

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.07.2015

DATE OF DECISION: 27.07.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI

and

THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. Nos.1345 to 1347 of 2014 and M.P. Nos.1 of 2014
(in all WA)

- 1 The Principal
Sir Theagaraya College
Old Washermanpet
Chennai 600 021
 - 2 The Secretary
College Committee
Sir Theagaraya College
Chennai 600 021
- Sir Theagaraya College
represented by its Secretary
Old Washermanpet
Chennai 600 021
- The Secretary
College Committee
Sir Theagaraya College
Chennai 600 021
- Appellants in WA No.1345/2014
- Appellant in WA No.1346/2014
- Appellant in WA No.1347/2014
- सत्यमेव जयते
- 1 Veerappan
- 2 The Director of Collegiate Education
Chennai 600 006
- 3 The Regional Joint Director of Collegiate Education
Saidapet
Chennai 600 015
- Respondents in WA No.1345/2014

1 The Joint Director of Collegiate Education
Chennai Region
Saidapet, Chennai 600 015

2 N. Veerappan Respondents in WA No.1346/2014

1 Veerappan

2 The Regional Joint Director of Collegiate Education
Saidapet
Chennai 600 015

Respondents in WA No.1347/2014

Writ Appeals preferred under Clause 15 of the Letters Patent challenging the common order dated 25.09.2014 passed in W.P. No.21392 of 2014, 24410 of 2014 and 24844 of 2014 respectively.

WP.NO.21392 OF 2014:Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the 2nd respondent to call for proposal from the 4th respondent college on the application submitted by the petitioner on 2.7.2014 for extension of service and consider and grant extension of service to the petitioner as Associate Professor Department of Plan Biology and Plan Biotechnology in Sir Theagaraya College Chennai-21 from 1.10.2014 to 31.5.2015 by considering the representation dated 25.7.2014 made by the petitioner.

WP.NO.24410 of 2014:Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari Calling for the records pertaining to the proceedings in Na.Ka.No. 5183/Voo2/2014 dated 04.09.2014 issued by the 1st respondent quash the same

WP.No.24844/2014:Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 2nd respondent in his proceedings No.Nil dated 01.09.2014 and quash the same and direct the respondents to give extension of service to the petitioner from 01.10.2014 to 31.05.2015 as Associate Professor Department of Plan Biology and Plan Biotechnology in Sir Thegaraya College Chennai 21 and confer all the consequential benefits.

For appellants
in all WAs

Mr. B. Ravi

For R1 in
WA No.1345/2014, &
1347/14

For R2 in
WA No.1346/2014 &

Mr. C. Selvaraju, Sr. Counsel
for M/s. C.S. Associates

For R2 & R3
WA No.1345/2014,
For R1 in
WA No.1346/2014 &
For R2 in
WA No.1347/2014

Mr. K. Karthikeyan
Government Advocate

- - - - -

COMMON JUDGMENT

SATISH K. AGNIHOTRI, J.

These three intra-Court appeals are directed against the common order dated 25.09.2014 passed in W.P. Nos.21392 of 2014, 24410 of 2014 and 24844 of 2014 respectively.

2 W.A. No.1345 of 2014 is directed against the order rendered in W.P. No.21392 of 2014. The said writ petition was filed by the first respondent herein seeking a direction to the third respondent herein to call for proposal from the second appellant herein in respect of the application dated 2nd July 2014 made by the first respondent herein, viz., Veerappan, (hereinafter referred to as "Veerappan) for extension of service as Associate Professor, Department of Plant Biology and Plant Bio-Technology in the appellant college from 1st October 2014 to 31st May 2015, read with his representation dated 25th July 2014.

3 The second writ appeal, being W.A. No.1346 of 2014 emanates from the order passed in W.P. No.24410 of 2014, wherein, the legality of the proceedings in Na.Ka.No.5183/C2/2014 dated 4th September 2014 issued by the first respondent herein was called in question by the appellant herein.

4 The third writ appeal being W.A. No.1347 of 2014 is preferred against the order rendered in W.P. No.24844 of 2014, filed by Veerappan, questioning the legality of the proceedings no.nil dated 1st September 2014 of the appellant and further direction to the respondents therein to give extension of service to him from 1st October 2014 to 31st May 2015 as Associate Professor, Department of Plant Biology and Plant Bio-Technology in the appellant College.

