

(2008) 02 MAD CK 0203
In the Madras High Court
Case No : Writ Petition No. 20486 of 2007

B. Narayanaswamy

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 2, 48

Citation : (2008) 4 MLJ 596

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Karthick Rajan, for the Appellant; Pa. Kadirvel, AGP, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard the arguments of Mr. Karthick Rajan, counsel for the petitioner and Mr. Pa. Kadirvel, learned Assistant Government Pleader representing the respondents and perused the records.

2. In this writ petition, the petitioner is challenging the order of the Government in G.O. Ms. No. 16 Higher Education Department dated 01.02.2007. Though the order passed by the first respondent Government is in favour of the petitioner, the petitioner is only aggrieved about the relaxation that has been granted by the Government Order was only with effect from 02.3.2006 in terms of the power exercised under Rule 48 of the General Rules of the Tamil Nadu State and Subordinate Service Rules. The grievance of the petitioner is that the said exemption ought to have been granted from the date the petitioner was qualified to have been appointed as the Lecturer under the Tamil Nadu Collegiate Education Services and not from a prospective date.

3. It is seen from the records that the petitioner was appointed as a Junior Assistant on 08.01.1982 and subsequently was promoted as an Assistant and finally as an Office Superintendent. All these categories of employment come

under the Tamil Nadu State and Subordinate Services and the petitioner was working as a non-teaching staff in a Government College. The petitioner claims that even at the time of entering into subordinate service, he had M.A. (Tamil) Degree and thereafter, in the year 1990, he had passed the State Level Screening Test (SLST). Besides these qualifications, which are requisite for a Lecturer post in the Collegiate Service, the petitioner also claims to possess M.Ed. Degree and BLIS. Under the Tamil Nadu Collegiate Service, it is claimed that the post of Lecturers can be filled up by direct recruitment, recruitment by transfer among tutors and Demonstrators (this post has been abolished subsequently) and recruitment by transfer from the category of Headmaster in the Tamil Nadu Subordinate Services and thereafter, if no qualified and suitable candidates are available for appointment, then transfer from any other service can be made. It must be noted that the question of there being any dearth of qualified and suitable candidates being available does not exist in this State and, therefore, the petitioner's reliance that he ought to have been recruited by transfer from the non-teaching staff post, which is a Ministerial post, held by him does not arise.

4. According to the petitioner, certain persons who had such qualifications were appointed by transfer during the year 1979-81 and when the petitioner's turn came, there was a ban on recruitment from the year 1992. Some of the persons, who were denied such appointment, moved the Tamil Nadu Administrative Tribunal and the Tribunal by its order dated 24.6.2002, directed the State to consider the case of 14 applicants, who were non-teaching staff, to the post of Lecturer. The respondent State did not consider those cases and after Contempt Application was filed, the respondent State appointed three non-teaching staff as Lecturers by an order dated 04.8.2003. It was correctly contended by the State that a person can be appointed as Lecturer only as per the norms of the University Grants Commission [for short, "UGC"] and the pre-requisite was that they should have passed the SLST examination. The petitioner also made representation to appoint him as Lecturer by invoking the power under the Special Rules, viz., appointment by transfer.

5. The petitioner filed writ petition being W.P. No. 6006 of 2006 directing the respondents to appoint him as a Lecturer pursuant to the order of the Tamil Nadu Administrative Tribunal granted in O.A. No. 5636 of 2000 and the said writ petition was allowed by this Court vide order dated 02.3.2006. In fact, in O.A. No. 5636 of 2000, the Tribunal, by its order dated 24.6.2002, merely directed the State to consider the case of the persons like the petitioner on par with the persons, who were appointed earlier by Government Order dated 19.11.1994. This kind of transfer overlooks the fact that invocation of such a power had got a pre-requisite condition, viz., that there should not be any qualified or suitable candidate available by other methods. There is no right on the part of either non-teaching staff or Ministerial staff to compel the Government to recruit those persons merely because they are having necessary qualifications. In fact, as per the UGC norms, the post will have to be advertised on all India basis and with

reference to the Collegiate Educational Service, the recruitment will have to be done by the Teachers' Recruitment Board. The petitioner, on the basis of the orders passed by this Court, sent representation to the Government to appoint him for the post of Lecturer. In fact, by an order dated 20.4.2006, the respondent informed the petitioner that he was not qualified for appointment as Lecturer as per the UGC norms and the same was also brought to the notice of the Tribunal when Contempt Application No. 209 of 2003 was filed before the Tribunal.

6. Not satisfied with this reply, the petitioner filed a Contempt Petition before this Court being C.P. No. 478 of 2006. In order to avoid any punishment, the Government issued G.O. Ms. No. 16 Higher Education Department dated 01.02.2007 and declared that the petitioner (who is already retired from service as Superintendent on 31.10.2006) is deemed to have been appointed as Lecturer in the same Government College where he was working, viz., L.N. Government Arts College, Ponneri, with effect from 02.3.2006, i.e., the date this Court directed the implementation of the order of the Tribunal. Even in doing so, necessary regularisation were to be given by the Government under Rule 48 of the General Rules since the appointment of the petitioner violates the pre-requisite condition made for invoking the clause of transfer, viz., that there being no suitable candidates available by the other modes of recruitment. It was stated by this retrospective appointment that the salary of the petitioner was fixed in the scale of Lecturer, i.e., Rs. 8000-275-13500 and his pension was also directed to be revised. It is also stated that this cannot be quoted as a precedent as it was granted on the basis of the observation made by this Court and that since the petitioner had retired on 31.10.2006 and had not physically worked in the post of Lecturer, no backwages should be paid. Is this order that is under challenge in this writ petition.

