
(2016) 04 MAD CK 0095
In the Madras High Court
Case No : W.P. (MD) No. 9860 of 2007

R. Kandasamy

APPELLANT

Vs

Commissioner & Special Commissioner

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Citation : (2016) 6 MLJ 196

Hon'ble Judges : Mr. V. Ramasubramanian and Ms. V.M. Velumani, JJ.

Bench : Division Bench

Advocate : Ms. J. Anandavalli for Mrs. J. Nisha Banu, Advocates, in W.P. (MD) No. 9860 of 2007, Mr. V. Panneer Selvam, Advocate, in W.P. (MD) No. 6291 of 2009, Mr. K. Srinivasan, SC for Mr. M.P. Senthil, Advocate, in W.P. (MD) No. 7640 of 2013, Mr. C. Selvaraj, SC f

Final Decision : Disposed Off

Judgement

Mr. V. Ramasubramanian, J.—W.P. (MD) No. 9860 of 2007.

The petitioner in this writ petition rendered temporary service from 1.7.1986 to 30.4.1987 in the Arulmighu Palaniandavar Polytechnic. Later, he rendered temporary service in another polytechnic from 8.6.1987 to 8.6.1988. Thereafter, he was appointed as Instructor (Structural Engineering) with effect from 16.6.1988 in the fourth respondent polytechnic.

2. As per the orders passed in WP. No. 26611 of 1997 dated 20.11.1998, the writ petitioner was promoted to the post of Lecturer with effect from 19.8.1989, after creation of a supernumerary post with retrospective effect. This post was upgraded as Senior Lecturer. The fifth respondent in the writ petition was directly appointed as Lecturer on 30.12.1989. Since the petitioner was promoted as Lecturer only after his success in the writ petition in 1998 with retrospective effect from 19.8.1989, the petitioner claimed seniority. The petitioner was treated as senior to the fifth respondent and was posted as Head of the Department In-Charge. The petitioner was not posted on a regular basis as Head

of the Department. Therefore, the petitioner has come up with the above writ petition seeking a Mandamus to direct the respondents to promote him to the post of Head of the Department.

W.P. (MD) No. 6291 of 2009.

3. The petitioner was appointed as Junior Assistant in the polytechnic on 1.7.1986. He was given selection grade and special grade respectively on 1.7.1996 and 1.7.2006, upon completion of 10 years and 20 years of service.

4. A post of Assistant fell vacant on 30.6.2008 due to the retirement of the regular incumbent. The petitioner filed a writ petition in WP(MD)No.899 of 2009 seeking consideration of his representation. The said writ petition was disposed of directing the respondents to consider the representation. However, the representation was rejected by the Commissioner, HR & CE Department by an order dated 29.4.2009 on the ground that the post has to be filled up only by a process of direct recruitment. Therefore, challenging the said proceedings and seeking promotion to the post of Assistant, the petitioner has come up with the above writ petition.

W.P. (MD) No. 7640 of 2013 and W.A. (MD)No. 814 of 2011.

5. The petitioner was appointed as Associate Lecturer in the Mechanical Engineering Department of the polytechnic on 28.12.1989. The post was upgraded as Senior Lecturer after 1997. Claiming that upon completion of five years of service, he became eligible for promotion to the post of Head of the Department on 28.12.1994 itself, the petitioner filed a writ petition in W.P.No. 1510 of 2004. It was disposed of with a direction to consider his request. But, the management passed an order dated 13.10.2005 rejecting his request on the ground that the post could be filled up through direct recruitment.

6. Challenging the said order, the petitioner filed a writ petition in W.P. (MD).No.10242 of 2005. The writ petition was disposed of by an order dated 20.7.2011 setting aside the impugned order and directing the respondents to fill up the post of Head of the Department as per the directions contained in G.O.Ms.No.1081 dated 19.8.1989.

7. Aggrieved by the order passed in W.P. (MD) No. 10242 of 2005, the institution filed a writ appeal in W.A. (MD) No. 814 of 2011. The appeal was admitted and an interim stay was granted. Thereafter, contending that the respondents are going to fill up the post by conducting an interview on 14.5.2013, the petitioner came up with a writ petition in WP (MD) No. 7640 of 2013 seeking a Mandamus to forbear the respondents from filling up the post of Head of the Department in all the Departments.

W.A. (MD) No. 772 of 2010.

8. This appeal is filed by the management of the polytechnic challenging an order passed by the learned Judge, allowing a writ petition filed by the first respondent

herein.

