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W.P.No.25100 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.02.2024

Delivered on: 29.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

W.P.No.25100 of 2010

and

M.P.No.01 of 2010

1. S.Arumugam

2.S.Sivagami

3.S.Sankar

4. J.Sundhararaaj

5.C.R.Ilango

6.V.Jacqueline

...Petitioners

Vs

1. Chennai Metropolitan Water Supply and Sewerage Board
Rep. By its Managing Director,
No.1, Pumping Station Road,
Chintadripet,
Chennai 600 002.

2. General Manager
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet,
Chennai – 600 002.

...Respondents



W.P.No.25100 of 2010

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Mandamus forbearing the 1st and 2nd respondent from promoting the 3rd respondent to the post of Programmr contrary to the Special Regulations of the Board and consequently direct the 1st and 2nd Respondents to fill up the vacant post of Programmer based on seniority amongst the System Operator as per Regulation 21 of the General Service Regulation of the Respondent Board and as per the existing practice of effecting promotion to the post of Programmer from System Operator purely based on seniority.

For Petitioner : M/s..Kaavya
for M/s.Balan Haridas

For R1 & R2 : Mr.Krishna Ravichandran

For R3 : M/s. Arulselvam

ORDER

This Writ Petition has been filed to forbear the 1st and 2nd respondent from promoting the 3rd respondent to the post of Programmer contrary to the Special Regulations of the Board and consequently direct the 1st and 2nd Respondents to fill up the vacant post of Programmer based on seniority amongst the System Operator as per Regulation 21 of the General Service Regulation of the Respondent Board and as per the existing practice of effecting promotion to the post of Programmer from System Operator purely based on seniority.



W.P.No.25100 of 2010

2. The case of the petitioner is that, respondents 1 & 2, contrary to the Special Regulations of the Board, are trying to promote the 3rd respondent to the post of Programmer. Petitioners are working as System Operator. Petitioner is a Post Graduate in M.Com. He also completed B.Ed and also Diploma in Computer Application and Oracle. The next avenue for promotion is to the post of Programmer. The post of Programmer can be filled up by direct recruitment or by promotion or by transfer of service. There are two vacancies of programmer. Respondents have been filling up the post of Programmer by promotion from the post of System Operator as per Regulation 21 of the General Regulations of the Board. The qualification for the post of programmer for the post of Programmer from the post of System Operator are as follows:

1. Must Possess a degree in Engineering or M.Sc., with Applied Science of Mathematics or Statistics or Physics as a Main subject. Degree in Computer Science and allied subjects preferred.

2. Must have put in a minimum period of 5 years of service in the Board as System Operator”



W.P.No.25100 of 2010

3. In case there is no System Operator available with the requisite qualification, the post of Programmer had been filled up from the System Operator by transfer of Service. The qualification for the post of Programmer from transfer of Service is that,

“From any other services in the Board in the pay scale of Rs.1400 -2600 (revised scale of Rs.5000 -150-8300. Training in Computer Programming and Data Processing from a Recognized Institute is essential”

4. The respondent prepared a panel of seniority and the petitioners are in S.No. 1 to 6 and the 3rd respondent is in S.No.7. The 3rd respondent studied B.Sc and obtained Diploma in Computer Application. He completed M.C.A through correspondence course in 2007. 3rd respondent does not possess the requisite qualification as per Regulation, but the respondents 1 & 2 are trying to illegally promote the 3rd respondent as Programmer and therefore, this Writ Petition.

5. The learned counsel for the petitioner submitted that, 3rd respondent possessed only B.Sc and Diploma in Computer Application. Even if he had passed M.C.A, it can only be a preferred qualification. M.C.A cannot be equated to Post Graduate Degree in Applied Science. Preferred Qualification



W.P.No.25100 of 2010

cannot be a basis for promotion. Therefore, promotion can only be made on transfer of service basis. When promotions are based on Seniority, the Comparative Assessment of merits has no place. If a candidate has minimum merits, he should be promoted.

6. In support of his submission, he produced the judgement rendered by this Court in W.A.Nos.402 and 403 of 2020, wherein it is stated as follows:

24. The line of decisions of the Apex Court lay down the ratio as follows:

(i) In Sher Singh v. Union of India, (1984) 1 SCC 107, the Apex Court examined the provisions of Section 47(1) of the Motor Vehicles Act, 1939 providing for preference to the State Transport Undertaking by grant of permit and explained the meaning of -preference- as under:

7. The expression preference amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other. It signifies that other things being equal, one will have preference over the others. Preference in this context would mean that other things generally appearing to be qualitatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking.



