
(2008) 04 MAD CK 0078
In the Madras High Court
Case No : W.A. No. 755 of 2007

A. Francis

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Chennai Metropolitan Water Supply and Sewerage Boards Water Supply Charges (Levy and Collection) Regulations, 1982 — Regulation 6B

Citation : (2008) 04 MAD CK 0078

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : N.R. Chandran for D. Sukumar, for the Appellant; B. Shanthakumar, for R2 to R4 and S. Gopinathan, AGP for R1, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—The writ appeal is directed against the order passed by a learned single Judge of this Court dated 23.4.2007 in

W.P. No. 43454 of 2006.

2. Heard the learned Counsel on either side and perused the materials placed on record.

3. The writ petitioner is the appellant herein. The writ petition was filed seeking a direction to the respondents therein to consider the case of the

petitioner/appellant for regular promotion as Deputy Controller of Finance against the existing vacancy in the Internal Audit Wing with due

modification and relaxation of Regulations of the respondent.

4. The case of the writ petitioner/appellant is that he was appointed in the services of the Adhoc Board of the first respondent as Accounts

Superintendent on 11.4.1978 and subsequently re-designated as Junior Accounts

Officer after the formation of the Board. Thereafter, he was promoted as Accounts Officer in June, 1982 and then as Senior Accounts Officer on 19.12.1985 and he continued to serve as Senior Accounts

Officer and completed 22 years of service. Thereafter, he was posted and functioning as Deputy Controller of Finance (in-charge) w.e.f.

22.11.2004 without any monetary benefit attached to the post. Therefore, he claims that since he was functioning as Deputy Controller of Finance

(in-charge), he is entitled for promotion to the above said post. However, the Special Regulations of the Board introduced w.e.f. 10.8.1982 favour

only professionals, viz., ICWA/CA/MBA. The said Special Regulations of the Board prescribing various qualifications for various posts were

framed during the infant stage of the Board and they have to be modified taking into consideration the prevailing regulations in other establishments.

5. The further case of the petitioner/appellant is that the professionals who were recruited in the Board have not completed their full period of

service and they had voluntarily retired on completion of 20 years of their service. They are, V. Venkateswaran, Chief Controller of Finance, R.

Sathiaselvan, Financial Analyst and Kamaraj, Controller of Finance (Internal Audit). It is further submitted that though his representation was not

considered, the cases of some other employees who were not qualified for promotion and who made representations to upgrade their post were

considered by the Board. The details of the same are given hereunder:

Sl. No. Date Particulars

1 1/9/2005 D. Narasimha Reddy,

Industrial Relation

Manager

Upgraded as Deputy

General Manager

2 1/3/2006 V.K. Suresh Kumar,

Assistant Public

Relations Officer

Upgraded as Deputy

Public Relations

Manager

3 4/6/2007 S. Gunasekaran, IFO

Temporarily promoted

as Manager (Customer

Care)

Regulation 6-B of the Chennai Metropolitan Water Supply and Sewerage Board Special Regulations, 1982 empowers the Board to relax any of

the special regulations in exceptional cases. However, the claim of the writ petitioner/appellant is that same was not done in his favour, while

exercising it in favour of other persons mentioned above.

6. It is pertinent to note that at one point of time, the Board has taken into consideration the petitioner's seniority, his work experience and past

service record and thereafter initiated proposals vide its order dated 7.8.1998 by constituting a Committee on Personnel Management Issues and

recommended the petitioner's name for promotion as Deputy Internal Auditor in Grade-IV from the post of Senior Accounts Officer on the

ground of his stagnation in the same post/cadre for more than 13 years on account of not possessing professional qualification. His name was also

recommended for further promotion and the Managing Director, Metro Water, vide his note dated 24.4.2003, considering his stagnation in the

post of Senior Accounts Officer for 18 years, has recommended him for promotion by relaxing the professional qualification prescribed before the

Personnel Committee and approved upgradation to the post of Deputy Controller of Finance. It is further submitted that in the report of the Re-

Engineering Study conducted by Prof. V. Lakshmipathy of the Regional Centre for Urban and Environmental Studies, Osmania University,

Hyderabad, it has been proposed to reserve one post of Deputy Controller of Finance to non-professionals and the same had been placed before

the Board in its 221st meeting held on 16.9.2000. The petitioner/appellant also submitted that he was associated with M/s.OMF Consultants, M/s.