9. The first respondent was appointed as a Skilled Assistant in the polytechnic on 1.7.1987. While working in the post, the first respondent in the appeal acquired a B.E. degree in Civil Engineering and started claiming promotion to the post of Junior Drafting Officer. It appears that a person, by name Ramesh, who was working in the post of Junior Drafting Officer, was given promotion to the post of Instructor, after he obtained orders from this Court. Though the order of promotion to Mr. Ramesh was given in 2009, it was given with retrospective effect from 12.9.2001. Therefore, the first respondent in the appeal gave a representation dated 27.2.2009 seeking promotion to the post of Junior Drafting Officer. By an order dated 22.6.2009 passed in W.P. (MD) No. 6305 of 2009, this Court directed the appellant - management to consider the representation. But, the appellant - management rejected the representation by an order dated 27.8.2009 on the ground that the post has to be filled up by direct recruitment.

10. Therefore, challenging the order dated 27.8.2009, the first respectively in the writ appeal filed a writ petition in WP.(MD) No. 10031 of 2009. This writ petition was allowed by a learned Judge by an order dated 29.4.2010 directing the management to grant promotion as per the Special Rules framed under G.O.Ms. No. 220 Higher Education dated 6.7.2009. Challenging the said order of the learned Judge, the management has come up with the above appeal in W.A. (MD) No.772 of 2010 on the ground that the Tamil Nadu Technical Education Subordinate Service Rules are not applicable to private aided polytechnics.

W.A. (MD) No. 23 of 2012.

11. The first respondent in W.A. (MD) No. 772 of 2010 filed another writ petition in WP. (MD) No. 13898 of 2011 seeking the issue of a Writ of Mandamus to direct the management of the polytechnic to promote him to the post of Instructor on the ground that if he succeeds in his case for promotion to the post of Junior Drafting Officer, he is also entitled to the next higher post of Instructor. But, this writ petition was dismissed by a learned Judge by an order dated 7.12.2011. Hence, the first respondent in W.A. (MD) No. 772 of 2010 has come up with the above appeal in WA. (MD) No. 23 of 2012.

12. Though the cases on hand arise out of individual claims for promotion to teaching and non teaching posts in a polytechnic, all these cases are clubbed together only on account of the fact that the answer to the issues raised therein revolve only around two questions namely

(i) as to whether the posts, to which individuals seek promotion, could be filled up only by direct recruitment or by promotion ? and

(ii) as to whether what are the set of rules that are applicable to the management of the polytechnic in question ?

13. Arulmighu Palani Andavar Polytechnic is an institution established and administered by the Arulmighu Palani Andavar temple, which comes within the

purview of the Tamil Nadu Hindu Religious and Charitable Endowments Department.

14. Way-back in 1980-81, the temple administration wanted to establish a polytechnic and it made an application to the Director of Technical Education. Vide G.O.Ms.No.1641 Education Department dated 3.8.1981, the Government sanctioned the establishment of a polytechnic for women at Palani, during the Academic Year 1981-82. Under paragraph 6 of the said order, sanction was also accorded for employment of staff to various posts indicated in the Annexure. The posts are (1) one post of Principal; (2) one post of Lecturer; (3) one post of Instructor; (4) one post of Skilled Assistant, in engineering subjects; (5) four posts of Instructor in non-engineering subjects; (6) two posts of Instructor in Commercial Practise and (7) one post each in the categories of Superintendent, Assistant, Junior Assistant, Typist, Watchman and Sanitary Worker and two posts of Peon. Three Diploma Courses were sanctioned to be started. They are (1) Diploma in Civil Engineering; (2) Diploma in Electronics; and (3) Diploma in Commercial Practices. Since the College was established for the first time, the Director of Technical Education issued instructions by a Circular, dated 24.9.1981, directing the Management to constitute a Selection Committee and fill-up the posts as per the Grant-In-Aid Code.

15. By a subsequent order in G.O.Ms. No. 1785 Department of Education, Science and Technology dated 9.8.1982, the Government accorded sanction for the establishment of a polytechnic for Men. Only two courses were sanctioned, namely, Diploma Course in Civil Engineering and Diploma Course in Electronics, to be started from the Academic Year 1982-83. About 34 categories of posts were sanctioned, as per the Annexure to the said Government Order (G.O.Ms. No. 1785). Out of them, 13 categories belonged to the Ministerial Cadre.