5 Since the question of law involved in all these three appeals is common, these appeals are being considered and decided by this common judgment.

6 The facts in a nutshell are that Veerappan attained the age of superannuation on 30th September 2014 working as the Head of the Department of Plant Biology and Plant Bio-Technology. Knowing that his age of superannuation is 30th September 2014, he made a representation dated 2nd July 2014 to the Secretary of Sir Theagaraya College Committee (for short "the College Committee") for extension

of his service. Two other similarly situated Professors were also due to retire on 30th September 2014. They made applications for extension of their services till the end of the academic year. The College Committee forwarded their representations with approval to the Regional Joint Director of the Collegiate Education (for short "the Regional Joint Director"). However, Veerappan, without waiting for the decision, filed the writ petition being W.P. No.21392 of 2014, seeking a direction to the Regional Joint Director to call for proposal from the College Committee in respect of his application/representation dated 2nd July 2014. During the pendency of the said writ petition, the College Committee sent a letter dated 27th August 2014 to the Joint Director of Collegiate Education, recommending not to extend the service of Veerappan on the ground that his continuation in service on re-employment would not be in the interest of institution and students. It was further stated by the College Committee that Veerappan was awarded with a punishment of stoppage of 3 increments with cumulative effect and also, he has not submitted pension papers, as required for re-employment. Thereafter, the College Committee issued proceedings dated 1st September 2014 to Veerappan, intimating the latter that his request for re-employment be rejected. Being aggrieved by the said proceedings of the College Committee, Veerappan preferred the other writ petition being W.P. No.24844 of 2014. The Regional Joint Director, vide communication dated 4th September 2014, called for the College Committee to submit its proposal for grant of re-employment to Veerappan, by way of extension of service. Sir Theagaraya College (for short "the College") questioned the legality of the said communication dated 4th September 2014 in W.P. No.24410 of 2014.

7 Veerappan's case before the learned Single Judge was that he is entitled to continue till the end of the academic year under G.O. Ms.No.281, Education Department dated 13th February 1981. The College Management has no discretion to refuse sending the proposal for re-employment, as it is mandatory. It was further projected by Veerappan that conditions such as extension of service of a school teacher, who retires in the middle of the academic year is subject to his conduct and character being satisfactory and the teacher be medically fit and must have submitted the proposal for pension, are not applicable to the College teachers, as the College teachers are governed by the Tamil Nadu Private Colleges (Regulation) Act, 1976 (for short "the 1976 Act") and the Rules framed thereunder and also, the Government Order, as aforesaid. Thus, the refusal on the part of the College to send the proposal for continuation of service is per se illegal, vitiated and deserves to be quashed.

8 On the other hand, the case of the College Committee and the College before the learned Single Judge was that re-employment cannot be claimed as a right, as it depends on various factors, including conduct and character of the college teacher concerned and Veerappan had also not submitted his pension papers, which was a pre-requisite for sending the proposal for re-employment. It was also contended

that Veerappan was imposed with the punishment of stoppage of increment for three years with cumulative effect on the ground of moral turpitude and as such, his conduct and character were not satisfactory for continuation on re-employment till the end of the academic year.

9 The learned Single Judge, relying on a judgment rendered by a Division Bench of this Court in W.A. (MD) No.456 of 2014, directed the College Committee to send the proposal for re-employment on or before 30th September 2014, by the impugned common order dated 25th September 2014, holding as under:

"19. Therefore, I hold that in respect of re-employment of College teachers, the competent authority is the Regional Joint Director of Collegiate Education and the power is derived from G.O. Ms.No.281, 300 referred to above and the proceeding of the Commissioner of Collegiate Education dated 20.07.1976 and 06.06.2012 referred to above and the College management is bound to send the proposal for re-employment with their remarks and final authority to take decision is the Regional Joint Director of Collegiate Education and the College management cannot refuse to send the proposal for re-employment even on the basis of punishment imposed on the teacher. Hence, W.P. Nos.21392 and 24844 are allowed and W.P. No.24410 of 2014 filed by the College Committee is dismissed. x x x x x x x x x .

