

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.Nos.14095 of 2011 & 18395 of 2013
and
Cont.P.No.204 of 2013 & connected M.Ps.

V.Ponmani ... Petitioner in both W.Ps.

Vs

1. The Secretary to Government
Law Department
Government of Tamil Nadu
Secretariat, Fort St.George,
Chennai.
2. The Director of Legal Studies
Puraisaivalkam High Road
Kellys, Chennai.
3. The Principal
Tamil Nadu Dr.Ambedkar Government Law College
Chennai 600 104. ... Respondents in both W.Ps.

W.P.No.14095 of 2011

Writ petition is filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records in respect of the Proceedings of the second respondent in Se.Mu.Order No.3518/A4/2008 dated 4.6.2011 and quash the same and consequently direct the respondents to comply with the directions issued by this Court in W.P.No.27115 of 2008 etc. (Batch) dated 1.12.2008 in letter and spirit by allowing the petitioner to continue to serve as a Lecturer (Selection Grade) at the third respondent College till all the sanctioned faculty strength is filled up permanently.

W.P.No.18395 of 2013

Writ petition is filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records in respect of the order of the second respondent vide proceedings No.2308/A4/2012-2 dated 03.10.2012, quash the same and consequently direct the respondents to allow the

petitioner to continue to serve as a Lecturer (Selection Grade) at the third respondent College till all the sanctioned faculty strength is filled up permanently.

Cont.P.No.204 of 2013 :

Prof. V.Ponmani

... Petitioner/Petitioner

Vs.

1.Dr.G.Jayachandran

The Secretary to Government to
Law Department,
Government of TamilNadu,
Secretariat, Fort.St. George,
Chennai.

2.Dr.S.Narayana Perumal (I/C)

Director of Legal Studies,
Purasaiwalkam High Road,
Kelley's, Chennai.

3.Dr.S.Narayana Perumal,

The Principal,
TamilNadu Dr.Ambedkar Government Law College,
Chennai - 104.

... Respondents

Contempt Petition filed under Section 11 of the Contempt of Court Act to punish the respondents under the provisions of Contempt of Court for the disobedience of the Order of this Hon'ble Court in M.P.No.1 of 2011 in W.P.No.14095 of 2011 dated 21.06.2011 and 21.07.2011, M.P.No.1 of 2011 filed to stay of operation of the Order of the 2nd Respondent in his proceedings in Sc.Mo.Order No.3518/A4/2008 dated 04.06.2011.

For Petitioner : Mr.A.Edwin Prabakar

For Respondents : Mr.P.H.Aravind Pandian
Additional Advocate General

Assistant by C.V.Shailandhran
Government Advocate

C O M M O N O R D E R

The petitioner is a retired Lecturer in Tamil Nadu Dr.Ambedkar Government Law College. Though there were many posts vacant in the said cadre, those posts were not filled up by regular appointments. Hence, the Hon'ble Division Bench of

this Court, in order to protect the interest of the poor law students, passed an order dated 01.12.2008 in W.P.Nos.27115 of 2008 etc., directing the Government to appoint the retired Lecturers on temporary basis till regular appointments are made. At this juncture, it is useful to refer to relevant portion of the order made in the above Writ Petitions:

"13(c) The Director of Legal Studies and the Principal are directed to ascertain the availability of retired teachers who are willing to accept temporary appointment as lecturers at the rate of their last drawn salary, till such time the regular appointments to the vacant posts are made. After ascertaining the willingness of the retired teachers, the Director of Legal Studies/ Principal shall shortlist the retired teachers to the extent of existing vacancies and forward their names to the State Government for being appointed temporarily as a stopgap arrangement till the regular appointments are made at the rate of salary last drawn by them. Such list should be forwarded by the Director of Legal Studies/ Principal within two weeks from the date of receipt of a copy of this order. On receipt of such communication from the Director of Legal Studies / Principal, the State Government/Law University is directed to issue necessary orders providing for such temporary / ad hoc appointments at their last draw salary till the regular appointments are made to fill the vacancies before the reopening of the college on 19.01.2009. It is needless to state that the salary component will include pension and that the difference alone will be payable on being assigned the task of temporary appointment. "

Pursuant to the aforesaid order, the Government issued G.O.Ms.No.117, Law Department dated 16.4.2009, for appointment of retired Teachers in the Law College on temporary basis, till the regular appointments are made.

2. Based on the aforesaid order passed by the Hon'ble Division Bench and the order of the Government in G.O.Ms.No.117, referred to above, the Director of Legal Services issued an order dated 09.05.2009, appointing the petitioner on temporary basis as a regular Lecturer in the Tamil Nadu Dr. Ambedkar Government Law College. In the said order dated 09.05.2009, it was stated that the petitioner would be permitted to continue her service either until the regular appointment is made or till she reaches the age of 62 years, whichever is earlier.

Thereafter, the Government issued another Government Order in G.O.Ms.No.234 Law Department dated 26.08.2009, modifying G.O.Ms.No.117, to the effect that re-employment of the Teachers after retirement would be retained upto the regular appointment or till they reach the age of 62 years, which ever is earlier.

3.In these circumstances, the petitioner on reaching the age of 62 years was relieved from service by order dated 04.06.2011. Therefore, the petitioner filed W.P.No.14095 of 2011, questioning the aforesaid order relieving her on reaching the age of 62 years. According to the petitioner, she should be permitted to continue until regular appointment is made, as per the order dated 01.12.2008 in W.P.No.27115 of 2008.

