



WEB COPY



WA No.560 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2024

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-9.

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

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

... Appellants

versus

1.Thriu.R.Senthil Kumar

2.Sri Krishna Polytechnic College,
Coimbatore,
Represented by the Principal
R2-Given up

... Respondents

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PRAYER: Writ Appeal filed against the order in WP No.9081 of 2013 dated 01.10.2013 of the learned Single Judge.

For the Appellants :Mr.D.Ravichander
Special Government Pleader

For the Respondents :first respondent - No appearance
second respondent- Given up

JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

The writ appeal is filed against the order in WP No.9081 of 2013 dated 01.10.2013 of the learned Single Judge.

2. Though notice was sent to the first respondent and name 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 initially appointed in



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the post of Lab Assistant by direct recruitment. He joined in service on 16.04.1997 with a qualification of ITI NTC/NAC and subsequently, he was qualified as B.E. (second class) in the year 2013 apart from obtaining diploma in DEEE. The respondent was awarded selection grade scale of pay in the same post. 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 dated 27.03.2013 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.9081 of 2013 before the learned Single Judge. The Writ Court, by order dated 01.10.2013, following the earlier decision of a Division Bench of this Court



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in WA No.207 of 2002 etc., batch, dated 01.08.2007, had allowed the writ petition. In the said writ petition, learned Single Judge has made the following observation:

" 6.It is seen that the petitioner was selected and appointed as Lab Assistant on 16.04.1997 and subsequently he was qualified as B.E., (second class) in the year 2013 apart from obtaining diploma in DEEE. For the past 15 years, he was working without any promotion. The petitioner got stagnated. His only next avenue is Instructor. When similarly placed persons got orders from this Court in the light of the orders in W.A.No.207 of 2002 and WP No.26414 of 2013 on 23.09.2013, there cannot be any prohibition. The first respondent is directed to consider the petitioner's claim for promotion as per the petitioner's representation dated 27.03.2013 and pass appropriate orders and promote the petitioner as Instructor within a period of three months from the date of receipt of a copy of this order, in the light of the orders passed in WA Nos.207 and 208 of 2002 dated 01.08.2007 and G.O.Ms.No.121, High Education (C1) Department dated 01.04.2011."

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 Special Government Pleader appearing for the appellant Department, relies upon an order passed by a Division Bench of this Court on a similar set of facts in WA No.2820 of 2018 etc., batch dated 13.07.2022 filed by the Department, wherein the claim of the respondent employee therein was negatived. The relevant portion of the said order of the Division Bench is extracted hereunder:

"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.

59.The learned counsel relied on the following judgments for the proposition that the employer has a duty to create promotional avenue for his employees. AIR 1980 SC 444, 1989 (4) SCC 635, 1990 Supp SCC 688, 2004 (9) SCC 65

60.We are again of the view that the said judgments are not applicable for all the reasons discussed supra. It is also relevant to note that in most the cases the respondents availed atleast one promotion.

61.In so far as the prayer of some of the respondents that they should be considered for the Post of lectures is concerned, we are of the view that the entry level post of lectures is not a



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promotion post and therefore the respondents claim cannot be accepted.

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)"

5. Learned Special Government Pleader further submits that review applications in Review Application Nos.226 of 2022 etc. batch has been filed by the respondent employees therein to review the order passed in the aforesaid writ appeal. The appellate Court, by order dated 22.11.2023 had dismissed the said review applications. Further, in the aforesaid appeal, earlier decision of a Division Bench of this Court in WA No.207 of 2002 etc., batch, dated 01.08.2007 has also been considered and it was held that the said decision would not apply to the facts of the said case, since the post of Instructor is a non existing post. Therefore, the claim of the respondent employee therein has been negated by the Division Bench of this Court.



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Hence, he seeks to allow the writ appeal.

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6. We have anxiously gone into the aforesaid decision of the Division Bench in WA No.2820 of 2018 etc., batch dated 13.04.2022 and the order passed in the review application Nos.226 of 2022 etc. dated 22.11.2023. The issue decided in the aforesaid writ appeal squarely applies to the facts of the present case on hand and in the said writ appeal the claim of the respondent employee therein have been negated by this Court. Therefore, we have no hesitation to set aside the order of the learned Single Judge, in the light of the aforesaid judgment cited supra. Hence, the order passed by the writ court is liable to be set aside. Consequently, the order passed in the writ petition in WP No.9081 of 2013 dated 01.10.2013, is set aside and the writ appeal stands allowed. There shall be no order as to costs. CMP No.2326 of 2021 is closed.

[D.K.K., J.] [K.B., J.]
25.04.2024

Index : Yes/No
Neutral Citation : Yes/No
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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

(mrn)

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