7. It must be stated that on the basis of the said order, the Contempt Application was closed by this Court on 05.02.2007 and it is seen from the said order that the petitioner had not objected to the closing of the Contempt Application and it is presumed that the order had been substantially complied with by the Government.

8. Even otherwise, a counter affidavit dated 23.7.2007 has been filed on behalf of the respondents. It is contended that there was no obligation for the Government to appoint any non-teaching staff / Ministerial staff to be appointed as a Lecturer by invoking the power of transfer from one service to the other service. In paragraphs 6 and 7 of the counter affidavit, it is stated as follows:

Para 6: It is submitted that the method of direct recruitment envisaged in the Special Rules for Tamil Nadu Collegiate Education is still in vogue and only if no qualified and suitable candidates are available by the above method, recruitment through other methods has to be adopted. It is submitted that as per the order dated 24.6.2002, in the batch cases of Original Applications, only three persons were found qualified and they were appointed as Lecturers. It is submitted that

appointment of 14 persons who were appointed earlier, was found irregular and the Government have relaxed the rule relating to method of appointment in their cases. The rule relating to the method of appointment was relaxed in the case of appointment of the three persons also as per the orders of the Hon"ble Tribunal in the above said batch cases. The petitioner was not qualified at that time as the validity of the SLET/NET passed by him had expired in 1995 and hence he was not eligible for appointment as a Lecturer.

Para 7: ...The petitioner"s claim could not be considered as the Teachers Recruitment Board had directly started the process of recruitment of Lecturers by direct recruitment as per Rule 2(a)(1) of the Special Rules for Tamil Nadu Collegiate Educational Service as mentioned in para-4 above....

9. However, it is the case of the respondent that such orders had become final as now indicated in the counter affidavit which is extracted above. But at the same time, it must be seen that the petitioner cannot by filing successive petitions to arm twist the Government from violating all the Special Rules in getting the appointment to the post of Lecturers. It must be noted that the Lecturer post is a teaching post and only qualified candidates can be appointed in terms of the existing Special Rules. The petitioner"s category is only a residual category and recruitment from such a category cannot be invoked as a matter of routine and only in exceptional cases, such a power can be invoked considering the fact that the post in which the petitioner is trying to get appointed is a teaching post. It is doubtful whether such a residual power can be invoked by the Government. Even in the residual power found in Rule 2(a)(5) of the Special Rules, there is a pre-condition and unless that condition is satisfied, the petitioner cannot get appointed to any post in a different service. When thousands of candidates are available in the open market, who are more qualified and are also waiting for a number of years, it is rather unfortunate to compel the Government to choose within the narrow campus of the categories of non-teaching staff merely because they have acquired some degrees and that too, while in Government service. If the non-teaching staff or Ministerial staff are qualified and have aspiration to get posted as teaching staff, they should apply along with the direct recruitment candidates and compete in the selection process and then get appointed to the said service and not by this ingenious method of getting the appointment through back door. In any event, the question of the petitioner being appointed as a Lecturer under the Tamil Nadu Collegiate Services will arise only when the Rules are relaxed in favour of the petitioner under Rule 48 of the General Rules. Such a power to relax any existing Service Rule can be made by the Government only in public interest and not placating any particular individual.

10. In the present case, the respondent State was compelled to make a relaxation under Rule 48 in favour of the petitioner only on the basis of the order of the Tribunal and faced with a threat of contempt and it has not been exercised for the reason for which the said power has been vested on the Government. Further, the power to relax Rule 48 of the General Rules can be made either

prospectively or retrospectively and in the present case, the Government has relaxed the Rule in favour of the petitioner only from the date of the order of this Court, viz., 02.3.2006. The direction given by this Court in W.P. No. 6006 of 2006 reads as follows:

Considering the limited relief sought for in the writ petition, there will be a direction to the respondents to implement the order of the Tamil Nadu Administrative Tribunal in C.A. No. 5636 of 2000 with reference to the petitioner, if there is no legal impediment, within a period of twelve weeks from the date of receipt of a copy of this order.

11. Therefore, there is no positive direction in favour of the petitioner and the Government, on the advise of the Special Government Pleader, passed the present order. While this Court is not inclined to go behind the nature of advise given to the Government, but, however, it is stated that there is no fundamental right for any Government servant to force the Government to relax any particular Special Rule and it is not a matter of course where such an order can be granted. It is also seen that the petitioner got superannuated on 31.10.2006 as an Office Superintendent and it is unthinkable as to how he can get the post of Lecturer and when he had not taught any single class even for a day. Even otherwise, the Government had granted relaxation from the date of the order of this Court. This itself is a bonanza for the petitioner and by virtue of the same, he will have enhanced pension in the post of Lecturer even though he had not taught even for an hour for college students.

12. It is a real sad state of affairs that the person, who, otherwise, is not qualified to enter into the post in Collegiate service, by ingenious method had now compelled the Government to relax a vital rule in his favour and also partially succeeded in getting the order. The petitioner ought to have been satisfied with the order impugned in the writ petition. His present attempt to further make an improvement, viz., to get his deemed appointment extended to ten years backwards and also arrears of salary for that period is an exercise in futility and the writ petition is misconceived and devoid of any merits. Accordingly, the writ petition will stand dismissed. No costs.