
(2010) 10 MAD CK 0160

In the Madras High Court

Case No : Writ Petition No. 41614 of 2006 and O.A. No. 4961 of 2000

N.V. Moorthy

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0160

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : S.S. Swaminathan, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Judgement

D. Hariparanthaman, J.—The Petitioner joined as Casual Labourer in the Public Works Department (shortly "PWD") in 1956 and he worked on daily wages basis upto 1967. He was paid monthly salary from 1967. His services were provincialised with effect from 01.12.1972 vide G.O.Ms. No. 450, PWD, dated 04.04.1974 and G.O.Ms. No. 782, PWD, dated 20.06.1978. He was brought under regular establishment from 01.01.1977.

2. The Petitioner was attending to the soil tests, boring tests and load tests in Soil Mechanic and Research Division of PWD from 1981. In the said Division, there were four posts of Fitter Grade-II. However, three posts remained vacant. As per the Adhoc Rules approved in G.O.Ms. No. 461, PWD, dated 15.03.1980, the educational qualification prescribed for the post of Fitter Grade-II was possession of I.T.I. Certificate in the Trade of Fitter with experience of not less than one year in the said trade.

3. The Petitioner and two other similarly situated persons did not have the educational qualification as prescribed in the Rules. But they were discharging the duties of Fitter Grade-II.

4. Taking into account the fact that the Petitioner and two other similarly situated persons, were discharging the duties of Fitter Grade-II, the Superintending

Engineer wrote a letter dated 08.03.1989 to the third Respondent requesting to get an order of relaxation from the first Respondent for appointment of the Petitioner as Fitter Grade-II.

5. Thereafter, the fourth Respondent wrote a letter dated 08.09.1997 to the Superintending Engineer, Designs Circle, Chepauk, Chennai requesting him to get suitable orders for relaxation of educational qualification in respect of three Mazdoors, for the appointment to the post of Fitter Grade-II. The Petitioner was one among the three Mazdoors. Further it is stated therein that as per G.O.Ms. No. 3891, dated 26.08.1952, persons with previous experience, were appointed as Fitters, even if those persons did not possess the required educational qualification. He further requested the Superintending Engineer to get suitable order for relaxation of educational qualification.

6. The Superintending Engineer wrote yet another letter dated 25.09.1997 to the second Respondent herein, giving the service particulars of three Mazdoors including the Petitioner, requesting him to get suitable orders from the first Respondent for relaxation of educational qualification for appointment as Fitters Grade-II. It is further stated therein that the Petitioner was attending to all the testing works such as soil tests, boring tests and load tests and gained experience in the trade of Fitter Grade-II.

7. The Superintending Engineer also wrote another letter dated 29.04.1998 to the second Respondent stating that the Petitioner and two other Mazdoors were in possession of rich experience in doing the work of Fitter Grade-II. He requested the second Respondent to get appropriate orders for appointing those persons as Fitters Grade-II.

8. There is also another letter dated 10.06.1998 from the Executive Engineer to the Assistant Executive Engineer in the same lines, as stated above.

9. Though so many recommendations were made by all the officials right from the Executive Engineer and the Superintending Engineer requesting the Respondents 2 and 3 to get suitable orders from the first Respondent for relaxation of educational qualification, so as to appoint the Petitioner and two other Mazdoors as Fitters Grade-II, nothing happened.

10. Hence, the Petitioner made a representation dated 27.08.1998 to the second Respondent requesting him to get suitable orders from the first Respondent for relaxation of educational qualification for appointment to the post of Fitter Grade-II. In the said representation, he has brought to the notice of the second Respondent that the first Respondent issued orders in G.O.Ms. No. 30/98 dated 27.01.1998 and G.O.Ms. No. 392/98 dated 19.06.1998 granting relaxation for educational qualification. He wanted similar treatment as given to the persons under G.O.Ms. Nos. 30/98 and 392/98.

11. Since no order was passed on his representation, he approached the Tamil Nadu Administrative Tribunal (shortly "the Tribunal") by filing Original Application

in O.A. No. 3021/1999 praying for a direction to the second Respondent herein to pass orders on his representation dated 27.08.1998. The Tribunal passed orders on 17.06.1999 directing the second Respondent herein to dispose of the Petitioner's representation, within a period of four months.

