



WA No.2363 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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1.The State of Tamil Nadu,
Represented by the Secretary to Government,
Higher Education Department,
Secretariat,
Chennai-600 009.

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

3.The Additional Director of Technical Education,
Directorate of Technical Education,
Guindy, Chennai- 25.

... Appellants

versus

P.Paranjothi

... Respondent



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PRAYER: Writ Appeal filed against the order in WP No.23824 of 2010 dated 08.11.2010 of the learned Single Judge.

For the Appellant :Mr.Ramanlal
Additional Advocate General
Assisted by Mr.D.Ravichander
Additional Government Pleader

For the Respondents :No appearance

JUDGMENT

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The intra court appeal has been preferred by the Education Department as against the order passed by the learned Single Judge in WP No.23824 of 2010 dated 08.11.2010.

2. Though the name of the respondent has been printed in the cause list, he has neither appeared in person nor through counsel.

3. Brief facts of the case:

3.1.The respondent herein/writ petitioner was selected for



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appointment to the post of Workshop Instructor through employment exchange in the year 1987. He joined in the service on 19.07.1987 with a qualification of Diploma in Mechanical Engineering. He served in the Department in the said post for more than 20 years and thereafter, he has been awarded selection grade scale of pay. The next avenue of promotion was to the post of Instructor. Subsequently, by virtue of Government Order in G.O.Ms.No.1081, Education (J1) Department dated 19.08.1989, the said post of Instructor was abolished.

3.2. Since there was no promotional chance after the abolition of the post of Instructor, the respondent herein has made a representation to the appellant Department to consider him for promotion to the post of Instructor stating that the aforesaid Government Order will not apply to the respondent herein/writ petitioner. The representation submitted by the respondent was not considered by the appellant Department. Aggrieved by the same, the respondent had filed a writ petition in WP No.23824 of 2010. The Writ Court, by order dated 08.11.2010, following the earlier decision of a Division Bench of this Court in WA No.207 of 2022 etc., batch, dated



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01.08.2007, had allowed the writ petition. In the said writ petition, learned

Single Judge has made the following observation:

"4.Learned counsel for the petitioner submits that in compliance with the said Division Bench order, the Government issued G.O.Ms.No.95 Higher Education (C1) Department dated 26.03.2008 and granted Instructor posts to two persons viz., C.Selvamani and D.Dennis Clemend, who worked as Junior Draftsmen and subsequently passed B.E. Degree. The said order was followed by me in W.P.Nos.22009 and 22719 of 2005 by order dated 15.12.2008. In view of the subsequent Development viz., the order of the Division Bench and issuance of G.O.Ms.No.95 Higher Education (C1) Department dated 26.03.2009, granting Instructor posts to the similarly placed persons, the first respondent is directed to consider the claim of the petitioner, seeking promotion as Instructor in accordance with the Division Bench order as well as the order passed in G.O.Ms.No.95 dated 26.03.2008 within a period of three months from the date of receipt of a copy of this order.

5. The writ petition is allowed on the above terms. No costs. "

3.3. Challenging the said order passed by the Writ Court, the appellant Department has preferred the present intra court appeal.



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4. Learned Additional Advocate General for the appellant Department

submits that the prayer sought for in the writ petition by the respondent is only for a Mandamus i.e. to direct the appellant Government not to give effect to the order passed in G.O.No.1081 dated 19.08.1989 till the promotion of the respondent/petitioner and to direct the appellant Department to promote the respondent to the post of Instructor with effect from the date of promotion given to other candidates as per G.O.Ms.No.95, Higher Education (C1) Department, dated 26.03.2008, following the order of the Division Bench in WA No.207 of 2002 etc., batch. However, the respondent has not challenged the aforesaid Government Order, G.O.Ms.No.1081, Education (J1) Department dated 19.08.1989 in the said writ petition, by virtue of which, the post of Instructor was abolished. Subsequently, the Commissioner of Technical Educational has sent a proposal to the Government for amending the Special Rules for the Tamil Nadu Educational Subordinate Service for omitting the post of Instructor from the Special Rules. The Government has accepted the said proposal and the post of Instructor was omitted from the said Special Rules, vide Government Order G.O(Ms) No.184 dated 15.10.2014. Hence, there is no



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post of Instructor available now. Therefore, the prayer as sought for by the respondent in the writ petition seeking promotion to the post of Instructor is for a non-existing post. Hence, the prayer as sought by the respondent/writ petitioner could not have been entertained by the Writ Court and the Writ Court ought to have rejected the claim of the respondent/petitioner.

5. Learned Additional Advocate General further relies upon the earlier order passed by a Division Bench of this Court in WA (MD) No.1110 of 2015, wherein on the similar set of facts, the Division Bench had allowed the appeal filed by the appellant Department, following the earlier judgment passed by another Division Bench of this Court on a similar set of facts in WA No.2820 of 2018 etc., batch dated 13.04.2022 and taking note of the aforesaid Government Order in G.O.Ms.No.1081 dated 19.08.1989 and the amended Special Rules. The relevant portion of the judgment in WA (MD) No.1110 of 2015, is extracted hereinbelow:

20. Therefore this Court is the firm view that the earlier orders of this Court relied upon by the learned Senior Counsel appearing for the petitioner has not dealt the subsequent G.O.Ms.No.184 dated 15.10.2014. Whereas in the



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writ appeal in WA No.2820 of 2018 etc. batch, dated 13.04.2022, the subsequent co-equal has considered the said G.O. and has held that the petitioner therein cannot claim promotion to the post of Instructor, since such post has already been abolished.

