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Order QR

WP No. 4758 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-09-2026

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

WP No. 4758 of 2022

CNR:{HCMA010287102022}

AND

WMP NO. 4868 OF 2022



Case QR

Dr.Marykutty Abraham
W/o. Mathew Zachariah,
No.19, Throwpathy Amman Koil 1st Street,
Velacherry, Chennai-42.

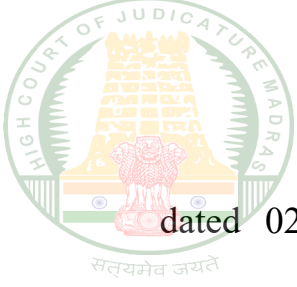
..Petitioner(s)

Vs

1. The Board of Governors
Rep. by its Chairman,
National Institute of Technical Training and
Research, Taramani, Chennai-113.
2. The Director
National Institute of Technical Training and
Research, Taramani, Chennai-113.

..Respondent(s)

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in its Ref. Admin / MA / Minutes / 2021 / 280 dated 25.11.2021 and quash the same and consequently direct the respondents to appoint the petitioner as Associate Professor in Engineering pursuant to the order of appointment



dated 02.04.2012 with all attendant and consequential benefits including seniority and pay.

For Petitioner(s): Mr.V.Vijay Shankar

For Respondent(s): M/s. Al.Ganthimathi,
Senior Counsel
for S.Meenakshi For R1 & R2

ORDER

The present writ petition has been filed challenging the impugned order dated 25.11.2021 by and in which the 2nd respondent has rejected the claim of the petitioner on the ground that the petitioner's experience qualification is equivalent with the required qualification for the Associate Professor in Engineering as called for in the Notification in Advertisement No.01/2010 by "National Institute of Technical Teachers Training and Research, Chennai" [hereinafter called "NITTTR"].

2.The brief facts which are necessary for the disposal of the present writ petition is that, based upon the Notification dated 25.07.2010, the petitioner applied for the post of Associate Professor in Engineering and that he was called for interview and subsequently vide letter dated 02.04.2012, an offer of appointment was issued to the petitioner. In the interregnum, on filing of the writ petition by third parties, the appointment was stayed and after the petitioner



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came to know about the disposal of the writ petition and Writ Appeal in WA.No.680 of 2012 dated 20.04.2016, requested the respondent to give an appointment. While so, the 2nd respondent vide order dated 09.10.2018 has informed to the petitioner that they are not in a position to offer the appointment, since the petitioner has not fulfilled the required experience for the post of Associate Professor. The said order was challenged by the petitioner in WP.No.28474 of 2018 and on 30.08.2019, in which the learned Single Judge directed the 2nd respondent-Authority to appoint the petitioner. When the respondents challenged the same in WA.No.657 of 2021 vide order dated 21.04.2021, the Division Bench set aside the impugned order and remitted back the matter for fresh consideration. After the order of the Division Bench, when the petitioner has submitted all relevant records, vide impugned order dated 25.11.2021, they sustained the earlier order and not offered the appointment, which necessitated the petitioner to file the present writ petition.

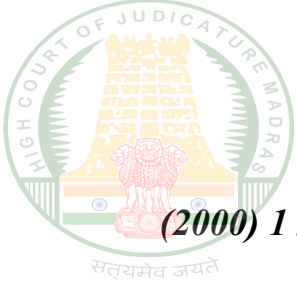
3.Heard the learned counsel for the petitioner and the learned Senior Counsel appearing for the respondents.

4(a).The learned counsel for the petitioner would contend that the present writ petition is hit by the principles of estoppel, and that having the respondents have appointed the similarly situated persons, rejecting such claim to the



petitioner would affect the right under Article 14 of the Constitution of India.

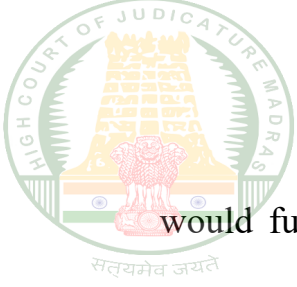
The learned counsel would also invite the attention of this Court that the contention of the respondents that the pay scale of the Lecturer in Engineering Colleges, Kerala, and the Assistant Engineer, Soil Conservation Department is not on the same level, cannot be accepted at all. He would contend that according to the pay scale of Kerala Government for the period from 24.06.1999 to 05.01.2003, the sub office pay qua basic pay is Rs.7,200/-, which is equivalent to the pay scale of a Lecturer in Engineering College for the 5th CPC 1997/98 revision. It is also his contention that during 2009 revision, the pay scale of a Lecturer and the Assistant Engineer are identical. It is the further contention of the petitioner that for a period between 24.06.1999 to 05.01.2003, the basic pay of the petitioner is Rs.7,200/-, which is identical to the pay scale of a Lecturer in Engineering College. Similarly, his basic pay for 01.06.2007 to 31.07.2007 is also identical as that of the Lecturer in Engineering College, Kerala. It is the further submission of the petitioner that the very rejection of the petitioner towards equivalence between the Assistant Engineer and Lecturer in the Engineering College based upon the only factor of a pay scale is contrary to the judgment of the Hon'ble Supreme Court in *Sub-Inspector Rooplal and another Vs. Lt.Governor Through Chief Secretary and others* reported in



(2000) 1 SCC 644. According to the petitioner, the pay scale is one of the factor and not the only factor.

(b).The learned Counsel would also submit that the Notification is of the year 2010 and according to 2009 pay comparison, both pay scale of Lecturer in Engineering College and Assistant Engineer in Soil Conservation are one and the same. Though the respondent had stated that in respect of Sathyabama University, there is no mention of the pay scale in the appointment order, according to the salary slip for the month of October, 2009, his basic pay is Rs.28,020/-, which is over and above the required pay. Since because the pay has not been mentioned as that of the pay in the Government service does not mean that the petitioner was not at all having equivalent qualification. Hence, prayed to interfere with the impugned order.

5.Per contra, the learned Senior Counsel would stoutly object the above contention and would contend that according to the Expert's view, the petitioner do not possess the requisite qualification. It is for the petitioner to establish by producing the clear cut material that his scale of pay is equivalent to the pay scale of Lecturer in Engineering College. It is also the further contention that according to the expression qualification the very word "pre-revised" would indicate that the equivalence must be determined based upon the pay scale. She



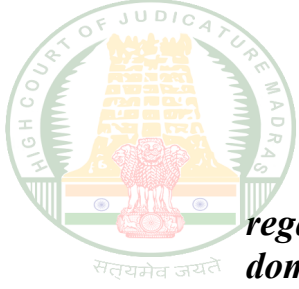
would further submit that the judgement relied upon by the petitioner is not applicable to the present facts of the case, as in the reported case, it was between the persons those who are working in the same cadre in the different Department. Therefore, would contend that the present writ petition is liable to be dismissed.

6.I have given my anxious consideration to either side submissions.

7.It is relevant to mention that, as per the Notification dated 25.07.2010, for the post of Associate Professor, the qualification is, the age should be below 45 years, and that his experience must be 5 years in teaching/ Industry/ research at the level of Lecturer (Pre-Revised)/Assistant professor or equivalent, of which 2 years post Ph.D experience is desirable. Though the petitioner was initially given an offer for appointment, the same was refused vide order dated 09.10.2018 on the ground that the petitioner has not fulfilled the required experience qualification for the post of Associate Professor in NITTTR.

8.When the said order was challenged, the learned Single Judge directed the appointment of the petitioner. Against which, when the respondent preferred an appeal, the Division Bench of this Court in WA.No.657 of 2021 has set aside the order of the learned Single Judge and observed as follows:-

“17.It is equally well settled position of law that the prescription of qualification and adherence on the part of the candidates with



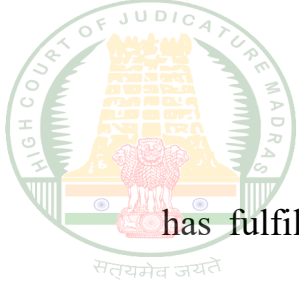
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regard to the prescribed qualification, falls within the exclusive domain of the employer, and it is for them to take a call whether the candidate has fulfilled the requisite qualification or not. Once it is concluded that there is an infraction/non-adherence to the principles of natural justice on the part of the High Level Committee, the normal course would be to set aside the consequential proceedings and remand the matter for fresh adjudication, after providing opportunity to the concerned candidates/officers, and in that event, the technicality or otherwise of the qualification will also be considered, for the reason that the Committee is consisting of experts in the relevant filed.

18.

*19.It is pertinent to point out at this juncture that, in service jurisprudence, such a positive direction requires to be issued in cases involving challenge to the disciplinary proceedings, and in the event of the delinquent officer having reached the age of superannuation, this Court, instead of remanding the matter for fresh consideration, normally would substitute with the order of appointment. In the case on hand, it is not so. **This Court, taking into consideration the technical nature of the issue and that it also lacks necessary expertise to take a call in this matter, is of the considered view that, in the light of the reasons recorded by the learned Single Judge in Para No.13, the appellants/official respondents ought to have provided opportunity to the respondent/writ petitioner to meet out the infirmities/alleged lack of qualifications on her part, however, it has not been done so. Therefore, right course would be to set aside the impugned order passed in the writ petition with direction to remand the matter to the concerned Committee for taking a fresh call as to the fulfillment of qualification and of course, after affording opportunity of personal hearing to the respondent/writ petitioner. In the considered opinion of this Court, the said course would meet the ends of justice.***

8. According to the above observations, it is pellucid that the prescription of qualification and adherence by the candidates, falls within the exclusive domain of the employer, and it is for them to take a call whether the candidate



has fulfilled the requisite qualification or not. Apart from that, the Division Bench of this Court has also held that such qualification can only be assessed by an expert, and that this Court lacks necessary expertise to take a call on this matter.

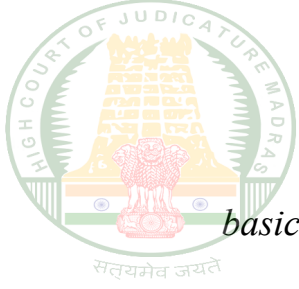
9. Thereafter, at paragraph 21, the Division Bench has directed to constitute a Selection Committee and place the objection raised by the petitioner before the Selection Committee. The newly constituted Selection Committee has observed that the petitioner is not possessing with the requisite experience qualification with the following reasons:-

(iv). From the above comparison, it has been observed by the Selection Committee that

● *the scale of pay of Assistant Engineer, Soil Conservation Department is not equivalent to the pay of a Lecturer in Engineering/Technology and the scale of pay of Lecturer in Engineering Colleges in Kerala is **higher** than that of the Assistant Engineer in Soil Conservation Department, Government of Kerala.*

● *The scale of pay of Assistant Engineer is equivalent to the Lecturer only from 01-07-2009 as per the Govt. of Kerala G.O/(P)No.85/2011/Fin dated 26th February 2011 (enclosed by Dr. (Mrs.) Marykutty Abraham)*

● *the services rendered in Sathyabama University (two years and three months) may be considered as a qualifying service as per the pay slip, but there is no mention of pay scale in the appointment order. In 2007, the Lecturer basic pay was Rs.21,600/- plus allowances as per AICTE/UGC norms whereas the appointment order No.Sathyabama/Chancellor/WaterResearch/Appointment Order/2007 dt. 03-05-2007 reveals that her basic pay was Rs.16,463/- plus allowances, which was lower than AICTE/UGC Scale of pay. Further, there is no proof for date of revision of her*

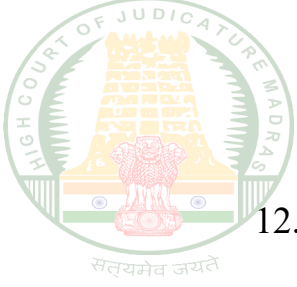


basic pay from Rs.16,463/- to Rs.28,020/-.”

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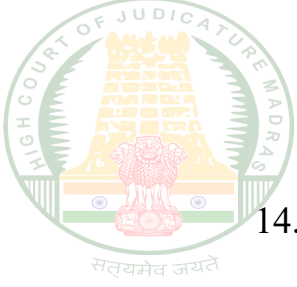
10. In the case in hand, the petitioner relies upon the pay certificate issued by Sathyabama University, where the basic pay is referred to as Rs.28,020/-, and the pay certificate issued by the Senior Accounts Officer, Pathanamthitta, where the pay scale of Assistant Engineer has been referred as Rs.7,200/-. If we look at the qualification [as extracted hereinabove] the experience of the candidates must be at the level of Lecturer [pre-revised]. While considering the above terminology “pre-revised”, it amply indicates that it is the duty of the petitioner to demonstrate his equivalence by establishing that his pay scale is at the level of Lecturer [pre-revised].