A.F. Ferguson & Co., in conducting classes to the employees of the Corporation of Chennai in various branches of accounts, introduction of

formats and preparation of opening balance sheet as Junior Accounts Officer in-charge of Supplies Section during the year 1979 and has

registered the Board under Central Sales Tax, by which the Board saves crores of rupees by issuing CST Forms by paying only CST @ 4% for

inter-State purchase. The questionnaire prepared has been revised for Area and Regional Offices for conducting Transaction Audit. As Senior

Accounts Officer, Internal Audit in-charge for the settlement of Accountant General and Internal audit paras during the year 1991 and 1992, he

has taken special efforts to bring down the pendency of both Accountant General and Internal Audit paras. The Board vide its Res. Nos. 13/91,

dated 23.1.1991 and 20/92 dated 12.3.1992, had identified and appreciated his efforts to reduce pendency.

7. Apart from the above, he is a Post-graduate in Commerce (M.Com.) and has rendered 28 years of service in supervisory cadre, more than 20

years as Senior Accounts Officer and from 22.11.2004, he has been working as Deputy Controller of Finance (in-charge). Therefore, by virtue of

promotion, he will receive a benefit of Rs. 325/- only. Therefore, when his representation was rejected, though he having vast experience in the

field of accounts, the Board, by its Minutes dated 29.7.2003, rejected his claim stating as follows:

The Committee after detailed examination observed that the individual has entered into the service of the Board as Accounts Superintendent and

has been given two promotions thereafter as Accounts Officer and Senior Accounts Officer. In as much as the individual does not possess the

prescribed qualification, viz. Chartered Accountant or MBA with Finance or Cost Accountant for the post of Deputy Controller of Finance, the

Committee felt that the request of the Officer is not reasonable and if we consider such unqualified person for promotion, this will give room for

similar requests from other categories also.

Aggrieved, the writ petition has been filed seeking a direction to the respondents therein to consider the case of the petitioner/appellant for regular

promotion as Deputy Controller of Finance against the existing vacancy in the Internal Audit Wing in view of his continuous service in the post of

Senior Accounts Officer with due modification and relaxation of Regulations of the respondent.

8. The learned single Judge, considering the facts and circumstances of the case, has observed that the post of Deputy Controller of Finance will

be filled up by direct recruitment either permanently or on contract, possessing the qualification of Chartered Accountant or M.B.A. with Finance

or Cost Accounts with at least five years experience, of which a minimum of two years should have been in a supervisory capacity by promotion

from Senior Accounts Officers in Grade-V and the candidates must possess the qualifications prescribed for direct recruitment and must have put

in not less than five years of service as Senior Accounts Officer, and held that the appellant/petitioner does not possess the educational qualification

though he was having vast experience of service and dismissed the writ petition as misconceived. Aggrieved, the present writ appeal has been

preferred.

9. Mr. N.R. Chandran, learned Senior Counsel appearing for the appellant submits that the appellant/petitioner is having the educational

qualification prescribed in the Regulations and has vast experience in the Accounts Department of the Board. He is having minimum five years of

experience as Senior Accounts Officer and he was discharging his duties as in-charge of the Deputy Controller of Finance, which is a promotional

post from 22.11.2004 and he is also in-charge of a higher post of Deputy Controller of Finance, i.e., Controller of Finance from 8.9.2007 as per

the proceedings of the Chief Controller of Finance in Proc. No. CMWSSB/CCOF/Spl/2007. Therefore, if the counter filed in the writ petition by

the third respondent is taken into account, i.e., he is not having the prescribed educational qualification for promotion to the post of Deputy

Controller of Finance, the fact remains that the respondents are utilising his services in the post of Deputy Controller and Controller of Finance,

taking into consideration his vast experience in the department, is nothing but an exploitation of the vast and rich experience of the

appellant/petitioner. Further, the Board in the case of three other employees, considering their request, even though they were not possessing the

requisite educational qualification to hold the post, taking into consideration their length of services in the post, has upgraded the posts which they

were holding equivalent to the promotional post. In support of these submissions, the learned Senior Counsel has relied upon a decision of the

