



W.P.No.370 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	19.02.2024
Pronounced on	:	30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.370 of 2011 &
M.P.Nos.2 & 3 of 2011

Dr.CH.Kajendirakumar

...Petitioner

Vs.

- 1.The Union Territory of Pondicherry,
Represented by its Chief Secretary,
Government of Puducherry,
Puducherry.
- 2.The Chairman,
Pondicherry Institute of Post Matric
Technical Education (PIPMATE),
Puducherry.
- 3.The Vice Chairman,
(Secretary to Government (Education),
Pondicherry Institute of Post Matric
Technical Education (PIPMATE),
Puducherry.
- 4.The Member Secretary,
Pondicherry Institute of Post Matric
Technical Education (PIPMATE),
Puducherry.



W.P.No.370 of 2011

5.K.Francis

6.D.Sandanasamay

7.G.Rani

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 4th respondent in their proceedings No.A/13/1/1/PIPMATE/2008/A1/1060 dated 30.12.2010, and quash the same and consequently direct the respondents herein to implement the minimum qualifications and teaching experiences for the teaching posts as recommended by the 6th pay Commission and directed by the AICTE by suitably amending the Recruitment Rules.

For Petitioner : Mr.T.S.Baskaran

For R-1 : M/s.G.DJearany, Govt. Advocate
(Puducherry)

For R2 to R4 : Mr.T.M.Naveen

ORDER

This Writ Petition is filed calling for the records of the 4th respondent in their proceedings No.A/13/1/1/PIPMATE/2008/A1/1060 dated 30.12.2010, and quash the same and consequently direct the respondents herein to implement the minimum qualifications and teaching experiences for the teaching posts as recommended by the 6th pay Commission and directed by the AICTE by suitably amending the Recruitment Rules.



W.P.No.370 of 2011

WEB COPY

2.The case of the petitioner is that he was working as Senior Lecturer (Selection grade) in the Department of Mechanical Engineering in the Karaikal Polytechnic College. He had qualified as B.Tech and M.Tech and acquired Ph.D Degree in July 2009. 4th respondent is governed by AICTE (All India Council for Technical Education) norms. As per 5th Pay Commission norms, a Principal has to possess UG and PG Qualification of appropriate branch in Engineering and Technology with first class or equivalent either UG or PG level coupled with 15 years relevant experience in teaching/research or industry, in which 5 years shall be at the level of HOD or equivalent or he must possess a Ph.D degree with 10 years of teaching experience in which 3 years shall be at the level of HOD or Equivalent.

2.1.6th Pay Commission brought about sweeping amendments with regard to minimum qualifications and experiences in teaching posts at various levels at various institutions. The Recommendation of the 6th Pay Commission was accepted by AICTE by their notification dated 05.03.2010. The recommendation of 6th Pay Commission was directed to be implemented by all the institutions governed by AICTE norms. In consonance with the above directions, 4th respondent by an order in No.A/10/4/1/PIPMAT/2010/A1/PF/728



W.P.No.370 of 2011

dated 15.09.2010 notified the approval of the Chairman, PIPMATE with regard to the implementation of the revised Pay Structure and other relevant benefits notified by the AICTE with certain conditions.

2.2.Though the 4th respondent accepted the directions of the AICTE to implement the 6th Pay Commission Pay Structure and other norms, the revised minimum qualifications and experiences with regard to teaching posts have not been incorporated in the existing provisions in relation to service conditions for the teaching staff in the 4th respondent's institution. As per the revised minimum qualifications and experiences prescribed for the teaching post, the post of Principal can be filled up only by the persons who have acquired the Ph.D degree. Without implementing the norms fixed by the VI Pay Commission, 4th respondent was taking steps to fill up the vacancies. Petitioner had been sending repeated representations to the 4th respondent to consider him for the post of Principal, stating that, he alone had the necessary qualification and experience as prescribed by the 6th Pay Commission. He sent a legal notice on 24.12.2010 to the respondents in this regard. The respondents hurriedly proceeded to fill up the vacancies to the post of Principal. The persons who had been appointed as the Principal for the three institutions run by the 4th respondent as per order dated 30.12.2010 have not qualified as Ph.D.



