
(2007) 10 MAD CK 0178
In the Madras High Court
Case No : Writ Petition No. 21780 of 2005

C.R. Natarajan

APPELLANT

Vs

The Dean, R.M. Hospital

RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 10

Citation : (2007) 10 MAD CK 0178

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : K. Dhanalakshmi, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Judgement

S. Manikumar, J.—The petitioner has challenged the order dated 28.10.1984 of the respondent, rejecting his request to reinstate him in the post of Wireman Grade I.

2. Brief facts leading to the Writ Petition are as follows:

On 13.09.1972, the petitioner was appointed as Electrician in the Government R.M. Hospital, Thanjavur from among the candidates sponsored by the Employment Exchange. Nearly after seven years of continuous work in the said post, the petitioner was ousted from service on 13.07.1979 on the ground that he did not possess the required qualification and experience. Aggrieved by the same, the petitioner preferred an appeal on 07.08.1979 to the Director of Medical Education and Family Welfare, Chennai. After 10 years, the respondent by his proceedings dated 24.10.1989, sought willingness of the petitioner for appointing him as Grade-IV servant in the Hospital and in response to the same, the petitioner, by his letter dated 17.11.1989, agreed to work as hospital worker. In spite of his willingness, after a lapse of eight months, again the respondent, by proceedings dated 11.07.1990, sought particulars from the petitioner with regard to his educational qualification for the post of Electrician, which was also complied with by him. Thereafter, by letter dated 26.10.1990, the petitioner was

directed to forward renewal of his licence as Wireman and he responded to the same. Again, by letter dated 06.02.1991, the petitioner was directed to offer his willingness for appointment as Wireman Grade-I. In spite of production of all the particulars required by the respondent, to his shock and surprise, the respondent has passed the impugned order dated 28.10.1991, and intimated the petitioner that since the Government had refused to relax the rules regarding the age prescribed for the post of Electrician Grade-I, the request of the petitioner to reappoint him as Electrician cannot be complied with. Aggrieved by the same, the petitioner has preferred the Original Application before the Tamil Nadu Administrative Tribunal, which was subsequently transferred to this Court and renumbered as Writ Petition.

3. The respondent in his counter affidavit submitted that the petitioner was originally appointed as Electrician (upgraded post) in Ref.No. 12577/72/E3 dated 13.09.1972, by the then Superintendent (now re-designated as Dean) of R.M. Hospital, Thanjavur, in one of the two posts of Electrician sanctioned by the Government for Free Eye Camp and he joined duty on 19.09.1972. The appointment of the petitioner was purely on temporary basis under Rule 10(a)(i) of the General Rules for Tamil Nadu State and Subordinate Service Rules in a scale of pay of Rs. 160-5-240, pending framing of Ad hoc rules for the post of Electrician (ungraded), as the same was a newly created post. The respondent has further submitted that with a view to regularise the services of the petitioner, he sent a proposal to the Director of Medical Education and Family Welfare, Chennai on 01.06.1979. But the service of the petitioner was terminated with effect from 14.07.1979, as per the directions of the Director of Medical Education and Family Welfare, Chennai dated 13.07.1979, on the ground that the petitioner did not possess necessary qualification for the post of Electrician (Grade-I) as per the Rules.

4. The respondent has further submitted that as per the Rules in vogue at the time of appointment, the following qualifications were prescribed for the post of Electrician, Grade-II, in the Service Manual Volume III,

- i) Must have passed VIII Standard or IIIId Form
- ii) Pass in the Electrical Wiring Examination of the Central Polytechnic, Madras.
- iii) Experience for a period of not less than 5 years as Electrical Wireman.

(However, later in G.O.Ms.No. 25, Health dated 05.01.1976, it was amended and substituted as "Experience" for a period of not less than three years as Electrical Wireman.")

