

(2010) 02 MAD CK 0113

In the Madras High Court

Case No : Writ Petition No. 6321 of 2006

M. Ponni

APPELLANT

Vs

The State of Tamil Nadu and The Principal, Thiagarajar Poly
Technic (Autonomous Institution)

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Citation : (2010) 02 MAD CK 0113

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

**Advocate : A. Arulmozhi, for the Appellant; G. Sankaran, Spl. Govt. Pleader for
R. 1 and 2 and S.R. Rajagopal, for R. 3, for the Respondent**

Judgement

P. Jyothimani, J.—The writ petition which was originally filed for Mandamus against the respondents to appoint the petitioner as Lecturer in

Civil Engineering in the third respondent Poly-technic with all attendant benefits was subsequently amended in order to challenge the impugned

order of the second respondent dated 29.1.2004, by which the second respondent rejected the proposal of the third respondent dated

18.12.2003 for approval of the appointment of the petitioner as Lecturer in the third respondent institution from the post of Junior Drafting Officer,

on the basis that the same is not permissible as per Rules.

2. The petitioner who completed her diploma in Engineering in the year 1991, has also acquired B.E. Degree in the year 2002 from Salem

Engineering College. In the year 1995 she was appointed as Junior Drafting Officer in the third respondent college. The said post is a non-teaching

category covered by clause V of Special Rules of Tamil Nadu Technical Education Subordinate Services.

2(a). It is the case of the petitioner that the post of Workshop Instructor/Drafting Officer is feeder category for the post of Lecturer for recruitment

by transfer provided the candidate has the required qualification of B.E. degree. The petitioner applied for the post of Lecturer in Civil Engineering

in the third respondent college and she was called for interview by the third respondent on 14.11.2003, however she was not selected and an

outsider was appointed by direct recruitment who also resigned within a few months.

2(b). It is understood that the third respondent was attempting to appoint another person by direct recruitment. The petitioner made a

representation on 13.10.2005, for which she was orally informed that the Rules and guidelines do not permit her appointment as Lecturer. As per

the Tamil Nadu Technical Education Subordinate Service Rules, the post of Junior Drafting Officer and Workshop Instructor is governed by the

said Rules and the said post is a feeder category for the post of Lecturer by transfer.

2(c). It is stated that as per G.O.Ms. No. 1364, dated 16.08.1988, the Junior Drafting Officer and the Workshop Instructor who are in non-

teaching category were promoted as Instructors in teaching category. This method was discontinued due to the policy of AICTE as per G.O.Ms.

No. 1081 dated 19.8.1989. The incumbents in the post of Workshop Instructor/Junior Drafting Officer appointed prior to 1989 were

redesignated as Lecturer as per G.O.Ms. No. 119 dated 26.03.1999.

2(d). The minimum qualification for appointment to the post of Lecturer is B.E. degree with First Class. Even though the petitioner fulfilled the

required qualifications, because of AICTE norms the petitioner was not selected for the post of Lecturer. It is the case of the petitioner that the

third respondent directed her to appear for staff selection committee, since the appointment by transfer of non-teaching cadre to teaching cadre has

been stopped in spite of AICTE clarification dated 4.3.2003. It is stated that the proposal sent by the third respondent for appointing the petitioner

has been rejected by the second respondent under the impugned order dated 29.1.2004.

2(e). It is the case of the petitioner that the second respondent is under the mistaken impression that the proposal for appointment was made by

promotion from the post of Junior Drafting Officer to the post of Lecturer. But, actually the appointment was by way of transfer based on the

interview conducted along with the candidates called for from the employment exchange. The same has not been clarified to the second

respondent.

2(f). A reference to the impugned order shows that a proposal was sent by the third respondent for filling up the post of Lecturer in the vacancy in

the post of Instructor sanctioned as per G.O.Ms. No. 1081 dated 19.08.1989, which has not been explained by the third respondent properly.

Since the post of Instructor has been dismantled with by G.O.Ms. No. 587 dated 1.2.1997, the post of Lecturer is an entry level post and there is

no question of promotion.

2(g). If only the above two points were clarified by the third respondent, the second respondent would not have passed the impugned order and

the impugned order is arbitrary. Under these circumstances, the impugned order is assailed on various grounds including that the petitioner's

appointment originally as a Junior Drafting Officer is in a regular vacancy and after acquiring B.E. degree she satisfied the norms of AICTE and as

a Junior Drafting Officer she has put in more than 10 years of experience and she is eligible for appointment by transfer as Lecturer, that as per the

clarification of AICTE dated 4.3.2002 the local condition has to be taken into consideration by the State Government by adopting suitable faculty

structure in the diploma level technical institutions, that if the petitioner is not appointed as a lecturer in the third respondent college in the existing

vacancy her career will be stagnated and that the impugned order is discriminatory.

3. In the counter affidavit filed by the second respondent it is stated that in the Government aided polytechnic colleges all appointments are made

through Staff Selection Committee and the third respondent being the Government aided polytechnic, the petitioner should only appear before the

Staff Selection Committee for appointment and therefore she is not eligible to the post of lecturer by promotion as requested by her in the petition

dated 13.10.2005.

3(a). As per the instructions issued by the Director of Technical Education dated 3.1.1989, the Staff Selection Committee has to draw a list of

eligible candidates from the Employment Exchange and the eligible internal candidates in the feeder category who will be permitted to compete in

the interview and the selection is made and the list is sent to the Director of Technical Education for approval. It is stated that the petitioner is

working as a Junior Drafting Officer in the third respondent college in a non-teaching post and in the third respondent college, there was a vacancy

in the post of Lecturer (Civil Engineering) in 2003 which is a teaching post and the petitioner participated in the interview held on 14.11.2003 and

was selected as an internal candidate for the post as per the requirement.

3(b). The third respondent has written to the second respondent in the letter dated 18.12.2003 seeking approval of the selection of the petitioner.

That was disapproved in the impugned order on the ground that under the existing norms persons holding the post of workshop instructor/

Machine operator/Junior Drafting Officer (non-teaching posts) with the requisite qualifications for higher education qualifications prescribed for the

post of Lecturer cannot be treated as internal candidates and appointed to the post of Lecturer through Staff Selection Committee.

3(c). Further, the impugned order came to be passed on the basis that the post of Assistant Lecturer has been redesignated as Instructor. While

so, the promotion has been sought for filling up the post of Lecturer in the redesignated post of Instructor and there is a ban on the appointment to

the post of Instructor under G.O.Ms. No. 1081 Education dated 19.08.1989. It is stated that as per G.O.Ms. No. 597 Higher Education

Department dated 1.12.1997, the appointment to the post of Lecturer has to be made either by direct recruitment or by recruitment by transfer

from the category of Instructor in the Tamil Nadu Technical Education Subordinate Service and therefore, for the post of Lecturer the feeder

category is Instructor.

3(d). The petitioner was only a Junior Drafting Officer, which is not a feeder category for the post of Lecturer. It is stated that the Junior Drafting

Officer is a feeder category for the post of Instructor as per the Special Rules and therefore, unless the petitioner is first appointed as Instructor she

cannot claim the post of Lecturer by transfer straight away from the post of Junior Drafting Officer.

3(e). It is stated that the post of Instructor has been dispensed with from

19.8.1989 as per G.O.Ms. No. 1081 Education (J1) Department dated

19.8.1989 and thereafter the post of Lecturer became the entry level teaching post and that post was earlier called as Associate Lecturer.

However, the existing Instructors have an avenue of becoming Lecturers as and when they acquire the requisite educational qualifications.

3(f). It is stated that the post of Instructor has been retained in the Special Rules for the Tamil Nadu Technical Educational Subordinate Service by

recent G.O. Ms. No. 220 Higher Education dated 6.7.2009 in order to safeguard the interest of the services of the Instructors who were already

appointed and are still in service. Therefore, it is stated that it is the decision of the Staff Selection Committee which is final in respect of the

appointment for the post of Lecturer and that is the only method of appointment adopted from the date of inception.

4. It is the contention of the learned Counsel for the petitioner Ms. Arulmozhi that the impugned order of the second respondent proceeds as if the

petitioner was sought to be promoted to the post of Lecturer as an internal candidate from the post of Junior Drafting Officer, but, on the other

hand, it is by way of selection process by the third respondent the candidates sponsored by the Employment Exchange as well as the petitioner

being an internal candidate were interviewed and the selection process was made in accordance with law to fill up the post of Lecturer in the third

respondent college and therefore, only because the petitioner was working in the third respondent college as Junior Drafting Officer, it does not

mean that she being an internal candidate was sought to be promoted to the post of Lecturer.