W.P.No.370 of 2011

3.Learned counsel for the petitioner submitted that when the respondents 5 to 7 did not possess the required educational qualification i.e., Ph.D, their promotion is against the 6th Pay Commission recommendation and AICTE guidelines. They were promoted based on the earlier regulation. Three posts of Principal were vacant from 2001-04 but they were filled only in 2010, without following the proper procedure. The order of Member Secretary in No.A/10/4/1/PIPMAT/2010/A1/PF/728 dated 15.09.2010 with regard to the revised minimum qualifications and experiences prescribed for teaching posts of the Diploma Level Teaching Institutions, shall be implemented after making necessary amendments in the existing provisions, is against the 6th Pay Commission recommendation. When pay is paid on the basis of 6th Pay Commission, the service condition with regard to educational qualification for appointment or promotion should also be given effect from 01.06.2006. It cannot be postponed to the future dates. 6th respondent did not even have the requisite qualification under AICTE guidelines issued as per V Pay Commission. Therefore, this Writ Petition is filed for the aforesaid relief.

4.Learned counsel for the respondents 1 to 4 submitted that PIPMATE has established 4 polytechnic colleges. In accordance with norms and standards prescribed by AICTE from time to time, it had been framing rules. PIPMATE



W.P.No.370 of 2011

has adopted the Service Rules applicable to the employees of the Government of Puducherry, subject to necessary variations. After AICTE changed the method of recruitment to all the teaching post by direct recruitment, PIPMATE has amended the rules to those posts. The absence of a method of recruitment by promotion caused very serious loss, prejudice and hardship to the teaching staff.

4.1. On 07.11.2002, Government of Puducherry framed recruitment rules for teaching posts. It prescribed the method of recruitment to the teaching post by promotion, failing which by deputation (ISTC), failing by both, by direct recruitment. On 15.04.2003 PIPMATE considered and resolved to adopt the recruitment rules for its teaching staff. Based on such resolution, on 28.01.2009, PIPMATE amended the said adopted recruitment rules by deleting the qualifications for promotion prescribed by the AICTE. PIPMATE was not able to fill up the vacancies to the posts of Principal in its 4 Polytechnic Colleges by promotion due to non-availability of eligible Heads of Department. Therefore, PIPMATE filled the said vacancies on temporary basis by deputation. Again the posts were vacant in 2001, 2003 and 2004. PIPMATE published notification dated 28.10.2005, inviting applications from eligible persons for recruitment to the posts of Principal. However, PIPMATE has not processed further. PIPMATE called for service particulars and other certificates of K.Francis, G.Rani, D.Sandanasamy, R.Babu Ashok, N.Sozhan and



W.P.No.370 of 2011

Dr.C.Vethirajan for filling up the vacancies by way of promotion.

WEB COPY

4.2.AICTE Regulations, 2010 fixed minimum qualification and experience prescribed for the post of Principal. By order dated 15.09.2010, PIPMATE decided to implement the norms and standards prescribed in the AICTE Regulations, 2010. As per the norms, PIPMATE has to bring the incumbents officiating as Senior Lecturers and Lecturers under one designation viz. “Lecturer” and determine their seniority. Only thereafter, PIPMATE has to amend the recruitment rules for its teaching posts. PIPMATE already initiated action for carrying out the amendments in the recruitment rules. Meanwhile, PIPMATE can make promotions to the vacancies in the post of Principal as per the recruitment rules in force. AICTE Regulations, 2010 was published only on 13.03.2010 and on 15.09.2010, PIPMATE decided to implement the norms and standards prescribed in the AICTE Regulations 2010, subject to the conditions mentioned in the Order. Therefore, PIPMATE was not able to amend the recruitment rules as per AICTE Regulations 2010. Till the amendment of the recruitment rules, the qualifications and conditions prescribed in the existing recruitment rules would continue to be in force. As per the recommendation of the Department Promotional Committee, the impugned order was passed. Petitioner was working only as a Senior Lecturer in Mechanical Engineering, which is equivalent to the pay of Head of Department. Therefore, he is not