It is further submitted that at the time of appointment, the petitioner was possessing following qualifications:

- i) S.S.L.C. Failed
- ii) Training in Wireman in I.T.I of Nagapattinam from August 68 to July 70, -

Provisional Certificate dated 10.08.1970, issued by the Principal, I.T.I. Nagapattinam.

iii) He had no previous experience as Electrical Wireman.

5. The respondent has further submitted that at the time of sanctioning of the post of "Electrician" for the Free Eye Camp in G.O.Ms.No. 1654, Health dated 20.07.1972, there was no specific mention about the "Grade", as to whether the post is Electrician Grade-I or Grade-II (as the sanctioned post was only "Electrician"). Further, there was no qualification prescribed in the Service Manual for the ungraded post of "Electrician" and due to this ambiguity, the qualifications could not be notified by the Employment Exchange at the time of selection.

6. The respondent has further submitted that it was never his intention to terminate the petitioner and he tried his level best to regularise the temporary services of the petitioner by sending suitable proposal to the Director of Medical Education and Family Welfare, Chennai for obtaining necessary relaxation from the Government. After a long correspondence, the Government in their letter dated 11.07.1983, issued directions that the petitioner and Tvl. R. Govindan may be reappointed as Electricians Grade II and their temporary services may be regularised, after they gain the specified period of experience and subject to the condition that a "Non-Availability Certificate" is obtained from the concerned Employment Exchange, stating that the posts were lying vacant from 14.07.1979. On receipt of the above said letter dated 11.07.1983 from the Government, the respondent sought clarification about the "Non-Availability Certificate" and also whether the petitioner should gain experience afresh for a further period of three years or the experience already gained by him for 7 years as Electrician at the hospital before his termination may be taken for the purpose of previous experience with a view to reappoint him on regular basis from the date of joining.

7. The respondent has further submitted that the Director of Medical Education, Madras in his letter dated 11.10.1983, clarified and instructed the respondent that before reappointing the petitioner to obtain a statement from the Employment Exchange, that Nonqualified, candidates were available with them. The Director of Medical Education and Family Welfare, Madras, further added that it may be concluded that the petitioner possesses the adequate experience and he may be reappointed in service, taking into consideration the experience gained by him for more than six years, ie., from September 1972 to 14.07.1979, on which date, the petitioner was ousted from service. Accordingly, by letter dated 08.11.1983, the District Employment Officer, Thanjavur, was requested to furnish the non-availability certificate to the effect that no suitable qualified candidates were available for the post of Electrician Grade-II in the District Employment Office. The Assistant Director, District Employment Office, Thanjavur, in his letter dated 14.11.1983, replied that non-availability certificate for the period from July 1979, could not be issued after a long lapse of time, as the records were not available.

8. The respondent has further submitted that the Director of Medical Education and Family Welfare, Madras in his letter dated 17.08.1984 stated that, if those discharged from services on 14.07.1979 were to be appointed again, their names should be sponsored by the Employment Exchange or a non-availability certificate should be obtained from the concerned Employment Exchange. Based on this letter, the respondent by his letter dated 16.11.1984, requested the District Employment Officer, Thanjavur, to sponsor the names of the petitioner and another person for selection and reappointment as Electrician Grade-II or to furnish a "Non-Availability Certificate". In reply, the District Employment Officer, Thanjavur raised a query as to whether the above said individuals have re-registered their names in the Employment Exchange and also to clarify as to whether the qualifications prescribed for the said post were adequate.

9. In response to the query, the respondent sent a detailed letter to the Assistant Director, Employment Office, Thanjavur, stating that a notification, calling for eligible candidates is not required to be published, since the matter was already in correspondence with the Government for relaxation of the rules in favour of the petitioner and Thiru. R. Govindan. Thereafter, the Assistant Director, Employment Office, Thanjavur, was informed of the re-registration particulars of Thiru. R. Govindan, and he was requested to issue a formal employment notification. The respondent has further submitted that inspite of his efforts, the petitioner could not be contacted immediately and therefore the details as to whether his name was re-registered in the Employment Exchange could not be ascertained.