(ii) In *Government of Andhra Pradesh v. P.Dilip Kumar*, (1993) 2 SCC 310, the Apex Court held as under:

13. *The matter may be looked at from another viewpoint. The word preference as understood in ordinary parlance means preferring or choosing as more desirable, favouring or conferring a prior right. What then is the purpose and object sought to be achieved by the insertion of the preference clause in the rule? There is no doubt that preference was sought to be granted under Note 1 to post-graduates in the larger interest of the administration. How would the interest of the administration be served by granting preference to post-graduates? It is obvious that it was thought that on account of their higher mental equipment the quality of performance that the State will receive from highly qualified engineers would be better and of a high order. In other words the State considered it necessary to strengthen the engineering service by recruiting post-graduates to the extent available so that the State may benefit from their higher educational qualifications and better performance. If this was the objective surely it would not be realised unless post-graduates are treated as a class and given preference en bloc over the graduates.*

15.*It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting*



candidates with higher qualifications to enter the zone of consideration. It was, therefore, held that screening a candidate out of consideration at the threshold of the process of selection is neither illegal nor unconstitutional if a legitimate field demarcating the choice by reference to some rationale formula is carved out. Thus the challenge based on Articles 14/16 of the Constitution was repelled.?

(iii) In Secretary (Health), Department of Health and F.W. v. Anita Puri, (1996) 6 SCC 282, the question raised before the Apex Court was answered as follows:

7. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed. In adjudging the suitability of person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going

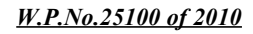


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to be held, his general aptitude for the job to be ascertained in course of interview, extracurricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held.?

(iv) In Executive Officer v. E.Tirupalu, (1996) 8 SCC 253, the Apex Court held that where rules provide for preference to a particular class of candidates, that preference under the Rules cannot be applied irrespective of the merit of candidates, the inmates have to be given appointment. It means that the merit of the candidates being equal, preference would be given to the inmates of the class which is to be given preferential right and it certainly does not mean an automatic appointment without considering the cases of other candidates. Therefore, even if the rules provide for preferential right, candidates having such subjects would have preferential right only when they complete with other candidates and are found on equal footings, otherwise not.

(v) In State of Uttar Pradesh v. Om Prakash, AIR 2006 SC 3080, after considering the earlier judgments on the issue, the Apex Court held that the word 'preference' would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more



of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of the candidates vis-a-vis others in the merit list prepared by the Commission.

7. It is the further submission of the learned counsel for the petitioners that, 1st petitioner was the senior most System Operator, entitled to be considered for promotion. However, the 3rd respondent was considered for promotion to the post of Programmer. Though 1st petitioner is retired now, he has right to be considered for promotion along with 3rd respondent, by following transfer of service method. When that be the case, without even eligible for being considered, 3rd respondent been promoted as Programmer. Without disturbing the promotion of the 3rd respondent, this Court can adjust the equity by giving promotion to the 1st respondent notionally as Programmer from 03.11.2010. Petitioner was not insisting on arrears of pay. But he is concerned only on higher pension.

8. In reply, the learned counsel for the respondents submitted that, in order to fill up the post of vacancy through promotion for the post of Programmer, eligible candidates in the cadre of System Operator had been called for from the respective Controlling Officers of the Respondent Board. It



W.P.No.25100 of 2010

was found that, among the candidates, 3rd respondent was found having qualification of M.C.A and twelve years experience. Therefore, he was promoted as Programmer vide proceedings No.CMWSSB/P&A/STF/RA1/45200/2010 dated 03.11.2010. Post of Programmer can be filled by Direct Recruitment or Promotion or Transfer from Service. Previous eight vacancies in the cadre of the Programmer had been filled up by transfer from other service, because of the absence of qualified persons. 3rd respondent possessed requisite qualification and therefore, he was promoted. Petitioners have not taken any steps to equip themselves and acquire the requisite qualifications, despite having plenty of time. Therefore, they cannot challenge the promotion given to the 3rd respondent.