It was further observed by the learned Single Judge that it was open for the College Committee to state remarks for not recommending Veerappan for re-employment and it is for the the Regional Joint Director to take a decision on the matter.

10 Mr.B. Ravi, learned counsel for the appellants/College/College Committee would submit that the principles contained in G.O. Ms.No.1643, Education (U2) Department dated 27th October 1988 are not applicable to the College teachers. The object of granting re-employment is to extend the benefit of continuance of teaching from the same teacher to the students and as such, there cannot be different conditions and criteria, one for school teachers and other for college teachers, for re-employment or extension of service till the end of the academic year. It is further contended that G.O. Ms. No.281, Education Department dated 13th February 1981 does not prescribe for grant of re-employment or continuation of employment. The said Government Order deals with reduction of retirement age of teachers of an aided college from 60 years to 58 years. G.O. Ms.No.1351, Education (F1) Department dated 28th June 1976, G.O. Ms.No.300, Higher Education (F) Department dated 8th September 2006 and G.O. Ms.No.355, Education Department dated 20th March 1989 provide for grant of re-employment, subject to certain conditions as stipulated therein, i.e., suitability, conduct, character, medical

fitness and also submission of pension papers. Granting discretion to the Director of Collegiate Education without any guidelines is arbitrary and discriminatory.

11 The next contention of the learned counsel for the appellants is that satisfaction of the College Committee is to be prominently looked into. In the case on hand, Veerappan was charged with the allegation of insubordination and moral turpitude and as such, after due enquiry, the punishment of stoppage of 3 increments with cumulative effect was inflicted on him. The learned Single Judge ought to have appreciated that the interest of students would be jeopardised and at peril if Veerappan is permitted to continue in view of the serious charges of insubordination and moral turpitude levelled and proved against him.

12 Per contra, Mr. C. Selvaraju, learned Senior Counsel appearing for Veerappan would submit that the appellant college is an aided minority institution receiving 100% grant from the Government of Tamil Nadu and as such, the service conditions of all the employees are governed by the provisions of the 1976 Act and the Rules made thereunder. The relevant Government Order in G.O. Ms.No.281, Education Department dated 13th February 1981, prescribes for re-employment or extension of service. In the event, a teacher attains the age of superannuation, i.e., 58 years, in the middle of the academic year, he has to be permitted to continue till the end of the academic year. The said Government Order was issued with the sole purpose of not to disturb the academic atmosphere and studies of the students. If a teacher is found fit for continuance in service till he attains the age of retirement in the middle of the academic year, there is no reason to decline continuation of his service till the end of the academic year. It was not a case of removal or dismissal even, but, the imposition of punishment of stoppage of increment for 3 years with cumulative effect. Veerappan was permitted to teach students till he attained the age of superannuation. Subsequent continuance cannot be conditional and the College cannot take a decision to reject his continuance on the basis of its whims and fancies. The Director of Collegiate Education, in his proceedings dated 6th June 2012, had already instructed all aided colleges that re-employment of the teacher till the end of the academic year is mandatory. The College Committee has no other choice, except to forward the proposal for re-employment. The Regional Joint Director alone is competent to consider the facts and pass appropriate orders for re-employment. The learned Single Judge has accordingly directed, as per law. The reliance of the appellants on other Government Orders is of no assistance, as the same are applicable only to the School Education Department and not to Collegiate Education. It is further contended that the Director of Collegiate Education, by proceedings in R.C. No.53430/G3/2011 dated 11th December 2014, had directed all the aided colleges to follow the instructions contained in the proceedings of the Commissioner of Collegiate Education in Na.Ka.No.48914/G3/1995 dated 4th September

1995. It is also stated that the Management is entitled to place all the materials in its proposal for re-employment in respect of departmental proceedings or punishment, if any.

13 Mr. K. Karthikeyan, learned Government Advocate appearing for the official respondent would submit that the Management is under an obligation to send the proposal for re-employment with all the materials, including the imposition of punishment, if any. The final decision has to be taken by the Regional Joint Director alone. Accordingly, the College Committee was directed by communication dated 4th September 2014 to send its proposal qua re-employment of Veerappan. There is no illegality or irregularity in the procedure followed by the Directorate of Collegiate Education.