16. One post of Head of Department in each of those two departments, one post of Lecturer in each of those two departments, one post of Associate Lecturer in each of those two departments, three posts of Instructors in each of those two departments, two posts of Skilled Assistants and two posts of Laboratory Assistants in each of those departments, were sanctioned. In so far as the Electronics Department is concerned, one more post of Instrumentation Mechanic was also sanctioned. Apart from these posts, a separate set of posts were also created as common categories. They are, one post of Lecturer in Mathematics, two posts of Associate Lecturer (Physics and Chemistry), four posts of Instructors (English, Physics, Mathematics and Chemistry), two posts of Laboratory Assistant (Physics and Chemistry), one post of Physical Director and one post of Librarian.

17. By another order in G.O.Ms. No. 1198 Department of Education, Science and Technology dated 27.6.1983, one post of Head of Department, one post of Instructor, one post of Draghtsman, two posts of Skilled Assistants, one post of Laboratory Assistant, one post of Instrument Mechanic, one post of Store-Keeper, one post of Record Clerk and one post each of basic servant, sweeper and gardener, were also sanctioned for the Women's Polytechnic.

18. Thereafter, by another order in G.O.Ms. No. 1799 Department of Education, Science and Technology dated 15.9.1983, the Government accorded permission to introduce a Diploma Course in Mechanical Engineering in the Polytechnic for Men and sanctioned additional posts, namely one post of Head of Department, two post of Lecturers, one post of Workshop Superintendent, two posts of Associate Lecturer, four posts of Instructors, four posts of Workshop Instructors, six posts of Skilled Assistants and two posts of Lab Assistants.

19. Since the Colleges are also polytechnics, they were governed by "Grant-in-Aid Code" of the Madras Technical Education Department, approved in G.O.Ms. No. 1282 Education Department dated 26.7.1967. Under the Grant-in-Aid Code, the Government provides two types of grants, namely (1) Teaching Grant; and (ii) Building and Equipment Grant. While the former is a recurring grant, the latter is a non-recurring grant. Every institution, to which aid is given, is required to be under the management of a Governing Council. Under Clause (11) of the Grant-in-Aid Code, staff of the institutions receiving Grant-in-Aid should be selected by a Selection Committee constituted in accordance with the general orders of the Government. Under Clause (13), every member of the teaching staff is obliged to execute agreements in the forms prescribed in Appendix-2.

20. In pursuance of the aforesaid Code, the Government issued G.O. Ms.No.578 Education Department dated 10.4.1970, directing all Managements of Engineering Colleges and Polytechnic to constitute a Selection Committee, comprising of six members. The Committee shall comprise of the Chairman of the Governing Council, the Correspondent or any other nominee of the Governing Council, the Director of Technical Education or his nominee, the representative of the University and two experts in the field, nominated by the Southern Regional Committee.

21. Following the aforesaid order, the Director Technical Education also instructed the Arulmighu Palaniandavar Polytechnic that whenever vacancies arose in the post of teaching staff, the institution should invite a list from the District Employment Office and also make paper advertisement, inviting applications and thereafter persons should be selected through the Selection Committee.

22. In the year 1989, the Government issued G.O.Ms.No.1081, Education Department dated 19.8.1989, revising the pay-scales of teachers in polytechnics. The revision came into effect from 1.1.1986 with notional fixation and monetary benefit from 1.6.1988. At the time of implementation of the revised pay scales, the Government considered as though there were only four teaching posts, namely (i) Associate Lecturer; (ii) Lecturer; (iii) Head of the Department; and (iv) Principal. It was further indicated that those working as Instructors were to be promoted to the post of Associate Lecturers, as and when they acquire the degree qualifications and future recruitment to the post of Instructor shall be discontinued.

23. Paragraph 7 of the Government Order in G.O.Ms. No. 1081 contained the

prescription for recruitment and qualifications to those four teaching posts and the qualifications prescribed for six posts. Since there are no recruitment rules and since this Government order alone appears to occupy the field, it is necessary to extract paragraph No. 7 of G.O.Ms. No. 1081. It reads as follows.

"Recruitment and qualifications.

Recruitment to the posts of Associate Lecturer in Polytechnics and Special Diploma Instructors 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 class Bachelor degree in the relevant discipline.

The existing teachers holding diploma qualifications 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 to become a Lecturer.

A Lecturer should complete 10 years of service in that level and shall possess either a Master's degree or Bachelor's Degree in engineering for promotion as Head of the Department.