4(a). According to her, the petitioner whose qualification is not in dispute is eligible to be appointed as Lecturer and it is based on that, the

selection was made by the third respondent. It is her case that in fact the Staff Selection Committee of the third respondent college conducted

interview on 14.11.2003 and after considering the candidates referred by the Employment Exchange and conducting interview, the proposal was

sent to the second respondent for approval and that was not for the purpose of promotion of the petitioner to the post of Lecturer.

4(b). It is her contention that as per G.O.Ms. 597 Higher Education Department dated 1.12.1997, the appointment to the post of Lecturer is

effected either by direct recruitment or recruitment by transfer in the Tamil Nadu Technical Education Subordinate Service with a First Class

Bachelor Degree in the branch of Engineering relating to the post concerned. She also brought to the notice of this Court that under similar

circumstances, the second respondent himself approved the appointment of persons who were holding the post of Junior Drafting Officers as

Lecturers in the private aided Engineering Colleges, whereas the same has been denied to the petitioner.

4(c). She would rely upon the judgment in *R. Sivakumari and Ors. v. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam and*

Ors. 2007(5) CTC 561 to substantiate her contention that simply because the petitioner was not sponsored by the Employment Exchange, it does

not mean that the appointment of the petitioner becomes invalid. She would also rely upon the judgment in *Arun Kumar Nayak Vs. Union of India*

(UOI) and Others, to insist the said contention made by her.

5. On the other hand, it is the contention of Mr. S.R. Rajagopal, learned Counsel appearing for the third respondent that the proposal sent for

approval of appointment of the petitioner was not as if the petitioner was promoted to the post of Lecturer and it was only by way of staff selection

process and in accordance with law, the appointment was made.

6. It is the contention of Mr. G. Sankaran, learned Special Government Pleader (Education) appearing for respondents 1 and 2 that as per various

Government Orders, the appointment to the post of Lecturer from the internal candidates is not permissible.

7. I have heard the learned Counsel for the petitioner and the respondents and given my anxious thoughts to the issue involved in the present case.

8. At the outset, it is not in dispute that the petitioner was holding the post of Junior Drafting Officer in the third respondent institution which is an

aided private technical educational institution and the post held by the petitioner is a non-teaching post. In the letter of the second respondent dated

23.11.2007 addressed to the petitioner institution it is specifically stated that in respect of aided technical institutions, in addition to the persons

sponsored by the Employment Exchange, persons working in the same institution with necessary qualifications along with others should be

considered by the Staff Selection Committee by way of interview. As it is seen in

the proposal sent by the third respondent dated 18.12.2003, it is clear that the Staff Selection Committee of the third respondent in the meeting held on 14.11.2003 conducted the interview of the candidates sponsored by the Employment Exchange along with the petitioner as an internal candidate and the proposal was sent for approval of the second respondent and the post in which the petitioner was appointed was an approved one and the qualification of the petitioner is B.E. First Class in Civil Engineering and therefore, her eligibility for the post of Lecturer in the third respondent college is not in dispute. However, the reason assigned in the impugned order by the second respondent in rejecting the proposal is that there is no rule permitting consideration of the persons holding the post of Junior Drafting Officer as an internal candidate for the post of Lecturer.

9. The further reason for rejecting the proposal of the appointment of the petitioner is that the proposal is against G.O.357 dated 19.2.1962.

According to the impugned order, the vacancy stated in the G.O. is relating to the post of Instructor. Taking note of the fact that for the post of Instructor, the Lecturer post was sought to be filled up, the proposal came to be rejected.

10. The first requirement for appointment to the post of Lecturer as per the Rules that the same should be by way of selection process by the Staff

Selection Committee has been complied with in this case. In fact, the Staff Selection Committee has considered the case of the candidates

sponsored by the Employment Exchange along with the petitioner as internal candidate and recommended the appointment of the petitioner to the

post of Lecturer. It is not in dispute that in the existing posts of Lecturers in the third respondent college only the appointment of the petitioner was

sought to be made as an internal candidate. Simply because the petitioner's name was not forwarded by the Employment Exchange, it cannot be

said that the consideration of the petitioner for the post of Lecturer in the third respondent college becomes invalid, especially when the petitioner

complied with the requirement of educational qualifications for the post of Lecturer.