21. Now the contention of the learned Senior Counsel for the petitioners is that K.Santhi case (cited supra) is not the correct view, in view of not following the earlier line of judgment discussed elsewhere in this order. Therefore, contended that the issue to be referred to the larger Bench. It is axiomatic that the judicial discipline envisages that the subsequent co-equal Bench has to follow the decision of the earlier co-equal Bench. But in our case, in K.Santhi case (cited supra) [W.A. No.2820 of 2018] the Division Bench has not delivered from the earlier view. But on came to know about certain new fact, which was admittedly not at all dealt by the earlier Bench, took a different view. Therefore, the contention of the learned Senior Counsel that the subsequent Bench has not followed the earlier Division Bench order cannot be countenanced.

22. Therefore, this Court is of the firm view that the order of the co-equal Bench in K.Santhi case (cited supra) [WA No.2820 of 2018 etc., batch] is binding upon this Court. Apart from that, we are also in full agreement with the proposition enunciated in the said judgment. For ready reference, this Court deems it appropriate to extract the relevant paragraphs in WA Nos.2820 of 2018 etc., Batch cases:

50. The counsel for the respondents relief on the following



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Division Bench Judgment of this Hon'ble Court to drive home, the point that the issue is no longer res integra and is settled by these judgments in WA No.1039 of 2006, WA No.207 of 2022, WA No.807 of 2015, WA (MD) Nos.772 of 2010, 814 of 2011 and 23 of 2012 and WA No.547 of 2015.

51. We would have agreed with the counsel for the respondents, if not for G.O.Ms.No.184 dated 15.10.2014. In the earlier litigations, this Hon'ble Court was pleased to pass orders against the Government because the Service Rules provided for promotion to the post of Instructor and also identified the feeder posts. It was only on the basis of an executive order (G.O.Ms.No.1081 dated 19.08.1989) that the Government claimed to have abolished the post of Instructor. But now the Government has amended the Service Rules vide G.O.Ms.No.184 dated 15.10.2014 exercising its power under Article 309 of the Constitution.

52. In this context we would like to point out that even if the respondents prayer is allowed, then it is only the Service Rules in force now that would apply and not the Old Rules. It is settled that abolishing a Post under the Service



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Rules is the Prerogative of the Government. The policy decision of the Government would not be interfered with, unless it is found to be arbitrary and perverse. We deem it appropriate to refer to the latest judgment of the Hon'ble Supreme Court in the case of State of Himachal Pradesh and Other vs Raj Kumar and Others reported in 2022 SCC Online SC 680.

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56. *There is no quarrel on the legal proposition but we find that under the facts of the present cases, the said judgments are not applicable. As discussed above the scenario in the present case has changed due to the passing of the Amended Rules.*

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58. *The counsel for the respondent submitted that by abolishing the post of Instructor the Government has shut the only avenue for promotion to them. We are unable to accept the respondents submission. As already stated nobody has a vested right to promotion, but only a right to be considered for promotion.*

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62. In the light of the above discussion, we are not inclined to accept the submission of the respondents. We are of the view that the respondents claim cannot be countenanced for the reason that the post of Instructors is now abolished and the post of the Lecturer is made an entry level post and due to the abolition of the said post it may not be possible to fix the pay scale for the post of Instructor. We are therefore of the view that no purpose would be served if the respondents claim is allowed. On the contrary it may lead to confusion in extending the benefits.

(emphasis supplied by this Court)

23. In view of the above enunciation and as per the detailed discussion stated supra, this Court find merit in the present writ appeal. Hence, this Court is of the firm view that the State has made out a case for interference."

6. Hence, he seeks for setting aside the order passed by the Writ Court and allowing the writ appeal.

7. The prayer as sought for by the respondent/petitioner in the writ



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petition is only for a mandamus seeking promotion to the post of Instructor, without challenging the aforesaid Government Order, G.O.Ms.No.1081, Education (J1) Department dated 19.08.1989, which abolished the said post of Instructor, followed by Government Order in G.O(Ms) No.184 dated 15.10.2014, by virtue of which, the post the Instructor was omitted from the Special Rules. Further, in the recent judgment of the Division Bench of the Madurai Bench of this Court, in WA (MD)No. 1110 of 2015 dated 22.03.2024, following the judgment of another Division Bench of this Court in WA No.2820 of 2018 etc. batch dated 13.04.2022, it held that since the post of Instructor was abolished vide G.O.Ms.No.1081, Education (J1) Department dated 19.08.1989 and the Special Rules have been amended vide Government Order, G.O(Ms) No.184 dated 15.10.2014, by omitting the post of Instructor, and the same was not challenged by the employees therein, they were not entitled to claim promotion to the post of Instructor against a non-existing post.

8. Further, in the earlier judgment of this Court, in WA No.207 of 2022 etc. batch, dated 01.08.2007, the employees therein were considered



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since they were degree holders but on the case on hand, the respondent is only a diploma holder. On that ground, the respondent is not entitled to be considered for the said post of Instructor.

9. In view of the above, there is some force in the contention of the appellant Education Department. We are of view that the order of the writ court is liable to set aside and writ appeal to be allowed in the light of earlier order passed by this Division Bench of this Court cited supra and the aforesaid Government Order in GO Ms No.1081 dated 19.08.1989 and the subsequent amended Special Rule.

10. In fine, the writ appeal stands allowed. There shall be no order as to costs.

[D.K.K., J.] [K.B., J.]
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Index : Yes/No
Neutral Citation : Yes/No
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and
K.KUMARESH BABU, J.

(mrn)

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