W.P.No.370 of 2011

considered eligible for promotion for the post of Principal. The persons considered for promotion and promoted held the post of Head of Department and therefore, they were promoted.

4.3.It is further stated that, even as per the norms of AICTE Regulations 2010, possession of Ph.D is not mandatory for considering a Head of Department to the post of Principal. Possession of Ph.D is only optional. In support of this submissions, he pressed judgment in ***Gelus Ram Sahu and ors Vs. Dr.Surendra Kumar Singh and ors*** reported in [2020 4 SCC 484].

5.In reply, learned counsel for the petitioner submitted that respondents cannot follow the old regulation for filling up the vacancies after implementation of 6th Pay Commission norms. The claim that respondents can make promotion to the post of Principal as per the recruitment rules in force is absolutely illogical and against the norms prescribed by AICTE Regulations. Petitioner got information from the concerned authority that no proposal was submitted seeking the amendment of recruitment rules of teaching staff of PIPMATE. Therefore, the claim of the respondents that they had taken steps for amending recruitment rules is false. 7th respondent does not possess even PG qualification. 5th respondent had only a 2nd class degree in Bachelor and Masters degree in the concerned subject. Therefore, they do not even qualify to be the Head of



W.P.No.370 of 2011

Department. Petitioner is conferred with selection grade and drawing pay of Head of Department. However, his claim was rejected without any justification.

6.Considered the rival submissions and perused the records.

7.From the case set out by the parties, it is the case of the petitioner that he possessed required qualifications of B.Tech and M.Tech and Ph.D for considering him for the promotion to the post of Principal. However, 5th to 7th respondent were promoted when they do not possess the required qualification. Petitioner placed his claim based on AICTE Regulation, 2010. As per this Regulations, qualifications required for promotion to the post of Principal are,

Principal	Qualifications as above for the post of Head of Department and Ph.D in engineering or Qualification as above for the post of Head of Department	Minimum of 10 years relevant experience in teaching / research/ industry out of which at least 3 years shall be at the level of head of department or equivalent. In case of Architecture, professional practice of 10 years of certified by the Council of Architecture shall also be considered valid.
-----------	---	---

8.For a better understanding, qualification required for the possession of Principal, it is necessary to understand the qualification required for the post of Head of Department as well. The qualifications for Head of Department as per



W.P.No.370 of 2011

AICTE Regulations 2010 are as follows,

Head of Department		
Engineering Technology	Bachelor's and Masters degree of appropriate branch in Engineering / Technology with First class or equivalent either Bachelor's or Master's level or Bachelor's and Masters degree of appropriate branch in Engineering/Technology with first class or equivalent either Bachelor's or Master's level and Ph.D. or equivalent, in appropriate discipline in Engineering/Technology	Minimum of 10 years relevant experience in teaching / research/ industry Minimum of 5 years relevant experience in teaching / research/ industry
Principal	Qualifications as above for the post of Head of Department and Ph.D in engineering or Qualification as above for the post of Head of Department	Minimum of 10 years relevant experience in teaching / research/ industry out of which at least 3 years shall be at the level of head of department or equivalent. In case of Architecture, professional practice of 10 years of certified by the Council of Architecture shall also be considered valid.



W.P.No.370 of 2011

WEB COPY

8.1.The combined reading of the qualifications required for Head of Department shows that, to become a Principal, one must possess the qualification required for the post of Head of Department and Ph.D in Engineering with minimum 10 years of relevant experience in teaching/research/industry, out of which atleast 3 years shall be at the level of Head of Department or equivalent.