11. Though from 2009, the pay scale of the Lecturer in Engineering College and Assistant Engineer in Soil Conservation Department is at the same level of Rs.20,740/- in the previous period, there is a variance, which was extracted by the respondent-Authority in the impugned order. According to the above order, during 2004 revision, there was a difference of Rs.525/- between the pay scale of Lecturer in Engineering College and the Assistant Engineer. Similarly, a sum of Rs.140/- during 1992. Therefore, from 1992-2004, the pay scale of Assistant Engineer in Soil Conservation Department is lesser than the pay scale of Lecturer in Engineering College.



12. Though the learned counsel for the petitioner would submit that according to the pay certificate, the basic pay is Rs.7,200/- for a period 1997-98, which is equivalent to the pay scale of Lecturer in Engineering College, Kerala, it is for the petitioner to establish that such pay is a basic pay. While looking into the pay certificate issued by Senior Accounts Officer, Pathanamthitta, Rs.7,200/- referred as “sub/officiating pay”. Therefore, mere reference of Rs.7,200/- cannot be construed as that of the pay scale of Rs.7200-11400.

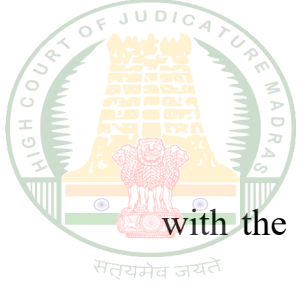
13. The learned counsel would contend that in order to determine the equivalence between the two cadres, the salary of the post is a last criteria and the essential criteria to consider the equivalence between two posts is, (i) the nature and duties of the post (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held responsibility of the charge (iii) the minimum qualification, if any prescribed for the post. But, as rightly contended by the learned Senior Counsel, the above reported case is not applicable to the present case as in the reported case, it was a comparison between two similar cadres, but in the different department. But, in this case, the very cadre itself is different. The application is called for the post of Associate Professor, whereas the petitioner at the relevant point of time was working as the Assistant Engineer in Soil Conservation Department.



14. Therefore, when the petitioner contends that his qualification is equivalent to the required qualification, it is for him to substantiate the clear cut basis of the equivalence. In the case in hand, the respondent has demonstrated the variance of pay, especially during the pre-revised period. Though the petitioner had relied certain instances to demonstrate that his pay is equivalent as that of the Assistant Professor, as already stated, it is not a clear cut proof. As a matter of fact, this Court could not infer anything from the documents submitted by the petitioner in favour of them.

15. Further more, with regard to the contention that the other 3 criteria should be considered, in the case in hand, as already submitted, since both of them are in the different cadres, the other three criteria as referred to in the ***Rooplal's*** case [cited supra] is not applicable to the present case. As already observed by the Division Bench, the assessment towards the equivalence is the expert domain. In the case in hand, the expert after considering the various criteria, has ultimately found that the petitioner does not possess the required qualification qua the pay scale [pre-revised] as that of the Lecturer.

16. In such view of the opinion expressed by the Expert body, unless there is a *mala fide* pleaded against the Experts, the Court must be slow in interfering



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with the Expert opinion. Further, this Court could not find any patent error in the order passed by the 2nd respondent, so as to interfere with the impugned order.

17. In view of the above detailed discussion, this writ petition is dismissed. No costs. Consequently, connected WMP is also closed.

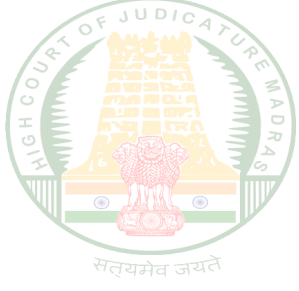
18-09-2026

Index: Yes
Speaking order
Neutral Citation: Yes

KMI

To

1. The Board of Governors
Rep. by its Chairman,
National Institute of Technical Training and Research,
Taramani, Chennai-113.
2. The Director
National Institute of Technical Training and Research,
Taramani, Chennai-113.



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C.KUMARAPPAN J.

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AND
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