Apex Court reported in B.N. Saxena Vs. New Delhi Municipal Committee and others, wherein the Supreme Court, while considering the claim

for promotion to the post of Head Draftsman of Municipal Corporation, has held that a person having no diploma qualification but having experience of service for six years as Senior and Junior Draftsman is entitled to be considered for promotion to the post of Head Draftsman. This judgment was followed in Bashir Ahmed and Others Vs. State of Punjab and Others, holding that for appointment to the post of driver by way of direct recruitment in the Animal Husbandry Department of the State of Punjab, though the Rules prescribed the qualification of possessing a light vehicle driving licence and knowledge of Punjabi language up to middle standard and also by way of promotion of 10% drivers from the lower rank of cleaner, when the petitioner therein was asking for relaxation of the above Rule, the Supreme Court held that in case of direct recruitment, the question of relaxation does not arise.

10. A Division Bench of this Court, in which one of us (E.D.R., J) delivered the judgment, in Union of India v. Central Administrative Tribunal reported in (2008) 2 MLJ 744, has followed the ratio laid down in the judgment reported in B.N. Saxena Vs. New Delhi Municipal Committee and others, and considering the length of service put in by the applicants therein, quashed the Rule impugned to the effect of giving retrospective effect, causing prejudice to the applicants therein and depriving their promotional avenues.

10. In view of the above, the learned senior counsel appearing for the appellant submits that when the respondents Board is utilising the vast experience of the appellant in the promotional post, while denying his due promotion merely on the ground that he is not having the requisite educational qualification, the Board should have at least upgraded the post of Senior Accounts Officer to that of Deputy Controller of Finance, as he has already gained 25 years of experience in the above said department.

11. On the other hand, the learned Standing counsel for the Board submits that when the Special Regulations prescribe the educational qualification for the post of Deputy Controller and when the appellant is not possessing such requisite educational qualification, the question of relaxing the same does not at all arise and the cases on which the appellant is relying upon are not in the Accounts Department, but are in the Public Relations Department of the Board. The Board has considered the case of the appellant

and rejected the same only on the ground of educational qualification. In support of his contention, he has relied upon a decision of the Supreme Court in Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, wherein it is held that the Selection Committee, in the absence of any express power conferred upon it, cannot relax such essential qualification. It has also held that in order to be considered for promotion to a higher post, a person must possess the essential qualification. If he does not do so, he cannot be considered therefor. Even the selection committee, in the absence of any express power conferred upon it, cannot relax such essential qualification.

12. The above decision cited by the learned Standing Counsel for the respondents Board cannot be applied to the present case on hand since it is not the request made to the Selection Committee by the appellant/writ petitioner to relax his educational qualification, but on the other hand, the request is made to the Board, which is having the power conferred upon it by Regulation 6-B of the Chennai Metropolitan Water Supply and Sewerage Board, Special Regulations 1982, which empowers the Board to relax any of the Special Regulations in exceptional cases. But, unfortunately, as seen from the order passed by the learned single Judge of this Court dated 23.4.2007, Regulation 6-B is not properly extracted. Instead of the Board having powers to relax any of these Special Regulations, it has been mentioned that the Board shall have no powers to relax. Therefore, from any angle, the appellant/writ petitioner has a better stand to seek for considering his request for relaxation of the educational qualification, taking into consideration his vast experience in the department for about 28 years.

13. Secondly, in the case of similarly situated persons, the Board has upgraded the post when they are not eligible for promotion and thirdly, the Board is utilising his vast experience in the higher post, viz., the Controller of Finance, which is above the posts of Senior Accounts Officer and Deputy Controller of Finance, instead of promoting him to the higher post since he does not have the professional qualification. Therefore, we are not able to appreciate the contention raised by the learned Standing Counsel for the Board that appellant/writ petitioner is not having the essential qualification and therefore, the Board has rightly rejected the request for

relaxation as regards the educational qualification for the post of Deputy Controller of Finance.

14. For all these reasons, the order of the learned single Judge is liable to be set aside and accordingly set aside and the writ appeal is allowed.

The consequential resolution passed by the Board is also set aside with a direction to the respondents/Board to exercise the power conferred

under Regulation 6-B of the Chennai Metropolitan Water Supply and Sewerage Board Special Regulations, 1982 in relaxing the professional

qualification to promote the appellant/writ petitioner to the post of Controller of Finance, since we consider that he is already working in the

promotional post and it only requires an usual order to be passed by the Board under Regulation 6-B of the Board, thereby relaxing the

professional qualification and issuing the promotional order. No costs.