4.This Court while admitting W.P.No.14095 of 2011, granted an interim order on 21.06.2011 in M.P.No.1 of 2011 in W.P.No.14095 of 2011 and in view of the same, the petitioner was permitted to continue her service. While so, the Director of Legal Studies, passed an order dated 03.10.2012, relieving the petitioner from service on the ground that regular appointment has been made. Aggrieved over the same, the petitioner filed W.P.No.18395 of 2013, questioning the order dated 03.10.2012. However, this time, the petitioner is not able to get any interim order.

5.A comprehensive counter affidavit has been filed by the respondents. According to the respondents, the petitioner cannot be permitted to continue her service beyond the age of 62 years, in view of the Government Order issued in G.O.Ms.No.234, referred to above and in any event, when regular appointment is made, she could not continue her service.

6.Heard both sides.

7.The learned counsel appearing for the petitioner has vehemently contended that the petitioner is entitled to continue upto 65 years or till a regular appointment is made. The learned counsel also relied on the letter dated 23.3.2007, of the Deputy Secretary to Government of India, Ministry of Human Resources Development, Department of Higher Education, New Delhi, for his submission that the petitioner is entitled to continue upto 65 years, and prayed that the petitioner should be permitted to continue till the appointment of regular incumbent as per order dated 01.12.2008 made in W.P.No.27115 of 2008.

8.On the other hand, the learned Additional Advocate General submitted that the petitioner cannot be permitted to continue her employment beyond the age of 62 years as per G.O.Ms.No.234. In any event, the learned Additional Advocate General submitted that in view of the interim order granted by this Court, the

petitioner continued her service and now that the regular appointment is made, the petitioner was relieved from service.

9. In this regard, the learned counsel for the petitioner has placed heavy reliance on the letter dated 23.3.2007, of the Government of India, referred to above and it is useful to extract para 2 of the aforesaid letter, which reads as follows:

"2. The matter has been reviewed by the Central Government in the light of the existing shortage in teaching positions in the centrally funded institutions in higher and technical education under this Ministry, and in the context of Government's decision to expand the capacities of such Institutions for increasing access to higher education and for implementing the policy of reservations for the weaker sections without affecting the number of seats in the unreserved category available through general merit. Accordingly, it has been decided that--

(i) The age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.3.2007 in any of the centrally funded higher and technical educations under this Ministry shall be increased from present 62 years to 65 years.

(ii) Persons holding such regular teaching positions who have superannuated prior to 15.3.2007 on attaining the age of 62 years but have not attained the age of 65 years may be re-employed against vacant sanctioned teaching positions till they attain the age of 65 years, in accordance with the guidelines framed by the University Grants Commission.

(iii) All persons holding teaching positions against sanctioned posts may also be considered for re-employment beyond 65 years and upto the age of 70 years, against sanctioned vacant posts, if such posts are not filled up by regular candidates. However, such re-employments beyond the age of 65 years shall be done only after screening at the age of 65 years, under the extant guidelines of the University Grants Commission."

10.A reading of the aforesaid letter makes it very clear that the same is not applicable to the Tamil Nadu Dr.Ambedkar Government Law College, and the subject in the aforesaid letter also makes it clear that it is applicable only to the Centrally funded higher and technical Education. Hence, the petitioner cannot rely on the aforesaid letter to continue upto 65 years.

11. It is true that the order dated 01.12.2008 in W.P.No.27115 of 2008 and more particularly paragraph No.13(c), states that the retired persons who are appointed on temporary basis, could be permitted to continue until a regular appointment is made. But, in my considered view, paragraph No.13(c) of the order made in W.P.No.27115 of 2008 can not be narrowly looked into and the purpose of the order dated 01.02.2008 is to ensure that the posts in the cadre of Lecturer in Government Law College shall not be kept vacant and the order was passed to protect the interest of the students and not to give re-employment to the retired teachers. It is only a stop gap arrangement till a regular appointment is made. Therefore, the said order cannot be relied on by the retired teacher to continue eternally upto 65 years, when the Government wants to relieve petitioner at the age of 62 years relying upon G.O.Ms.No.234 dated 26.08.2009.

12.It is also pertinent to note that G.O.Ms.No.234 dated 26.8.2009, states that the retired teachers who are temporarily appointed could be permitted to continue either on their attaining the age of 62 years or till the regular appointments are made, whichever is earlier. The said Government Order is not under challenge. In any event, I am of the view that it is for the Government to take a decision with regard to the retention of the retired teachers upto certain age, who are appointed on temporary basis. The Government have chosen to fix 62 years in G.O.Ms.No.234 and the same cannot be faulted with. In any event, in view of the interim order granted by this Court, the petitioner was permitted to continue beyond the age of 62 years and she has also been paid salary and she was relieved again by an order dated 3.10.2012, on the ground that regular appointment is made and therefore the petitioner cannot say that she is entitled to continue upto 65 years.

13.As stated above, the petitioner can continue upto 62 years or till regular appointments are made, whichever is earlier. In this case, the petitioner continued upto 62 years and she was also permitted to continue her service pursuant to the interim order of this Court till the regular appointment was made.

14. In these circumstances, I do not find any merit in the Writ Petitions. Accordingly, the Writ Petitions are dismissed. However, it is made clear that the salary paid to the petitioner cannot be recovered on the ground that the writ petitions are dismissed, since she earned the salary for the services rendered by her. In view of the order passed in the Writ Petitions, the Contempt Petition is closed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Secretary to Government
Law Department
Government of Tamil Nadu
Secretariat, Fort St. George,
Chennai.
2. The Director of Legal Studies
Puraisaivalkam High Road
Kellys, Chennai.
3. The Principal
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Chennai 600 104.

+1cc to M/s.A.Edwin Prabakar, Advocate, S.R.No.55469

W.P.Nos.14095 of 2011 &
18395 of 2013 and
Cont.P.No.204 of 2013

VD(CO)
CA(03/11/2015)

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