11. Even though that is not the reason given in the impugned order, a reference to the first reason given in the impugned order for rejecting the

proposal of the third respondent shows that the second respondent considered as

if the proposal sent by the third respondent for appointment of petitioner being an internal candidate by way of promotion. A reference to the proposal sent by the Staff Selection Committee makes it very clear that, what was done by the Staff Selection Committee was a selection process by conducting interview which is an approved method and not a process of promotion.

12. As correctly submitted by the learned Counsel for the petitioner, the Employment Exchange cannot act as the only source of recruitment. The Employment Exchange is one of the sources and in addition to that, wide publication in newspapers has to be effected so as to see that all qualified persons are participating in the selection process, especially in the appointment of teachers in aided institutions. That was the view of the Full Bench of this Court in *R. Sivakumari and Ors. v. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam and Ors.* 2007(5) CTC 561.

13. The Full Bench while observing that the persons who are in employment in a private aided school have a liberty of applying for recruitment to Government posts and the employment in private aided schools cannot be a bar and such denial would violate the fundamental rights guaranteed under the Constitution of India. Under the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960, there are no specific provision for maintenance of live register and for inclusion and deletion of names from such register and in such view of the matter, it was held that the Employment Exchanges cannot be stated to be the only source of recruitment, by framing the issue in that regard as follows:

14. Coming to the dispute on hand, it is seen that the core issue raised in the Writ petitions is as to whether a candidate who gets appointment in a Private Aided School, loses his right to be sponsored by the Employment Exchange to a Government post or not. The Division Bench has concluded that a person who gets appointment in a Private Aided School has no right to have his name retained in the live register of the Employment Exchange and to get sponsored to a Government job.

For the said issue, the answer as found in para-18 is as follows:

18. In the absence of a specific provision in the Act or in the Rules, both for maintenance of what is termed by the respondents as "Live Register"

and for the inclusion or deletion of the name of a person, it is to be seen if the official respondents are entitled to make a distinction between

employed and unemployed candidates while sponsoring their names for recruitment. This question would not have arisen for consideration if the

law laid down by the Supreme Court that the Employment Exchanges cannot act as the only source of recruitment, had been taken note of by the

respondents.

14. The Full Bench headed by P.K. Misra, J. (as he then was) has also relied upon various judgments of the Apex Court commencing from Union

of India (UOI) and Others Vs. N. Hargopal and Others, , Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara

Rao and Others, , and Arun Kumar Nayak Vs. Union of India (UOI) and Others, held that when the recruitment process is made by inviting

candidates from Employment Exchange, by issuance of publication in newspapers having wide circulation, displaying notifications in the respective

Notice Boards, there is no question of restricting the choice of selection only from the candidates sponsored by the Employment Exchange. The

relevant portion of the judgment is as follows:

25. If the above procedure, as prescribed by the Supreme Court had been followed, the question of restricting the choice of selection only to those

whose names are borne on the rolls of the Employment Exchanges and the removal of the names of already employed candidates from the "Live

Register" of the Employment Exchanges would not have arisen. As a matter of fact, persons who are already employed, would have made

applications in response to the advertisements issued in the newspapers, without being bothered about the sponsorship through Employment

Exchanges. Since the aforesaid procedure laid down by the Supreme Court has not been followed, the question as to whether a person has a right

to continue to have his name on the rolls of the Employment Exchanges, even after securing employment in a Private School, has come up for

consideration.

Ultimately, it was held that the circular issued by the District Employment Exchange Officer deleting the names of the persons in service in private

aided schools from the Live Register of the Employment Exchange as not valid.

15. Before the said judgment of the Full Bench of this Court, the Supreme Court

laid down the said rule in Arun Kumar Nayak Vs. Union of India

(UOI) and Others, holding that in addition to calling for names from the Employment Exchange, issuance of publication with wide circulation would

comply with the principles of fair play, justice and equal opportunity.