8.2.A person without Ph.D can be posted to the post of Head of Department, subject to possession 10 years of relevant experience in teaching/research/industry, provided he possess Bachelor's and Master degree in the appropriate branch in Engineering/Technology with first class or equivalent.

8.3.At the same time, if a person possesses Bachelors and Masters Degree in the appropriate branch in Engineering/Technology with first class or equivalent.or Ph.D or equivalent, it is enough that he possessed only minimum of 5 years of relevant experience in teaching/research/industry. From the reading, it can be understood that, a person possessing Bachelor and Masters



W.P.No.370 of 2011

degree in appropriate branch in Engineering/Technology with 1st class or equivalent with minimum of 10 years relevant experience in teaching/research/industry can be considered for the promotion to Principal. It is therefore that only a person who possessed Ph.D alone be promoted/appointed as Principal is not correct. This is very well explained by the judgment in ***Gelus Ram Sahu and ors Vs. Dr.Surendra Kumar Singh and ors*** reported in [2020 4 SCC 484] as follows,

(i) Is Ph.D mandatory for appointment to the post of 'Principal' under the 2010 AICTE Regulations?

12. The cause of the present controversy is not difficult to fathom. Prerequisite criteria for appointment to the post of Principal in a Polytechnic College has been provided under the 2010 AICTE Regulations in a tabulated form, relevant parts of which are extracted below:



WEB COPY



W.P.No.370 of 2011

<i>Principal</i>	<i>Qualifications as above for the post of Head of Department and Ph.D in engineering</i> <i>or</i> <i>Qualification as above for the post of Head of Department</i>	<i>Minimum of 10 years relevant experience in teaching / research/ industry out of which at least 3 years shall be at the level of head of department or equivalent.</i> <i>In case of Architechure, professional practice of 10 years of certified by the Council of Architecture shall also be considdered valid.</i>
------------------	--	--

8.4.Thus, the contention of the learned counsel for the petitioner that he possesses Ph.D, whereas others did not have, and that he should have been promoted cannot be entertained.

9.The next contention of the learned counsel for the petitioner is that, when 6th Pay Commission recommendation with regard to pay fixation is implemented, failure to implement the service conditions with regard to qualification for posting and promotion of teaching post, without amending the



W.P.No.370 of 2011

rules immediately and promoting the 5th to 7th respondents on the basis of the existing rules, are not appropriate and legal. This Court, on going through the submissions of the learned counsel for the respondents and counter affidavit filed, finds that, the Member Secretary passed a order in No.A/10/4/1/PIPMATE/2010/A1/PF dated 15.09.2020. The relevant portion of the orders reads as follows,

“As regards the revised minimum qualifications and experiences prescribed for the teaching posts of the Diploma Level Teaching Institutions, the same shall be implemented after making necessary amendments in the existing provisions.”

10. With regard to implementation of revised pay structure and other related benefits notified by the AICTE Regulations, has been given with effect from 01.01.2006. However, with regard to the revised minimum qualification and experiences prescribed for the teaching posts of Diploma Level Teaching Institutions, it is said that the same shall be implemented after making necessary amendments in the existing provisions. It appears that the respondents had not taken serious steps for amending rules for incorporating the qualification required for considering for appointment/promotion to the teaching staff.