14 We have given our anxious consideration to the arguments advanced by the learned counsel for the parties. We have also perused the pleadings and documents appended thereto.

15 The Grant-in-Aid Code of the Tamil Nadu Education Department (for short "the Code") prescribes the conditions and procedure for grant-in-aid to schools as well as private aided colleges. Rule 16 (A) which was incorporated by G.O. Ms.No.1258, Education Department dated 16th December 1971, contemplates continuance of service of the teaching staff attaining the age of superannuation in the middle of the academic year till the date of closure of the college summer vacation, subject to the conditions that their work is satisfactory, they are physically fit to continue in service and they have put in, at least a minimum period of one year service in that particular institution. It is apt to refer to the said rule which reads as under:

"16-A No grant shall be paid on behalf of the members of the teaching staff employed in aided colleges, who have completed their 60th year of age. Increments, if any, paid by the managements to the teachers employed in aided colleges after their attaining the age of 58 years shall not be taken into account for purposes of assessment of grant."

Provided, however, that grant shall be paid on behalf of any qualified teacher in an aided college, who after attaining the age of superannuation of 60 years in the middle of the academic year, is permitted to continue in service on re-employment terms till the date of closure of the college summer vacation, subject to the conditions that their work and conduct are satisfactory and they are physically fit to continue in service, that they have put in at least a minimum period of one year service in that particular institution and that they are not fresh recruits but have been employed in the institution before they attained the age of 60."

16 It appears that, subsequently, by G.O. Ms.No.1699, Education Department dated 1st October 1973, the provision of grants to the teachers of aided college till they attain 60 years of age was reduced to 58 years of age, with a condition to re-employ upto 60 years with the permission of the Director of Collegiate Education. The age of superannuation was subsequently reduced by G.O. Ms.No.281, Education Department dated 13th February 1981 from 60 years to 58 years. Thus, the said Government Order has to be read into Rule 16-A for the purpose of reducing the age of retirement and continuation of service on re-employment, subject to the same conditions as prescribed under Rule 16-A of the Code.

17 G.O. Ms. No.1351 further amends G.O. Ms.No.1258, whereunder, Rule 16-A was added to the Code, wherein, it was provided that grant shall be paid on behalf of any qualified teacher in an aided college, who after attaining the age of superannuation of 60 years in the middle of the academic year, is permitted to continue in service on re-employment terms, till the date of closure of the college summer vacation, subject to certain conditions. It was amended to the effect that from the academic year 1975-76 onwards, the period of re-employment of the teaching staff who attain the age of superannuation in the course of the academic year shall be restricted to the 31st May of the year only, instead of, upto the last date of the summer vacation of the college. The other terms and conditions were not amended and remained intact.

18 Subsequently, G.O.Ms.No.1643 came into force which deals with continuance of school teachers in service on re-employment terms and the same shall not be applicable to the college teachers. As aforesaid, the proceedings dated 14th September 1995 of the Commissioner of the Collegiate Education provided liberty to the Management to put forward the entire details of such cases along with the proposal for re-employment to the concerned Regional Joint Director with their remarks. Subsequent G.O. Ms.No.300 dealing with Collegiate Education provides for re-introduction of re-employment system of Principals, teachers, including Librarian and Physical Education Directors, working in the Government or aided colleges, which was withdrawn earlier in G.O. Ms.No.325, subject to the conditions stipulated in the Government Orders in G.O. Ms.Nos.1351 and 355.

19 Considering the aforesaid Government Orders, in the light of Rule 16-A which is a part of the Code, it is manifest that re-employment of the qualified teachers in an aided college who attain the age of superannuation in the middle of the academic year, is subject to the conditions that their work and conduct are satisfactory and they are physically fit to continue in service and they have put in at least a minimum period of one year of service in that particular institution. Such conditions cannot be wished away

as the same were neither deleted nor repealed in the subsequent Government Orders.

20 Thus, we have no hesitation in holding that re-employment or continuation of service of those college teachers who attain the age of superannuation in the middle of the academic year, is subject to the aforestated conditions.