10. The respondent has further submitted that a copy of petitioner's fresh representation was received vide Director of Medical Education's letter Ref. No. 110936/88/E2, dated 20.12.1988 and it was replied to the Director of Medical Education, Chennai that the office of the respondent was not in a position to accommodate the petitioner for want of prescribed qualification at the time of his appointment and as his name was not sponsored by the Employment Exchange.

11. Thereafter, the Government in their letter dated 08.08.1989, directed the respondent to review and reconsider the matter, so as to provide employment to the petitioner by taking suitable action. Taking into consideration of the plight of the individual and in order to overcome the age problem and non-availability of the vacancy in the post of Electrician Grade-II, Government R.M. Hospital, Thanjavur, by letter dated 26.09.1989, the Director of Medical Education and Family Welfare, Madras was requested to obtain necessary relaxation orders regarding the age, prescribed for the above said post anywhere under the control of Director of Medical Education and Family Welfare and it was also suggested to appoint the petitioner as hospital worker in the same institution, if the petitioner expresses his willingness for the same. Therefore, willingness of the petitioner for the post of hospital worker was obtained, vide letter dated 17.11.1989 and suitable proposal was also sent to the Government.

12. However, taking into consideration, the existing vacancy in the post of

Wireman Grade-I at that time, the respondent by his letter dated 04.01.1990, requested the Director of Medical Education and Family Welfare, Madras to consider the case of the petitioner for the post of Wireman, Grade-I instead of hospital worker and that necessary orders for relaxation of the age may be obtained from the Government. In this context, further particulars were called for from the petitioner regarding his Educational qualification for the post of Wireman Grade-I to accommodate him in a superior post, instead of basic service as hospital worker. Keeping that in mind, the petitioner was also directed to submit his willingness to the post of Wireman Grade I and after obtaining his consent, suitable proposals were sent by the respondent to the Director of Medical Education, Madras in his letter dated 28.10.1991, for obtaining relaxation of age and experience and also the mode of appointment for the purpose of accommodating the petitioner as Electrician Grade I. Ultimately, the Government refused to accept the proposals for relaxation of the rules in favour of the petitioner for appointment to the post of wireman Grade-I in the Government R.M. Hospital, Thanjavur and on receipt of the said letter, the respondent informed the decision of the Government to the petitioner. Therefore, the respondent submitted that the case of the petitioner for re-appointment as Electrician Grade-I could not be considered.

13. Learned Counsel for the petitioner submitted that when the post of Electrician was notified by the Employment Exchange, no qualifications were prescribed in the said notification, the petitioner having been selected in the year 1972 by the respondent from among the candidates sponsored by the Employment Exchange and worked for nearly seven years, ousting him from service on the ground that he had no previous experience as Wireman is arbitrary. Referring to the admission made in the counter affidavit by the respondent that, "at the time of appointment, the petitioner was in possession of necessary qualifications as notified by the Office of the respondent," learned Counsel for the petitioner submitted that once a person is found to be qualified and appointed to the post of electrician, terminating him on the basis of the rules, which came into effect subsequently is illegal. She further submitted that even assuming that the petitioner did not satisfy one of the conditions, viz., previous experience as Wireman, it is purely the fault of the respondent and for that reason, the petitioner, who had worked for nearly seven years as Electrician without any blemish, ought not to have been terminated without notice and therefore, the action of the respondent is in violation of Principles of Natural Justice.

14. Learned Counsel for the petitioner further submitted that after a long battle, the respondent himself came forward with an offer to appoint the petitioner as Wireman Grade I and when he had submitted his willingness to the said post with necessary certificates regarding technical qualifications, the respondent ought to have appointed him to the said post. She further submitted that the petitioner had even submitted his willingness to the post of hospital worker in the year 1989 and the respondent should have atleast considered him for the above

said post, relaxing the age applicable to that post. She submitted that the petitioner was well within the prescribed age at the time of appointment in the year 1972 and only due to the protracted proceedings of the respondent, with the Head of the Department and Government and others, he had crossed the maximum age prescribed for the post of Electrician and therefore, this Court should direct the authorities to relax the age and provide suitable employment to the petitioner.