16. It is also relevant to point out as stated above that the second respondent himself in the communication dated 23.11.2007 addressed to the

petitioner has permitted the consideration of employment exchange sponsored candidates along with internal candidates and therefore, the

consideration of the petitioner as an internal candidate for the post of Lecturer cannot be said to be either not permissible under the Rules or

against any existing rule as fallaciously stated in the impugned order by the second respondent.

17. A reference made in the impugned order to G.O.Ms. 357 dated 19.2.1962 is akin to mockery. The Appendix to the said G.O. makes it clear

that as per the staff pattern two posts of Lecturers in Civil Engineering are permissible. It is not as if the third respondent has proposed to appoint

the petitioner in the vacancy in Workshop Instructor. The appointment sought to be made in the third respondent college in respect of the petitioner

is to the post of Lecturer in Civil Engineering and therefore, a reference to G.O.357 dated 19.02.1962, is only a misplaced one.

18. The selection of the petitioner is in accordance with the Grant-in-Aid Code of the Madras Technical Education Department. Chapter II, Code

11 contemplates for the Selection by Staff Selection Committee constituted in the General Orders of the Government or orders made from time to

time and it is the Staff Selection Committee of the third respondent college which is the competent authority, which has selected the petitioner. A

reference to the post of Instructors has also no meaning, since it is stated by the respondents that the post of Instructor has been dispensed with

and the entry level post in teaching line as on the date of proposal sent by the third respondent was Lecturer.

19. Even as per the ad hoc Rules framed by the Government for the post of Lecturer in Engineering subjects in Government Polytechnics and

special institutions under the State Service as per G.O.Ms.597 Higher Education Department dated 1.12.1997, the appointment to the post is as

follows:

3. Appointment: Appointment to the post shall be made by,

i. Direct recruitment

ii. Recruitment by transfer from the category of Instructors in the Tamil Nadu Technical Educational Subordinate Service.

In the present case, the petitioner's appointment which is sought to be approved in the proposal sent by the third respondent is by direct

recruitment process and not by way of selection by transfer from the category of Instructors. The petitioner was considered as an internal

candidate but her selection was by way of selection process and not by way of either transfer or promotion. There is no specific rule prohibiting the

participation of any of the non-teaching staff working in the aided technical institutions in the selection process and it is not the contention of the

learned Government Pleader that the appointment of the petitioner is against the Rules.

20. In addition to the above said facts, as submitted by the learned Counsel for the petitioner, the second respondent himself approved the

appointment of one person viz., K. Rosemadhan Kumar, holding the post of Junior Drafting Officer like the petitioner who was proposed as

internal candidate for appointment to the post of Lecturer in Arasan Ganesan Polytechnic College, Sivakasi, by order dated 31.7.2009. Similarly,

name of internal candidates who have been selected for the post of Lecturer by the Staff Selection Committee have been approved as in the case

of Mr. G. Nallaiah, whose appointment by selection from internal candidates as Lecturer (Tool and Die Making) was approved by the

Commissioner of Technical Education in respect of Murugappa Polytechnic College, Avadi by order dated 25.7.2008. Similarly, in Sankar

Polytechnic College, Sankar Nagar, an internal candidate by name, Mr. S. Chellappa, Instructor was appointed as Lecturer and that was

approved by the second respondent by order dated 4.5.2006. There are other such proceedings of the Director of Technical Education and one

such case is in respect of Mr. K. Sivamurugan, whose proposal as Lecturer in VSVN Polytechnic, Virudhunagar was accepted in the proceedings

dated 12.6.2000.

21. In the light of all these above facts, I am of the view that the reasons assigned by the second respondent in the impugned order for rejecting the

proposal in respect of the petitioner for appointment for the post of Lecturer in the third respondent college cannot be said to be sustainable in law.

It is not in dispute that pending the writ petition there was an order of injunction against the third respondent not to fill up the post in question and

subsequently, status quo was ordered. In such view of the matter, the impugned order stands set aside with direction to the second respondent to

grant approval to the appointment of the petitioner in the post of Lecturer (Civil Engineering) in third respondent College and such approval shall

be granted within a period of two weeks from the date of receipt of copy of this order.

The writ petition is ordered accordingly. No costs. Connected miscellaneous petitions are closed.