21 The next question that arises for our consideration is as to whether it is for the Regional Joint Director to take a decision on the materials submitted by the Management or the Management, by itself, can take a decision not to recommend for continuation of service till the end of the academic year.

22 The Code prescribes for grant-in-aid to the educational institutions, i.e., schools or colleges. The Code prescribes for age limit for grant of aid, i.e., till a teacher employed in an aided college attains the age of 58 years. Even if it is in the middle of the academic year, under the provisions of the Code, the Management is not entitled to the grant-in-aid, unless the same is approved by the Director or any other officer nominated on his behalf.

23 In that view of the matter, the Regional Joint Director alone, who has been designated as the officer granting sanction, is competent to take a decision for continuation of service. It is evident from that fact that the Commissioner of College Education, vide his proceedings dated 14th September 1995, had granted liberty to the Management to put forward the entire details of such cases, along with the proposal for re-employment to the concerned Regional Joint Director with their remarks. This is the sole purpose to examine the proposal properly, subject to the conditions prescribed under Rule 16-A of the Code for grant of approval for continuation till the end of the academic year. The aforestated observations are confirmed by the subsequent communication dated 6th June 2012 of the Director of Collegiate Education.

24 The identical issue came into consideration before different Benches of this Court. A Single Bench, in Dr. S. Palanisamy vs. Kongunadu Arts and Science College and another, vide order dated 14th August 2012, held as under:

"9 G.O. Ms.No.281 is similar to that of G.O. Ms.No.1643. Applying the principles stated in the judgment of the Division bench of this Court cited supra, I have to necessarily hold that the petitioner is not entitled for re-employment since the Management, who is the appointing authority has decided not to give him re-employment based on his conduct and character. The very fact of punishment of his misconduct, in my considered opinion, is a ground to reject the request of the petitioner for re-employment."

25 In appeal against the aforesaid order of the Single Bench, a Division Bench, vide judgment dated 13.10.2014, while confirming the aforesaid decision of the Single Bench, held as under:

"6. Again a similar claim of school teacher was considered in W.A. No.106 of 2009, by order dated 31.1.2011 and by a Division Bench of this Court in P. Ravichandran vs. State of Tamil Nadu reported in (2013) 7 MLJ 641 - (2013) 5 LW 514 (of which one of us (NPVJ) is a member), wherein, it was held as follows:

"The aided college teachers as well as the Government college teachers, who are attaining the age of superannuation during the middle of the academic year are allowed to continue up to the end of the academic year, i.e., upto the end of May, if their conduct is good and they are physically fit. The same is made clear insofar as colleges are concerned, in G.O. Ms.No.281 Education Department, dated 13.02.1981. The underlying idea behind the said Government Order, which is still in force is, to ensure continuity of the benefit of teaching to students by the teachers, who attain the age of superannuation during middle of the year, for rest of the academic year."

7. In this case, charge memo was pending when the application for re-employment was submitted and ultimately punishment of censure was issued, which has not been set aside as on date. Hence, the learned Single Judge was perfectly right in dismissing the writ petition, taking note of the conduct of the appellant. There is no merit in the writ appeal and hence, the writ appeal is dismissed. No costs"

26 In another decision in Correspondent, Secretary and Managing Trustee, Salem Sowdeswari College Committee, Salem vs. M. Rajagopalan and 2 others, a Division Bench of this Court, vide order dated 27th September 2007, held as under:

"5. We are therefore of the considered opinion that unless the teacher is found unfit medically or on account of his or her conduct, he/she is entitled to continue till the end of the academic year."

27 In yet another decision in G. Annamalai vs. The Joint Director (Higher Secondary) and 3 others, a Division Bench of this Court, vide judgment dated 5th January 2007, held as under:

"8 It is well settled in law that a teacher retiring in the middle of the academic year is entitled to get re-employment till the end of the academic year on satisfying the conditions contained in the Government Orders, particularly, G.O. Ms.No.452 dated 24.03.1970, G.O. Ms.No.1712 dated 05.08.1976 and G.O. Ms.No.1653 dated 21.10.1986. In all the Government Orders, it is stated that for granting re-employment, the work of the teacher and conduct shall be satisfactory apart from physical fitness for further service."