15. Mrs. Lita Srinivasan, learned Government Advocate, submitted that when two posts of Electrician were sanctioned by the Government for free eye-camp conducted by the respondent, there was no specific mention about the Grade, as to whether, the post of Electrician Grade I or II. Though the respondent, with a bona fide intention of regularising the temporary services of the petitioner had sent suitable proposals for obtaining orders for relaxation from the Government in so far as the qualification, ie., previous experience is concerned, the Government, issued instructions only in 1983, stating that the petitioner as well as another person Thiru. R. Ganesan, may be re-appointed as Electrician Grade II and their temporary services be regularised, after gaining the period of experience and subject to the condition to obtain a "Non-Availability Certificate" from the concerned Employment Exchange, stating that the said posts were vacant as on 14.07.1979.

16. Learned Government Advocate further submitted that the respondent has taken all efforts to obtain the Non-Availability Certificate from the District Employment Office, Thanjavur. But the said certificate was not given by the concerned Employment Exchange and therefore, appointment could not be made in time. She further submitted that on the basis of the instructions issued by the Government, the District Employment Officer, Thanjavur was once again requested to sponsor the names of the abovesaid individuals for selection and re-appointment as Electrician Grade II. But in spite of sincere efforts taken by the respondent, the whereabouts of the petitioner was not known and therefore, it could not be ascertained from the petitioner as to whether, he had re-registered his name with the Employment Exchange. Ultimately, when the Department obtained the willingness of the petitioner, either to appoint him as Electrician Grade I or Hospital worker, the Government turned down the proposals on the ground that the petitioner was over aged for the post of Electrician Grade I. In fine, learned Counsel for the respondent submitted that the respondent has taken sincere efforts to accommodate the petitioner in the post of Electrician Grade-I, but since he had crossed the maximum age for that post, the petitioner could not be appointed as Electrician Wireman. In these circumstances, learned Counsel for the respondent submitted that there is no illegality in the orders of the respondent and the petitioner is not entitled to the relief prayed for in the Writ Petition.

17. Heard Mrs. K. Dhanalakshmi, learned Counsel for the petitioner and Mrs. Lita Srinivasan, learned Government, appearing for the taxes.

18. It is a classic case of demonstration of Red-tapism by the Government and the Department, where the interest of a person longing for employment was totally forgotten by the Government in exchanging correspondence for a decade and in that process, the petitioner had lost the age and youth, which are required for the post of Electrician. In this context, I would like to extract the meaning of Red Tapism. Source from the Brewers' Dictionary,

The following is from Truth, Feb. 10, 1887, p.207:- There was an escape of gas at Cambridge Barracks, and this is the way of proceeding: The escape was discovered by a private, who reported it to his corporal; the corporal reported it to the colour-sergeant, and the colour-sergeant, and the colour-sergeant to the quartermaster-sergeant. The quartermaster-sergeant had to report it to the quartermaster, and the quartermaster to the colonel commanding the regiment. The colonel had to report it to the Commissariat Officer in charge of barracks, and the Commissariat Officer to the barrack-sergeant, who had to report it to the divisional officer of engineers. This officer had to report it to the district officer of engineers, and he to the clerk of works, Royal Engineers, he sends for a gasman to see if there is an escape, and report back again. While the reporting is going on the barracks are Burnt down.

