pre-foundation course and foundation course is not equivalent to 10th and 12th. Hence the cut off date for not recognizing the pre-foundation and foundation course is only 20.11.2017. The relevant portion of the Division Bench judgment is extracted hereunder:

“This Court is of the considered opinion that the government had recognized the pre-foundation course vide G.O.Ms.No.528, P and AR Department, dated 18.05.1985 and the said G.O. was in existence from 1985 onwards, subsequently there was a challenge to the open university degree and the High Court has held open university degree is not valid and pre-foundation course as not valid. When it was considered valid for the past twenty four years, then it was declared as invalid, the persons who are affected from this shift / change of qualification ought to be protected. As rightly pointed out by the appellants, the Government has taken eight long years after issuance of G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, to issue G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017. It is only in G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated



9. Following the Hon'ble Division Bench judgment, this Court had considered the same issue in W.P.(MD)No.20868 of 2015 vide order, dated 03.11.2022 and allowed the writ petition. In the present case the writ petitioner had completed the foundation course on 1996. Therefore, this Court is inclined to quash the impugned order and allow this writ petition. It is submitted by the learned Senior Counsel appearing for the petitioner that the petitioner's junior was conferred with subsequent promotion to the post of Executive (Office).



W.P.(MD).No.16967 of 2016

WEB COPY

10. Therefore, considering the said service, this Court is inclined to pass the following orders:

(i) The impugned order is quashed.

(ii) The respondents are directed to confer promotion to the post of Junior Executive (Office) notionally from 11.01.2016 and grant all monetary and service benefits.

(iii) Thereafter, the petitioner shall be conferred promotion to the post of Executive (Office) from 26.07.2019 and grant all monetary and service benefits.

11. With the above said directions, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

gbg



W.P.(MD).No.16967 of 2016

WEB COPY

- To
- 1.The Commissioner,
Dairy Development Department,
Mathavaram Milk Colony,
Chennai-51.
 - 2.The Secretary to Government,
Education Department,
Chennai-9.



WEB COPY



W.P.(MD).No.16967 of 2016

S.SRIMATHY, J.

gbg

W.P.(MD).No.16967 of 2016

10.01.2023