12. In these circumstances, the second Respondent passed an order dated 14.07.1999 stating that the Petitioner did not possess the requisite educational qualification for the post of Fitter Grade-II. It is further stated therein that there is no provision in the Rules for relaxing the qualification of the Petitioner for appointment as Fitter Grade-II. It is also stated that the Petitioner has crossed 58 years as his date of birth was 15.07.1940. According to the second Respondent, after 58 years, the Petitioner could not be appointed as Fitter Grade-II, as the age of superannuation for the post of Fitter Grade-II is 58, i.e., though the age of superannuation for Mazdoor is 60 years, the age of superannuation for Fitter Grade-II is 58 years and that therefore, he could not be considered for appointment as Fitter Grade-II.

13. The Petitioner filed Original Application in O.A. No. 4961 of 2000 (W.P. No. 41614 of 2006) seeking for a direction to the Respondents to grant him promotion as Fitter Grade-II, with all benefits.

14. The Respondents filed reply affidavit refuting the allegations made by the Petitioner.

15. Heard the submissions made on either side and perused the materials available on record.

16. It is not in dispute that the Petitioner was working in the Soil Mechanic and Research Division from the year 1981. From 1989 onwards, repeated recommendations were made by the Executive Engineer and the Superintending Engineer to the Respondents 2 and 3 stating that the Petitioner was doing the work of Fitter Grade-II, though he was a Mazdoor and three Fitter Grade-II posts were vacant and that necessary orders could be obtained from the first Respondent for relaxation of educational qualification. The Respondents 2 and 3 have no power to relax the educational qualification to appoint the Petitioner as Fitter Grade-II. The first Respondent alone has power to relax the educational qualification. When the series of letters, as stated above, were written by the Executive Engineer and the Superintending Engineer to the Respondents 2 and 3, the Respondent 2 and 3 ought to have forwarded the same to the first Respondent for passing appropriate orders. It is for the first Respondent to decide as to whether relaxation has to be granted or not, based on the circumstances of the case. But unfortunately, the Respondents 2 and 3 did not do so. The Tribunal also directed the second Respondent herein to pass orders on the Petitioner's representation. The second Respondent has no power to decide the matter and the matter has to be decided only by the first Respondent. The Petitioner also referred to G.O.Ms. No. 30/98 dated 27.01.1998 and G.O.Ms. No. 392/98 dated 19.06.1998, wherein relaxation has been given to some persons,

relating to educational qualification. The same was not considered by the second Respondent while passing the order dated 14.07.1999.

17. The aforesaid narration of facts makes it clear that the Petitioner was recommended for appointment to the post of Fitter Grade-II, by the Superintending Engineer and the Executive Engineer, right from the year 1989. The relevant fact also is that the Petitioner was actually discharging the work of Fitter Grade-II as per the recommendations of the Executive Engineer and the Superintending Engineer. Those officials also stated that in the past, based on experience, persons were appointed as Fitters Grade-II, though they did not possess the educational qualification. Admittedly, there were three vacancies for a long time. In these circumstances, it could not be simply brushed aside on the ground that the Petitioner reached 58 years in 1998. The claim of the Petitioner could not be defeated on such technical ground. Hence, it is for the first Respondent to take into account the totality of the circumstances and to pass an appropriate order, considering the G.O.Ms. No. 30/98 dated 27.01.1998 and G.O.Ms. No. 392/98 dated 19.06.1998 granting relaxation for educational qualification, referred to by the Petitioner. If the first Respondent grants necessary relaxation and appoints the Petitioner as Fitter Grade-II, he would be appointed on notional basis and he would get revised pensionary benefits.

18. In view of the facts and circumstances of the case, the first Respondent is directed to consider the claim of the Petitioner for the post of Fitter Grade-II based on the recommendations made by the Superintending Engineer and the Executive Engineer and based on G.O.Ms. No. 30/98 dated 27.01.1998 and G.O.Ms. No. 392/98 dated 19.06.1998 and pass orders as to relaxation in the matter of educational qualification and consequent promotion/appointment to the post of Fitter Grade-II, within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs.