

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.13436 of 2014

&

M.P.Nos.1 to 3 of 2014

DR.K.PALANIVELU

...PETITIONER

Vs

1. GOVERNMENT OF TAMILNADU
REP. BY THE PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF HIGHER EDUCATION
FORT ST. GEORGE
CHENNAI-600 009.
2. DIRECTOR OF COLLEGIATE EDUCATION
DIRECTORATE OF COLLEGIATE EDUCATION
DPI COMPOUND
COLLEGE ROAD
CHENNAI-6.
3. DR.T.SENTHAMIZH SELVI
4. GOVERNMENT ARTS COLLEGE (AUTONOMOUS)
REP. BY ITS PRINCIPAL
KUMBAKONAM-612 002
THANJAVUR DISTRICT.

5 DR.K.DURAIARASAN

...RESPONDENTS

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records from the 2nd respondent relating to the order dt. 29.04.2014 bearing reference No. Na.Ka.No.6438/Q3/2014 and quash the same as being illegal arbitrary malafide without jurisdiction and

in violation of G.O.Ms.51 dt. 3.4.2012 and consequently direct the 2nd respondent to appoint the petitioner as the Controller of Examination of the 4th respondent College w.e.f. 19.2.2014 the date the panel was sent by the 4th respondent to the 2nd and 3rd respondent together with the monetary and other service benefits with arrears together with 12% interest per annum.

For Petitioner : Mr.N.G.R.Prasad
for M/s. Row and Reddy

For Respondents : Mr.P. Sanjaigandhi
Addl. Govt. Pleader for RR1,2 and 4

Mr.K.M.Vijayan
Senior Counsel
for Mr. Swarnam J. Rajagopalan
for R.5

R3- sd - No appearance

ORDER

The petitioner challenges the appointment of the fifth respondent as Controller of Examination primarily on the ground that it was made in violation of the Government Order in G.O.Ms.NO.51, Higher Education (F1) Department, dated 3 April 2012.

The facts:

2. The petitioner is senior most among the Assistant Professors working in Government Arts College at Kumbakonam. The petitioner is qualified for appointment as Controller of Examination. The fourth respondent submitted a panel for appointment to the post of Controller of Examination. The third respondent selected the fifth respondent as Controller of Examination and issued appointment order on 29 April 2014. The said order is under challenge in this writ petition.

3. It is the contention of the petitioner that the Government have issued an order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 prescribing the procedure to be followed for appointment to the post of Controller of Examination. The Government Order provides that seniority should be the criteria for making appointment to the post of Controller of Examination. The petitioner therefore has taken up a contention that appointment of the fifth respondent was in utter violation of the eligibility

criteria as indicated in the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012.

4. The second respondent has filed a counter affidavit wherein it was contended that the fifth respondent has put in more than fifteen years of service and he possessed good working knowledge and skill in using computer, a perquisite for efficient functioning as Controller of Examination. According to the second respondent the selection in question was made in accordance with the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 notwithstanding the University Grants Commission Guidelines (hereinafter referred to as "UGC Guidelines") authorising the Principal of the concerned Autonomous College to select the Controller of Examination.

5. The fifth respondent in his counter affidavit contended that while issuing the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012, the Government failed to take into consideration the prevailing UGC Guidelines for the Eleventh Plan Period (2007 to 2012). According to the fifth respondent, UGC Guidelines indicated the procedure to be followed for appointment to the post of Controller of Examination. The fifth respondent further contended that the petitioner does not possess the qualification regarding three years tenure to hold the post of Controller of Examination on the date of subject appointment. Accordingly, the fifth respondent justified the impugned order.

Submissions:

6. The learned counsel for the petitioner contended that the Government have issued an order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 prescribing the parameters to be considered for appointment to the post of controller of examination. As per the said Government Order, seniority is the criteria for making appointment. According to the learned counsel, proposal was made by the Principal to the Director of Collegiate Education as early as on 19 February 2014. The third respondent kept the matter pending and just one day prior to her retirement, appointed the fifth respondent on 29 April 2014. The learned counsel contended that UGC has issued only the guidelines and that too for the period ensuing 2012. However, the Government have issued detailed guidelines in the matter of appointment to the post of Controller of Examination. It was further contended that the impugned order does not contain any material to show that the process of assessing comparative merit was undertaken by the second respondent before appointing the fifth respondent.

7. The learned Senior Counsel for the fifth respondent by placing reliance on UGC Guidelines contended that the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 was issued in violation of UGC Regulations. According to the learned Senior Counsel, UGC Guidelines governs the field. As per the guidelines, the Principal is the authority to appoint the Controller of Examination. The petitioner is therefore not correct in his contention that the second respondent erred in appointing the fifth respondent in total violation of the Government Order.

Analysis:

8. The petitioner and the fifth respondent are working as Associate Professors in Government Arts College at Kumbakonam. There is no dispute that the fourth respondent is an Autonomous College. It is also not in dispute that the petitioner is the senior most.

9. The Government have issued an order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 fixing the guidelines for appointment to the post of Controller of Examination in Government Autonomous Colleges. The Government authorised the Director of Collegiate Education to appoint the Controller of Examinations. The English Translation of relevant guidelines read thus:

" 1. The Assistant Professor applying for appointment to the post of Controller of Examinations should have completed a minimum of 15 years of service as Assistant Professor and should have completed his service in a post higher to that.

2. The Controller of Examination should only be appointed on the seniority basis. (If a person with eligible seniority has any disciplinary action or charges pending against him, the Director can select a lecturer who is next to him in the seniority list.)