W.P.No.370 of 2011

11.It is the submission of the learned counsel for the petitioner that he got an information through the Right to Information Act from the Department of Personnel and Administrative Reforms through their letter dated 07.02.2013 that "no proposal/file for amending the recruitment rules of teaching staff of PIPMATE after the implementation of 6th Pay Commission has been received by this department till date." However, in the counter affidavit, it is claimed that, respondents submitted the proposal for amending the recruitment rules to the Personnel and Administrative Reforms Department. Thus, it is apparent that wrong submission was made, with regard to the alleged steps taken for amending the recruitment rules. The claim made in the counter affidavit that due to the change of staff structure that Senior Lecturers and Lecturers had been paid under one designation as Lecturer and that their seniority has to be fixed and only then the amendment in recruitment rules can be brought out, cannot be accepted for the reason that, when other recommendations, especially recommendation with regard to pay revision had been accepted and given effect from 01.01.2006, proper steps should have been taken for amending recruitment rules for posting/promoting the staff. It is admitted case of the respondents that respondents 5 to 7 were promoted only on the basis of the old recruitment rules and not on the basis of the AICTE Regulations, 2010. It is obviously not correct. The qualifications required for promotion to the posts of



Principal under AICTE Regulations 1999 are different from the qualification required under AICTE Regulations, 2010. For a better understanding, qualifications required for posting of Principal under AICTE Regulations, 1999 is extracted herein,

5. QUALIFICATIONS

1. The prescribed minimum qualifications and experience requirements for various teaching posts in diploma level technical institutions are given (Appendix-B).

2. Where qualifications and experience prescribed for a post in this pay revisions are higher than the qualifications and experience prescribed by ACITE for that post prior to this revision.

(i) The revised qualifications and experience will be required only for fresh appointees to that post and will not be insisted on for existing incumbents working on those positions.

(ii) For open selection to a higher cadre position through advertisement internal candidates presently working in lower position will be exempted from the prescribed higher qualification and experience to the



WEB COPY



W.P.No.370 of 2011

extent that they will be required to possess only the qualifications and experience prescribed by ACITE prior to this pay revision. This relaxation will be available only for a period of 5 years from the date of issue of this notification. Thereafter, internal candidates must also possess the qualifications and experience prescribed in this notification.

3. Teachers already in service prior to January 1, 1996 and who at the time of their recruitment possessed only a second class in their degree at Bachelor's or Master's Level (but met all the qualification requirement prescribed by ACIET at the time of their recruitment) Shall be exempted from the requirement of First Class for the Degree they had at the time of their recruitment.

11.1.As per this notification, the years of experience required is more than what is prescribed in the AICTE Regulations 2010. Whatever the case may be, when 4th respondent is governed by AICTE Regulations 2010, it is bound to follow the AICTE Regulations 2010 in terms of procedure laid down for teaching posts for appointment/promotion. When that was not done, even as per the admitted case of the 4th respondent, necessarily impugned order has to be set aside and accordingly, the proceedings passed by the 4th respondent



W.P.No.370 of 2011

No.A/13/1/1/PIPMATE/2008/A1/1060 dated 30.12.2010 is set aside.

WEB COPY

12.It is not known whether 5th to 7th respondents are still in service. The 1st to 4th respondents are directed to consider the claim of the petitioner that he is qualified for being considered to the post of Principal. His case shall be considered, in the light of the qualification prescribed in 6th Pay Commission recommendations and AICTE Regulations 2010 and appropriate orders shall be passed within a period of four (04) months from the date of receipt of a copy of this order.

13.Accordingly, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

30.04.2024

Index:Yes/No
Speaking/Non speaking order
gd



WEB COPY



W.P.No.370 of 2011

To

- 1.The Union Territory of Pondicherry,
Represented by its Chief Secretary,
Government of Puducherry,
Puducherry.
- 2.The Chairman,
Pondicherry Institute of Post Matric
Technical Education (PIPMATE),
Puducherry.
- 3.The Vice Chairman,
(Secretary to Government (Education),
Pondicherry Institute of Post Matric
Technical Education (PIPMATE),
Puducherry.
- 4.The Member Secretary,
Pondicherry Institute of Post Matric
Technical Education (PIPMATE),
Puducherry.

G.CHANDRASEKHARAN.J.,

gd



WEB COPY



W.P.No.370 of 2011

Pre-Delivery Order in
W.P.No.370 of 2011

30.04.2024