28 The aforesaid provision of Rule 16-A of the Code was not brought to the notice of the learned Single Judge. On a perusal of paragraph no.17 of the impugned order, it appears that in the judgment rendered in W.A. (MD) No.456 of 2014, there was no punishment, but, only a departmental proceedings was pending against the college teacher and as such, the same is not applicable to the facts of the instant case, wherein, the punishment of stoppage of three increments with cumulative effect was inflicted on Veerappan.

29 For the reasons and analysis made hereinabove, we are of the considered view that re-employment or continuation in service after attaining the age of superannuation in the middle of the academic year till the end of the academic year, is subject to the conditions stipulated in the proviso to Rule 16-A of the Code. Consequently, the Management is under an obligation to submit all the information/materials while recommending for continuation or non-continuation to the Regional Joint Director and it is for the Regional Joint Director alone, to take a final call in respect of continuation or not of the college teacher concerned.

30 Resultantly, W.A. Nos.1345 and 1347 of 2014 stand allowed and W.A. No.1346 of 2014 stands dismissed. Costs made easy. Connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

WEB COPY
Sub-Assistant Registrar

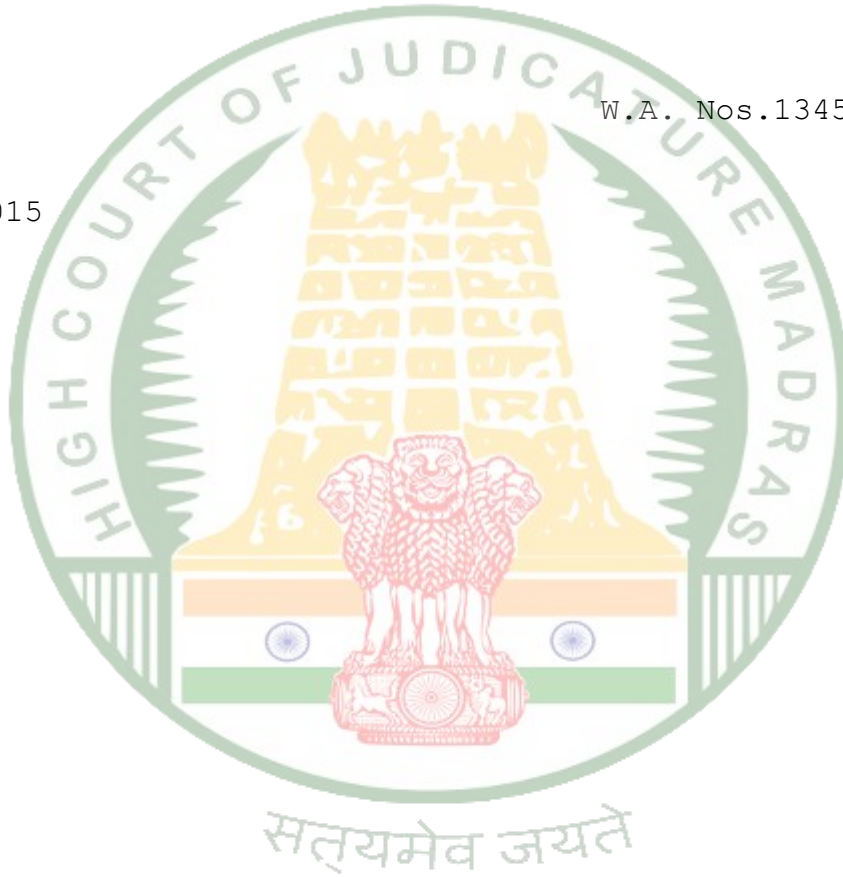
cad
To

1 The Director of Collegiate Education
Chennai 600 006

- 2 The Regional Joint Director of Collegiate Education
Saidapet
Chennai 600 015
- 3 The Joint Director of Collegiate Education
Chennai Region
Saidapet, Chennai 600 015
- +3 cc to Mr.B.Ravi, Advocate sr.38494
+3 cc to M/S.CS Associates, Advocate sr.37966
+1 cc to The Government Pleader sr.38520

W.A. Nos.1345 to 1347 of 2015

aa06/08/2015



WEB COPY