3. The Assistant Professor who has been appointed as the Controller of Examinations should have atleast three years of service before his superannuation.

4. A person appointed as the Controller of Examinations can resume his work for a period of three years from the date of assuming office.

5. Another opportunity should not be given to a person who had already held the post of

Controller of Examinations.

6.The Director of Collegiate Education is the appointing authority of Controller of Examinations."

10. In case the Government Order is followed in its letter and spirit, the authority to make appointment is none other than the Director of Collegiate Education. In such an event, the claim of the petitioner should be considered at the first instance as he is the senior most. The Government Order very clearly states that appointment should be only on seniority basis.

11. The UGC have issued guidelines for autonomous colleges for the period 2007-2012. The relevant guidelines reads thus:

"Autonomous College shall have an Examination Cell headed by Controller of Examination who will be a permanent faculty nominated by the Principal on the basis of potential of the person. The Principal of the College shall be the Chief Controller, Examinations."

12. The guidelines issued by UGC gives a discretion to the Principal to appoint the Controller of Examination on the basis of the potential of a person. Therefore an element of discretion is given to the Principal to nominate the Controller of Examination. The UGC guidelines does not contain a detailed procedure as to how the Controller of Examination should be selected. It merely says that the Controller of Examination should be nominated by the Principal on the basis of the potential of the person. Therefore, it is very clear that the University has not prescribed detailed guidelines with respect to the manner and method of appointment to the post of Controller of Examination.

13. The Government have issued detailed guidelines in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 . The respondents would be justified in their contention that the fifth respondent was appointed in accordance with UGC guidelines, only in case the order was passed by the Principal in exercise of the power conferred on him under the guidelines issued by UGC.

14. The order in question was issued by none other than the Director of Collegiate Education. The principal submitted a proposal containing the names of petitioner, fifth respondent and two others. The fourth respondent wanted the Director of Collegiate Education to appoint the Controller of Examination. The appointment in question

was also made by the Director of Collegiate Education. Therefore it is very clear that the second respondent has acted in accordance with G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 while appointing the fifth respondent as Controller of Examination. In fact the Director of Collegiate Education in the counter affidavit very clearly stated that the Principal had chosen to adhere to the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 which confers powers on the Director of Collegiate Education to appoint the Controller of Examination. It was further stated that the Principal carefully assessed the merit of all the four eligible applicants included in the panel and recommended the fifth respondent based on his potential. The counter affidavit of Director of Collegiate Education also contained a statement that appointment order was issued in tune with the spirit of the Government Order and the UGC norms. Therefore it is very clear that the second respondent has made the appointment only in accordance with the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012. Such being the position, the petitioner is perfectly correct in his contention that he should have been considered for appointment at the first instance on account of his seniority.

15. The fifth respondent has taken up a contention that that it would not be possible for the petitioner to occupy the post for the period of three years and as such he was rightly not appointed. There is absolutely no merit in the said contention for the simple reason that the Government have made it very clear in its order in G.O.Ms.No.300 dated 8 September 2006 and subsequent proceedings dated 6 June 2012 on the file of Director of Collegiate Education to the effect that re-employment is mandatory for Lecturers working in Government aided Colleges. The Government have issued specific orders to the effect that Lecturers would be re-employed till the end of the academic year. The petitioner is entitled to continue in service till the end of the academic year in which case he would be in a position to complete three years of service as Controller of Examination.

16. In fact, the order in question does not say that the petitioner would be having only less than three years and that was the reason for rejecting the candidature. When it is made out that the second respondent has appointed the fifth respondent by following the Government order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 the petitioner is correct in his claim that he should have been considered on account of his seniority. When a decision to follow the Government Order is taken, necessarily

senior most member of the faculty should be considered at the first instance. It is only in case he is found unsuitable, the candidature of another in seniority should be considered. However, the second respondent failed to consider the seniority of the petitioner by making appointment. I am therefore of the view that the petitioner is perfectly correct in his contention that the second respondent violated the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 while appointing the fifth respondent.

17. The second respondent has taken up a further contention that the fourth respondent has assessed the comparative merits of candidates. The fourth respondent has simply stated the experience of each and every candidate and finally recommended the case of fifth respondent. However while making such recommendation, especially the criteria regarding seniority was not followed by the fourth respondent. The appointment of the fifth respondent was therefore made in utter violation of the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012. Therefore I am of the view that the matter requires fresh consideration by the second respondent.

18. In the result, the impugned order is set aside. The second respondent is directed to consider the question of appointment in the light of the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012. In case there are detailed guidelines prescribed by UGC in the matter of appointment to the post of Controller of Examination, it is open to the second respondent to refer those guidelines also. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

19. In the upshot, I allow the writ petition. Consequently the connected MP is closed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Tr/

To

1. THE PRINCIPAL SECRETARY TO GOVERNMENT OF TAMILNADU
DEPARTMENT OF HIGHER EDUCATION
FORT ST. GEORGE
CHENNAI-600 009.
2. DIRECTOR OF COLLEGIATE EDUCATION
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3. GOVERNMENT ARTS COLLEGE (AUTONOMOUS)
REP. BY ITS PRINCIPAL
KUMBAKONAM-612 002, THANJAVUR DISTRICT.

1 CC to M/s. Row and Reddy, Advocate SR.No. 12123

1 CC to the Government Pleader, SR.No. 12331

W.P.No.13436 of 2014

ts (CO)
PSI (13.03.2015)



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