9. The learned counsel appearing for the 3rd respondent adopted the submissions of the learned counsel appearing for the respondents 1 & 2 and stated that the 3rd respondent possessed the requisite qualification of M.C.A in Computer Science and necessary experience and therefore he was promoted as Programmer. It is his further submission that, G.O.Ms.No.339 dated 26.08.2010 of FINANCE (PAY CELL) DEPARTMENT, Government of TamilNadu stated that, qualification for the post of Programmer is M.C.A (Master Degree of Computer Applications) or Master Degree in Science



W.P.No.25100 of 2010

(Information Technology /Computer Science). His promotion is in accordance with regulations and thus, prays for dismissal of this petition.

10. Considered the rival submissions and perused the records. From the facts narrated above, the case of the petitioners is that, they do not have necessary qualifications as per regulations of the Board for being promoted as Programmer. Similarly, though 3rd respondent has M.C.A qualification, that will not satisfy the requirement of regulation for promotion to the post of Programmer. Therefore, taking into consideration the Seniority, promotion should be made on the basis of transfer from other Service.

11. As per Regulation 21 of the General Regulations of the Board, qualification required for promoting a System Operator to the post of Programmer are as follows:

1. Must Possess a degree in Engineering or M.Sc., with Applied Science of Mathematics or Statistics or Physics as a Main subject. Degree in Computer Science and allied subjects preferred.

2. Must have put in a minimum period of 5 years of service in the Board as System Operator”



W.P.No.25100 of 2010

12. Admittedly, petitioners do not possess the educational qualification.

On the other hand, 3rd respondent has B.Sc with Diploma in Computer Application. He also completed M.C.A through correspondence course during 2007. As per the Educational Qualification requirement, one must possess a degree in Engineering or M.Sc., with Applied Science of Mathematics or Statistics or Physics as a Main subject. Degree in Computer Science and allied subject preferred.

13. What is meant by *Applied Science*? The term *Applied Science* refers to using scientific knowledge for practical applications, such as new inventions based on an existing tool. *Applied Sciences* are general classification for the real world application of scientific knowledge and research. Its a broad term that encompasses many fields of study ranging from biology to engineering. Some of the Applied Sciences are 1) Aerospace Engineering 2) Agricultural Engineering 3) Architectural Engineering 4) Biomedical Engineering 5) Civil Engineering 6) Computer Science 7) Mathematics 8) Mechanical Engineering 9) Molecular Biology 10) Statistics.

14. Computer Science is also one of the Applied Science Subject.



W.P.No.25100 of 2010

Computer Science is a branch of applied mathematics that focuses on the theory and practice of building software systems with computer hardware and designing algorithms to solve problems. It includes understanding how to design and implement solutions to digital problems. Computer Science, which is offered as main subject in M.C.A is one of the allied science subject. Therefore, 3rd respondent, who completed M.C.A (Master of Computer Application) satisfied the necessary Educational Qualification ie., Masters Degree in Applied Science (Computer Science). Infact, Educational qualification though refers about Degree in Engineering or M.Sc in Computer Science or Mathematics or Statistics of Physics as main subject, degree in Computer Science and Allied Subjects was preferred. When petitioners do not posses degree in Engineering or M.Sc in Computer Science or Mathematics or Statistics of Physics as main subject and when 3rd respondent possessed M.C.A, which is applied science, a preferred subject for the post of Programmer, this Court is of the view that, 3rd respondent was rightly appointed under promotion category to the post of Programmer.

15. In view of the finding that, 3rd respondent possessed Allied Subject



W.P.No.25100 of 2010

ie. M.C.A (Master of Computer Application) preferred subject to the post of

Programmer, this Court finds that the judgement relied by the learned counsel for the petitioner is not applicable to the facts and circumstances of this case. When petitioners do not have the requisite qualification, they cannot claim promotion to the post of Programmer. The claim that they should be considered for promotion on transfer of service cannot also be considered when there is qualified candidates available under promotion category.

16. In this view of the matter, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.04.2024

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W.P.No.25100 of 2010

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- To
1. The Secretary to Government,
Department of Revenue,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
 2. The Sub Divisional Magistrate Cum
The Revenue Division Officer,
South Chennai Division, Guindy,
Chennai – 600 032.
 3. The Inspector of Police,
Law & Order,
R-1, Mambalam Police Station,
T.Nagar, Chennai – 600 017.
 4. The Public Prosecutor,
Madras High Court.



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W.P.No.25100 of 2010

G.CHANDRASEKHARAN,J.
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Pre-Delivery order in
W.P.No.25100 of 2010

29.04.2024