

(2011) 07 MAD CK 0423

In the Madras High Court

Case No : Writ Petition (MD) No. 10242 of 2006 and W.P (MP) (MD) No. 1 of 2010

B. Raja Chinnakarupannan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 07 MAD CK 0423

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : M.P. Senthil, for the Appellant; S. Bharathi, Government Advocate for respondents 1 and 2 and D. Rajendran, for respondent-3, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner has challenged the impugned order, dated 13.10.2005, rejecting the representation, for considering his case for promotion, on the ground, that the post of Head of Department, in polytechnic getting grand-in-aid, is to be filled by direct appointment and not promotion, as claimed by the Petitioner.

2. The facts leading to the filing of this Writ Petition reads as under:

The Petitioner joined as Lecturer in the Mechanical Department with Arulmighu Palani Andavar Polytechnic College, Palani, Dindigul District, run by the Hindu Religious and Charitable Endowments Department on 28.12.1989.

3. The next channel of promotion from the post of Lecturer is to the post of Head of Department. The case of the Petitioner is that the promotional post is lying vacant for the last 22 years, as the competent authority has not considered the case for promotion. That the inaction on the part of the Governing Council has resulted in grave injustice to the Petitioner, as his right to be considered for promotion stood defeated.

4. It is not disputed that No. service rules have been framed for regulating the service conditions of teaching department in Government Aided Polytechnics in the State of Tamil Nadu, therefore the service conditions of the employees in the aided polytechnics are governed by the administrative instructions. At the time of revision of pay scale of teacher in polytechnic Colleges and special diploma Technical institutions G.O.Ms. No. 1081, Education(J-1) Department, dated 19.08.1989 was issued, wherein, it was stipulated as under:

Recruitment and Qualifications:

Recruitment to the posts of Associate Lecturer in Polytechnics and Special Diploma institutions will be done by the Tamil Nadu Public Service Commission or any other Educational agency to be identified by the Government for conduct of tests and selection of eligible candidates. The time of recruitment candidates shall possess adequate knowledge of Tamil.

The minimum qualification for appointment to the posts of Associate Lecturer will be First as Bachelor degree in the relevant discipline.

The existing teachers holding diploma qualification will be allowed

To continue in their present level. They will have to acquire the required degree qualification to advance further in their present level.

The Associate Lecturer should complete 10 years service in that level and should also possess First Class bachelor's Degree in Engineering for promotion as Head of Department.

A Head of the Department with a Master's degree, a Bachelor's Degree in Engineering for promotion as Head of Department.

A Head of the Department with a Master's Degree in Engineering and Experience of 5 years service will be eligible to become a Principal of polytechnic or special diploma institutions.

If due to non-availability of persons with Master's degree, a Bachelor's degree holder may be appointed as principal in the scale of pay of Rs. 4,200-125-4950-150-5700. For Non-Engineering subjects in a polytechnic a Master's Degree with 55 percent marks in the relevant subject will be the minimum qualification for Associate Lecturer as well as Lecturer.

8. In order to encourage research, in continuation of studies, candidates who at the time of their recruitment as Associate Lecturer, possess a Ph.D or M.E Degree will be sanctioned four and two advance increments respectively in the scale of Rs. 2,200-4,000 along with the benefit of corresponding years of service for purpose of promotion. The individual shall have the benefit to this weight age only at the entry level. The existing Associate Lecturer without research degrees and those similarly situated recruited in future will be eligible for a similar benefit in service for the purpose of promotion and when they acquire research degrees but will not be eligible for advance increment. Existing

Associate Lecturers with research degrees will also be eligible for similar benefit.

If a new entrant gets more pay than the senior possessing the higher qualification possess by the new entrant.,the pay of the senior may be stepped up to that of the junior.

5. The Petitioner is fully eligible for promotion, as Head of Department as he has the requisite qualification and experience as laid down in G.O.Ms. No. 1981.

6. On subsequent revision of pay, the Government issued G.O.Ms. No. 563, dated 31.12.2004, wherein, it was laid down that the initial recruitment for the cadre of lecturers will be done by Teachers Recruitment Board by open advertisement on merits at State Level and for higher posts, the policy of promotion already adopted will continue. Thus, even in the subsequent instructions of the Government, the policy adopted for promotion referred to in G.O(MS) No. 1081 above was reiterated. As inspite of government instructions, the case of Petitioner was not being considered for promotion to the post of Head of Department, the Petitioner approached this Court by filing the Writ Petition No. 1510 of 2004. The Writ was disposed of by this Court, by issuing directions to the Respondents to consider the representation of the Petitioner for promotion, and to pass appropriate orders thereon. It was only in pursuance of the directions issued by this Court, that the impugned order was passed.

7. The learned Counsel for the Petitioner challenged the impugned order, on the ground that the order on the face of it is arbitrary and amounts to colourable exercise of power. The reasons of rejection of his claim for promotion is contrary to the Government instructions referred to above.

8. It is also the contention of the learned Counsel for the Petitioner, that keeping the post vacant for 22 years, on the face of it amounts to colourable exercise of power,this action of management is hit by Article 14 of the Constitution of India, as deliberate attempt has been made to deny the right of promotion to the eligible candidates.

9. The Writ Petition is opposed by the Respondents by contending, that G.O.Ms. No. 1081 and G.O.Ms. No. 1282 referred to above are not applicable to the aided polytechnic colleges and regulate the service conditions of the Government Polytechnic only.

10. It is also the contention of the learned Counsel for the Respondents that the service conditions of the Petitioner is governed by G.O.Ms. No. 1282, Education, dated 26.07.1967. This contention deserves to be noticed to be rejected, for the simple reason that the learned Counsel for the Respondents are unable to place any such Government Order on record.

11. Even otherwise, if any such Government order is in existence, it would be deemed to be superseded by subsequent instructions issued by G.O.Ms. No. 1081, dated 19.08.1989 and G.O.Ms. No. 2082, referred to above.

12. The stand of the Respondents that the instructions are only applicable to Government Polytechnic, on the face of it is misconceived as the Government Order clearly states that this applies to polytechnic institutions run by Government and Government Aided, institutions.

13. On consideration, I find force in the contention raised down by the learned Counsel for the Petitioner. The order impugned, on the face it is arbitrary and amounts to colourable exercise of power, being the outcome of the misreading of Government instructions referred to above. The impugned order is therefore hit by Article 14 of the Constitution of India, thus deserves to be set aside.

14. This Court cannot issue a writ in the nature of Mandamus, directing the Respondents to promote a particular person to the post of Head of the Department and it will be for the Respondent/Management to consider the case of the eligible persons.

15. The directions are accordingly issued to the Respondent to fill up the post of Head of Department as per the instructions of G.O.M. No. 1081, dated 19.08.1989 by considering the case of all the eligible persons.

16. This direction is issued, keeping in view of the fact that the post of Head of Department was kept vacant for the last 22 years.

17. The Writ Petition is allowed in above terms. Consequently, connected Miscellaneous Petition is closed. No. costs.