A Head of 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 institution.

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. 4200-125-4950-150-5700. For non engineering subjects in a polytechnic a master's degree with 55 percent marks in the relevant subject will be the minimum qualifications for Associate Lecturer as well as Lecturer."

24. It is clear from paragraph 7 of G.O.Ms. No. 1081 that the post of Associate Lecturer was made the entry level teaching post with effect from 19th August, 1989 and hence, recruitment to the said post was to be by the Tamil Nadu Public Service Commission by the method of Direct Recruitment. The post of Lecturer was made a promotional post to those Associate Lecturers, upon completion of 10 years of service. The post of Head of the Department was made a promotional post for Lecturers, who completed 10 years of service. Similarly, a Head of the Department with a Master's Degree and experience of five years, was made eligible to become the Principal.

25. We should also point out, at this juncture, that Paragraph 7 of G.O. Ms.No.1081 does not use the expression "promotion", for movement from the post of Associate Lecturer to the post of Lecturer. But, it uses the expression

"promotion" for movement from the post of Lecturer to the post of Head of the Department.

26. Paragraph 10 of the Government Order also contained a Scheme for Up gradation. The said paragraph reads as follows.

"Upgrading scheme.

The upgrading scheme in polytechnic will be modified on the basis of the number of years of service put in by them and qualifications. An Associate Lecturer with 10 years experience and possessing the qualification required for a Lecturer may be upgraded as Lecturer on completion of 10 years of satisfactory service as Lecturer and having the qualification required as a Head of Department will be upgraded as Head of Department. They will also be eligible for service concessions detailed in paragraphs 8 and 9 above. However persons who have already moved to Higher categories by existing up gradation scheme will be allowed to continue in that post provided he possesses the prescribed qualification."

27. Interestingly, Paragraph 8 of the said Government order contained prescription regarding the grant of two advance increments as well as the benefit of weightage for candidates who possess a P.hd. or Master's Degree. This clause also contained the expression "promotion". Annexure-I to the said Government Order contained the revised scales of pay for all the teaching posts, including that of Physical Director and Librarian.

28. Therefore, it appears that the Government Order in G.O.Ms. No. 1081 Education dated 19.8.1989 alone contains some prescription relating to recruitment to various posts and the qualifications prescribed for each post. In such circumstances, it is not open to the management to contend that the prescription contained in the said order would not apply to the institution run by the Hindu Religious and Charitable Endowments Department.

29. G.O.Ms. No. 1081 dated 19.8.1989 seems to have undergone a change under G.O.Ms. No. 126 Higher Education dated 28.3.1999. It was followed by another order in G.O.Ms. No. 563 Higher Education dated 31.12.2004.

30. In so far as non teaching posts are concerned, the Government issued G.O.Ms. No. 220 Higher Education dated 6.7.2009, making the Special Rules for the Tamil Nadu Technical Educational Subordinate Service. These Rules cover the posts of Junior Drafting Officer and other posts.

31. Therefore, we are of the considered view that the contention of the management that all posts are liable to be filled up only by direct recruitment through Selection Committees specially constituted and that the aforesaid Government Orders are applicable only for revision of pay scales and not for appointment, does not merit acceptance. Hence, both the writ appeals filed by the management of the college are liable to be dismissed and the writ petitions filed by the individuals are liable to be disposed of.

32. Accordingly, the writ appeals in W.A. (MD) Nos. 772 of 2010 and 814 of 2011 are dismissed. Consequently, the writ appeal in W.A. (MD) No. 23 of 2012 filed by the individual employee is allowed and the order of the learned Judge is set aside. The writ petition in W.P. (MD) No. 13898 of 2011 filed by the appellant in W.A.(MD)No.23 of 2012 and the first respondent in W.A. (MD) No. 772 of 2010 as well as the three writ petitions are disposed of, directing the respondents to consider the claim of the writ petitioners for promotion to various posts in accordance with G.O.Ms. No. 1081 dated 19.8.1989 read with G.O.Ms. No. 126 Higher Education dated 28.3.1999, G.O.Ms. No. 563 dated 31.12.2004 and G.O.Ms. No. 220 Higher Education dated 6.7.2009. While considering the cases of the writ petitioners, the cases of the employees similarly placed shall also be considered in accordance with law. Orders shall be passed within a period of two months. No costs. Consequently, all connected pending MPs are closed.