

(2004) 06 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 3017 of 1993

A. Chandrasekaran, M.S. Puvaneswaran, S. Gnanasekaran
and M. Nagaraj

APPELLANT

Vs

The Director, Institute of Road Transport and The Principal,
Institute of Road and Transport Technology

RESPONDENT

Date of Decision : 16-06-2004

Acts Referred:

Citation : (2004) 06 MAD CK 0079

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

**Advocate : R. Kannan, for the Appellant; John, for Ramasubramaniam
Associates for R1, for the Respondent**

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioners who are four in number seek for directions for respondents to fix the petitioners in the cadre of Junior Assistant with effect from 1.7.1989 in the Scale of Pay of Rs.975-25-1150-30-1660/-.

2. The petitioners contend that they were directed to appear before the Institute of Road and Transport Technology, Erode for interview on 3.4.1987 for the post of Junior Assistant. They were appointed only as Clerical Trainees on a consolidated pay of Rs.500/- per month only which was subsequently raised to Rs.650/-. The services of the petitioners were also regularised with a basic pay of Rs.505/- per month in the Scale of Pay of Rs.505-10-555-15-615-20-795-25-845/-. However, the said order was directed to take effect from 1.7.1989 with reference to the first petitioner and from 1.8.1989 with reference to the other petitioners. The petitioners contend that though they were appointed as Clerical Trainees, by proceedings dated 27.7.1989, the petitioners were designated as Record Clerk Trainees. According to the petitioners, they were called for the interview only for the post of Junior Assistant and when the appointments were given, they were designated as

Clerical Trainees. Though the petitioners had sought for a clarification, they were told that both the post of Junior Assistant and Clerical Trainees were one and the same and that they would be called as Clerical Trainees during the probation period and once the probation period was over, they would be regularised in the post of Junior Assistant. However, to their surprise, even after the period of probation, they were not regularised. They were all regularised as Record Clerk Trainees by proceedings dated 27.8.1989. At the time when the said proceedings were issued on 27.7.1989, the Fourth Pay Commission Report was force. The very object of regularising the petitioners only as Record Clerk Trainees as aforesaid, was intended to fix their pay at a lower level. If they had been regularised in the cadre of Junior Assistant, their basic pay would be in the Scale of Rs.610-20-730-25-955-30-1075/-. The petitioners also refer to the case of one M. Mohammed Ilayas, who was interviewed and recruited along with the petitioners 1 to 3, and he had been fixed with basic pay of Rs.610/- in the Scale of Pay of Rs.610-1075/- as cited above. The petitioners pointed out such anomalies in their objections. By proceedings dated 22.9.1989, the basic pay was revised in the case of the petitioners at Rs.825/- per month but gave effect to it in respect of the first petitioner only from 1.7.1989 and in the case of the other petitioners only from 1.8.1989. The petitioners were re-designated as Lab Assistant/Clerk. According to the petitioners, the said re-designation was also totally baseless and aimed only at fixing a lower pay scale. The petitioners further contend that the second respondent while applying for affiliation with Bharathiar University for starting a new course, declared in Column No.11 of the declaration that the teaching staffs would be paid UGC Scale and the non-teaching staffs would be paid in accordance with the Pay Scale of Government of Tamil Nadu. The petitioner further submits that in terms of the recommendations of the Fifth Pay Commission, there was no category of Lab Assistant/Clerk in any of the departments. The petitioners submit that inspite of several representations, they have not been favourably responded. On 30.8.1991, the respondents amended the service rules of the employees of the Institute. In the service rules, the post of Lab Assistant/Clerk is shown as category No.14. Further, it has also been stated that in future, all appointments shall be made in the category of Junior Assistant only. The petitioners further contend that as on the date of implementing the service rules, the scale of pay of Lab Assistant was Rs.625-15-900-20-1200/- and the pay of Junior Assistant was Rs.975-25-1150-30-1660/-.

3. In the counter filed by the respondents, it is contended that the Institute of Road Transport (IRT) is a society under Societies Registration Act. It is not a Government Institution nor a Government Aided Institution. The service rules and conditions were decided by governing council of the IRT and their decision was final. On 3.4.1987, the respondents had called for the interview for the post of Junior Assistant and the petitioners were appointed as Clerical Trainees purely on temporary basis on 17.6.1987. The respondents further contend that in terms of the service rules of the IRT, only graduates are eligible for the post of Junior

Assistant. At the time of appointment of the employees, the graduates were taken as Junior Assistant Trainees, and the SSLC holders were taken as Clerical Trainees on a consolidated pay of Rs.600/- and Rs.500/- per month respectively. After a period of one year, their consolidated pay was raised to Rs.750/- and Rs.650/- per month. After satisfactory service, the Clerical Trainees were regularised as Record Clerks in the Scale of Pay of Rs.505-10-555-15-615-20-795-25-845/-. The trainees with SSLC qualification were designated as Lab Assistants/Clerks in the scale of Rs.825-15-900-25-1200/-. It is further stated that the service of respondents - 2, 3 and 4 were regularised in the Scale of Pay of Rs.505-845/- as cited above and they were designated as Record Clerks with effect from 1.8.1989 in the Laboratory and Chemistry Department. The first petitioner was regularised on 1.7.1989. All the four petitioners were not graduates at the time of their appointment in 1987 and hence as per the IRT Rules, they were not eligible to be appointed as Junior Assistants. The respondents further contend that while revising the pay for non-teaching staff of IRT, the petitioners were given Rs.825/-, in the Scale of Pay of Rs.825-1200/-. This Scale is applicable to Clerical Trainees as well as Lab Assistants. It is further stated that the Governing Council of IRT has fixed the Pay Scale for the cadre of Clerk at Rs.950-20-1150-25-1500/- subject to subsequent revision. The petitioners were very well aware of the fact that they were appointed only as Clerical Trainees and they have received their appointment order and joined in duty in the said post without any protest. It is further asserted that the appointment of the petitioners and their designation as Clerical Trainees and subsequently as Record Clerks is based only on their educational qualification and as they were not degree-holders.

4. In their reply affidavit, the petitioners have contended that IRT is amenable to the Writ jurisdiction considering that it is a Government Institute. The institute is governed by Government Orders and rules in respect of educational qualification fixing of salaries for the teaching and non-teaching staffs etc.,. The respondents had called for selection for appointment only to the post of Junior Assistants through Employment Exchange. Though the petitioners were selected, they were informed that they have to undergo two years period of probation and that they would be confirmed as Junior Assistants. It is further stated that the requisite educational qualification for the post of Junior Assistants then, was only a pass of the SSLC Examination.

5. It is further asserted that there was no designated post of Clerical Trainees. In the absence of any such post in the rules, the respondents have no power to appoint the petitioners on a consolidated salary in the post of Clerical Trainees and they should have been appointed as Junior Assistants. It is further contended that the respondents have no power to fix the minimum educational qualification to any post contrary to the Government rules and regulations. Therefore, the stand taken by the respondents cannot be sustained. The respondents ought to have regularised the service of the petitioners in the Post of Junior Assistant by fixing the Pay Scale in terms of the Reports of the Pay

Commission.

6. Mr. R. Kannan learned counsel for the petitioners after reiterating the stand of the petitioners as reflected in the affidavit in support of the petitioners and in the reply affidavit, further contends that in G.O.Ms.No.479, Education, Science and Technology Department dated 26.4.1994, it was made clear that the service conditions relating to the appointment of personnel belonging to petitioner Institute shall conform to the rules and orders issued by the Government. In terms of G.O.Ms.No.825 P&AR Department dated 25.8.1986, the required minimum general educational qualification for the post of Junior Assistant was only a pass in the Secondary School Leaving Certificate Examination eligible for admission to college course studies or a pass in SSLC examination of this State. Therefore, the contention that the Institute had framed separate rules fixing the minimum educational requirement of a degree of a University recognised by the Tamil Nadu Government, cannot be sustained. Moreover, the service rules of the IRT came into effect only in the year 1991 and hence cannot be made applicable to the petitioners who have been recruited in the year 1987 itself. There was no justification for the respondents giving a different nomenclature for the designation of the petitioners, which has been resorted to only for the purpose of giving them lesser Scales of Pay, which was not at all justified.

7. Per contra, learned counsel appearing for the respondents contends that IRT was a society registered under Societies Registration Act and it was not a Government Institution nor a Government Aided Institution. The petitioners were appointed only as Clerical Trainees on temporary basis on 17.6.1987. In terms of the service rules applicable to IRT, only graduates could be appointed as Junior Assistants. Therefore, the petitioners being SSLC holders were appointed as Clerical Trainees on a consolidated pay of Rs.600/- per month. They were regularised as Record Clerks in the Scale of Pay of Rs.505 - 845/-. The trainees who had passed only SSLC had to be designated only as Lab Assistant/Clerk which is the scale of pay in between Record Clerk and Junior Assistant. By order dated 1.8.1989, the services of the petitioners were regularised in the said scale of pay after being designated as Record Clerks with effect from 1.8.1989. All the four petitioners were non-graduates at the time of appointments in the year 1987 and in terms of the rules, they cannot be assigned the post of Junior Assistant. Learned counsel also contends that at the time of appointment designating them as trainees, there was no objection by the petitioners and hence they have accepted the appointment in the capacity in which they had been appointed. The petitioners cannot now be heard to protest against the designation/appointment given to them. It is further contended that there were no posts in which the petitioners could be fixed in view of the fact that they were not possessing any degree at the time of recruitment.

8. I have considered the submissions of both sides.

9. It is not disputed by the respondents that the petitioners were called for an interview only for the post of Junior Assistants on 3.4.1987. That being so, it is

not known as to how they could have been designated as Clerical Trainees after due interview on selection. The most crucial circumstance in favour of the petitioners is that even in terms of G.O.Ms.No.479 Education Department dated 26.4.1984 whereunder the respondents/Institute came to be established, it is made clear in Clause 11 that the staff recruitment shall conform to the recruitment for the Government Aided Engineering Colleges. The contention of the respondents is that the said clause cannot be applied considering that the respondents/Institute was only a society and not a Governmental Institution or Government Aided Engineering College. I am unable to sustain the contention that the respondents/Institute is not a Governmental Institution. The only fact that the Institute is registered under the Society's Registration Act cannot convert the real and true nature of the institution being a Governmental Institution. The Institute came to be established by a special Governmental order and the very purpose and object of the institute was to provide to the State Transport Corporation every year with a team of readily employable and specially trained engineers for the road transportation. It is only with the said object and back ground, the institute was established at a cost of about 350 lakhs utilising the infrastructure facilities available in Jeeva Road Transport Corporation, Erode and using the surplus funds of the State Transport Undertakings. Therefore, the contention that the respondents institute was not a Governmental Institution and is only a private society cannot at all be accepted. The fact that the institute is not an aided institution cannot also convert the nature of the institute being a Governmental Institution. A Society is not an antithesis of a Governmental Institution and a Governmental Institution can be registered as a Society under Societies Registration Act.

10. It is only in the said back ground, the Government order under which the Society was created, makes it clear that the staff recruitment should conform to the rules and orders issued by the Government for Government Engineering Colleges. Therefore, the pattern of educational qualification for various posts have to be in conformity with the Government orders applicable to the Government Colleges.

11. In the said back ground, the fact that the minimum educational qualification for the post of Junior Assistant for Governmental posts during the relevant period was only SSLC is not denied by the respondents.

12. The only ground on which the qualification of a degree is stated to be essential for the post of Junior Assistants is a resolution which is stated to have been adopted by the institute during the year 1986 itself and that for the post of Junior Assistants, the minimum educational qualification was a Degree from Universities recognised by the Tamil Nadu Government. Reference was also made to the proceedings in the context of appointment of the petitioners as Clerical Trainees while appointing the petitioners and that they having accepted such an appointment, the petitioners cannot now seek to agitate for being regularised as Junior Assistants.

13. It is not disputed that the petitioners though they have been classified as Clerical Trainees have been discharging the very same nature of duties discharged by the Junior Assistants, who have been regularly appointed being degree holders. Learned counsel for the petitioners had referred to the Circular issued by IRT on 14.9.1988 giving the details of allocation of duties and works relating to the Junior Assistants. The nature of the work assigned to each of the petitioners as assigned under the said Circular disclose that the petitioners were discharging the work of Junior Assistants only. This fact is not disputed by the respondents.

14. Therefore, having called the petitioners for interview for appointment to the post of Junior Assistant and after having selected them and appointed them to discharge the very same functions of a Junior Assistant, the stand of the respondents that they cannot be designated as Junior Assistants and that they will not also be entitled to wages, pay and allowances on par with Junior Assistants, cannot at all be sustained. The principle of equal pay for equal work will be applicable notwithstanding the nomenclature of the posts as held by the petitioners. It is also not disputed that as on date all the petitioners are now graduates.

15. Reliance is placed on the resolutions passed by the governing council of the institute prescribing a Degree Certificate as the minimum educational qualification for the post of Junior Assistant. Such a Resolution cannot override the statutory Government Order in G.O.Ms.No.479 dated 26.4.1994 in terms of which, the qualification for appointments to various posts shall be only in terms of rules and order applicable to the Government Engineering Colleges. Moreover, the service regulations of the IRT came to be formulated only in the year 1991. Chapter I of the General Rules also makes it specifically clear that the Rules shall come into force from 30.8.1991. Therefore, the said rules cannot be retrospectively made applicable to the staff who came to be appointed in 1987 itself. No reliance, therefore, can be placed on the Rules which came into effect only in the year 1991. As regards the staff who came to be appointed prior to the said date, the terms of qualifications as specified under G.O.Ms.No. 479 dated 26.4.1984 will govern such appointments. Consequently, as on the date when the petitioners came to be appointed, they were perfectly qualified and the refusal on the part of the respondents to give to the petitioners proper placement as Junior Assistants cannot be held to be valid. Reliance placed on the resolution of the society cannot be sustained as any such resolution would be contrary to G.O.Ms.No. 479 dated 26.4.1994. Resolution can be given effect to only for subsequent appointments. Moreover, as on date, it is not disputed that all the petitioners have acquired a degree and they are graduates. Therefore, there can be no difficulty in regularising the services of the petitioners by granting proper relaxation even if it is to be assumed that relaxation would be necessary. Power to relax has to be exercised where it is required in the interests of justice as they were appointed only pursuant to the calling for applications for the post of Junior Assistants. If they were not qualified then they ought not to have been appointed

which had resulted in disabling them to seek for a job elsewhere. Therefore, apart from the fact that they were perfectly eligible and qualified to be appointed as Junior Assistants on the date when they were appointed in terms of G.O.Ms.No.479 dated 26.4.1984, on grounds of equity also, they have to be regularised by granting relaxation, if necessary.

16. Therefore, viewed from any angle, the stand of the respondents denying proper placement to the petitioners as Junior Assistants and the benefit of equal pay for equal work done by the petitioners cannot at all be sustained.

17. In the result, the petitioners are entitled to succeed and the Writ Petition is allowed as prayed for. No costs.