19. Going through the pleadings and materials on record, it is evident that the Government has sanctioned two posts of Electrician in the Government Hospital for Free Eye-camp and in 1972, the posts were notified as Electrician (ungraded). After getting the names of the suitable candidates from the Employment Exchange, the respondent selected and appointed the petitioner in the post of Electrician in the year 1972, prior to framing of the rules. When the rules were framed, the post of Electrician has been classified as Grade I and II and qualifications were also prescribed. The respondent in their counter affidavit has admitted that at the time of appointment, the petitioner satisfied the qualifications as notified by their Office.

20. According to the respondent, the petitioner did not possess the previous experience as Electrical Wireman for a period of five years. By G.O.Ms.No. 25, Health Department, dated 03.01.1976 the Government relaxed the rule and reduced experience to three years and by that time, by virtue of his continuous work in the post of Electrician from 1972, the petitioner had acquired the required three years experience, which is prescribed under the Rules.

21. It is evident that but for the notification from the Employment Exchange, the petitioner and persons similarly placed would not have applied for the post of Electrician. The contention of the respondent that it is purely a temporary appointment liable to be terminated at any time can be raised in a case where the department appoints a person as a stop gap arrangement or where there is no need for continuity. The only shortcoming in the appointment was necessary experience, which the petitioner had gained during 1972-79.

22. It is the case of the respondent that the Government letter dated

11.07.1983, directing the petitioner and Thiru. Ganesan may be reappointed as Electrician and their temporary services may be regularised after the specific period of experience is gained by them, has created confusion in the mind of the respondent as to whether the individuals appointed earlier by him in the year 1972 should gain experience afresh for a period of three years. When the petitioner had already acquired the necessary qualification by virtue of his continues officiation for 7 years as Electrician and taking into consideration the intention of the respondent to regularise the petitioner, he ought to have addressed the Government/Directorate for regularisation of the petitioner's services as Electrician Grade I or Grade II, as the case may be, for which post, the petitioner had acquired the experience, instead of seeking further clarification, which has caused delay. It is evident that the District Employment Exchange, Thanjavur, also played its role and contributed to the delay.

23. According to the respondent, the petitioner satisfied the qualification at the time of appointment as Electrician. If that be the case, why should he be deprived of his chances of employment? It is not uncommon that official correspondence takes considerable time but final orders should be issued within a reasonable time. There is no hard and fast rule to estimate time, but the authorities dealing with the service condition of a Government servant should exercise due care and avoid unnecessary red tapism and protraction. Though the ouster was made in 1979, the Government took four years to send a letter to the Director of Medical Education and thereafter, for nearly six years, the respondent had been corresponding with the Directorate, District Employment Exchange, Thanjavur and the Government, without realising the fact that years have roled down and they have taken nearly a decade to finally offer him a post. At least when the petitioner meekly submitted to the respondent's offer to the post of Hospital worker, the respondent could have appointed him to the post of Hospital worker.

24. Even the contention of the respondent that the whereabouts of the petitioner were not known traced to ascertain the details as to whether the petitioner had re-registration in the employment exchange, is not acceptable for the reason that the petitioner had responded to the communications from the Office of the respondent and the counter affidavit is also bereft of the details as to when the communication was sent to the petitioner for the above purpose.

25. Except for a short span of time spent in getting the necessary details from the petitioner, the entire delay of nearly 12 years, since 1979, is caused only due to the repeated exchange of correspondence between the officials, for which, the petitioner should not be penalised. The petitioner was well within the age prescribed for the post of Electrician at the time of his appointment in the year 1972 and only due to the erroneous approach of the authorities and the action of the respondent in protracting the proceedings from 1979 to 1991, the petitioner could not be regularised in the post of Electrician Grade-I or appointed to any other lower post and the petitioner is certainly put to serious loss and irreparable

hardship. For the reasons stated supra, this Court deems it fit to issue a direction to the respondent to consider the case of the petitioner for appointment to the post of hospital worker or any other post suitable to his qualification, within a period of three months from the date of receipt of a copy of this order. The respondent is directed to take prompt action to avoid delay.

26. With the above direction, the Writ Petition is disposed of. No costs.