

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.Nos. 21517 and 21582 of 2015
and
M.P.Nos.2, 2, 3, 3 and 4 of 2015

W.P.No.21517 of 2015

RM. Palaniappan

... Petitioner

Versus

1. The Principal Secretary to Government
of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Technical Education,
Guindy, Chennai - 600 025.
3. The Secretary,
P.T.Lee Chengalvaraya Naicker Trust,
Vepery, Chennai - 600 007.
4. P.T.Lee Chengalvaraya Naicker
Polytechnic College,
Rep. by its Chairman,
Vepery, Chennai - 600 007.
5. S.Mohan,
Principal-in-charge,
P.T.Lee Chengalvaraya Naicker
Polytechnic College,
Vepery, Chennai - 600 007
6. R.Balasubramanian
Senior Lecturer,
P.T.Lee Chengalvaraya Naicker
Polytechnic College,
Vepery, Chennai - 600 007.

... Respondents

W.P.No.21582 of 2015

RM. Palaniappan

... Petitioner

1. The Principal Secretary to Government
of Tamil Nadu,
Higher Education Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Technical Education,
Guindy, Chennai - 600 025.
3. P.T.Lee Chengalvaraya Naicker Trust
Rep. by the Chairman,
Vepery, Chennai - 600 007.
4. S.Mohan,
Principal-in-charge,
P.T.Lee Chengalvaraya Naicker
Polytechnic College,
Vepery, Chennai - 600 007.

... Respondents

W.P.No.21517 of 2015:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of Certiorarified Mandamus to call for the records connected with the impugned proceedings of the 3rd respondent bearing order No.CNT/A3/776-1/2015 dated 20.06.2015 and to quash the same, and direct 2nd and 3rd respondents to continue to give effect to the order dated 25.03.2015 issued by the Chairman of the Governing Council of the 4th respondent.

W.P.No.21582 of 2015:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of the Writ of Certiorarified Mandamus, to call for the records connected with the impugned proceedings of the 4th respondent bearing Circular No.173/A3/2015 dated 17.06.2015 and the publication and to quash the same, and direct 3rd and 4th respondents to consequently promote the petitioner to the post of Principal of the 4th respondent and to fix the petitioner's seniority.

For Petitioner
in both W.Ps.

: Mr.K.Venkatakrishnan

For R1 & R2
in both W.Ps.

: Mr.A.Kumar,
Special Government Pleader

For R3 to R5 in
W.P.No.21517/15 &
R3 and R4 in
W.P.No.21582 of 2015

: Mr.Muthukumarasamy,
Senior Counsel
for Mr.M.R.Jothimaran

For R6 in
W.P.No.21517/15

: Mrs.A.L.Gandhimathi

COMMON ORDER

The petitioner joined as Instructor in P.T. Lee Chengalvaray Naicker Polytechnic College on 23.12.1985. He has completed 30 years of service in the said College. The petitioner, being the senior most among the Heads of Department of Civil Engineering, was appointed as the Head of the Department-in-Charge of the Civil Engineering Course by proceedings of the Principal of the Polytechnic, dated 27.08.2004 and now, he is holding the said post for more than 11 years.

2. According to the petitioner, there are two sanctioned post of Senior Lecturer in vogue in the Civil Engineering Department. From October 1996 onwards, Mr.V.Radhakrishnan and Mr.L.Ramajeyam were holding the said two posts of Senior Lecturer in the Department of Civil Engineering. During May 1998, Mr.V.Radhakrishnan retired from service. According to the petitioner, if Staff Selection Committee is periodically convened in June 1998 or later, he would have become the Senior Lecturer (Regular) from the year 1998 onwards especially when he was already a Senior Lecturer (upgraded) in the Department of Civil Engineering. According to the Adhoc Rules, the petitioner is eligible to be posted as the Head of the Department of Civil Engineering in the year 2000 itself. During September 2001, the Staff Selection Committee was convened after nearly five years. Even though he was a qualified candidate and he was eligible to be designated as Senior Lecturer (Regular) in Civil Engineering Department, his junior, one S.Mohan was designated as Senior Lecturer (Regular).

3. According to the petitioner, after the retirement of Mr. V. Radhakrishnan, Mr. L. Ramajeyam became the Principal in February 2004, therefore, the post of Head of Department became vacant in the year 2004. Since the petitioner was not regularised in the post of Senior Lecturer, he has not become Head of Department and he is only holding the post of HOD-in-charge. According to him, he is fully eligible to become as Head of the Department of Civil engineering and also to become the Principal of the third respondent Polytechnic. If the petitioner was regularized in the post of Senior Lecturer from the year 1998 and designated as HOD in 2004 when a vacancy arose, he would have become the Senior most HOD to become the Principal of the College whenever vacancy arises. Due to non-convening of staff Selection Committee periodically, many of the deserving teaching faculties could not be recognized and they were frustrated over the treatment given to them which would interalia greatly affect the institution.

4. According to the petitioner, the 4th respondent Polytechnic do not have a full time Principal and has appointed one Mr.S.Mohan as the Principal-in-charge on 12.08.2012.

However, the 3rd and 4th respondents have not taken any steps to fill up the vacancy of the Principal by promoting a suitable candidate from among the senior most among the heads of the Departments for all these years. As per the guidelines of the Department of Technical Education, any candidate can hold the post as in-charge only for a period of five months and within the said period, the educational institution shall post a suitable candidate as per the seniority among the heads of the department. The present Principal-in-charge, namely, S.Mohan, on account of his illness, availed frequent leave on medical grounds. During his leave period, the administrative work of the 4th respondent should not be affected and to avoid such dislocation, the Chairman of the 3rd respondent Trust and the Chairman of the Governing of Council, the 4th respondent, by an order dated 25.03.2015, appointed the petitioner as Principal-in-charge during the absence of Mr.S.Mohan. According to him, he was forcibly removed by the Secretary of the P.T.Lee Chengalvaraya Naicker Polytechnic College, by order dated 20.06.2015. The said order was sought to be enforced forcibly on 06.07.2015 to stop the intervention of the office bearers of the Staff Association. Thereafter, P.T.Lee Chengalvaraya Naicker Polytechnic College Staff Association submitted a representation to the Commissioner of Directorate of Technical Education. The 6th respondent, namely, R.Balasubramanian, who is 13 years junior to the petitioner and working as the Senior Lecturer of Civil Department was appointed as Principal-in-charge, which is in gross violation of the guidelines in Chapter III Cl. (13) of DOTE and it is also in violation of principals of natural justice. The proceedings of the third respondent dated 20.06.2015 cannot supersede the earlier order dated 25.03.2015 passed by the Chairman of Governing Council appointing the petitioner as Principal-in-charge of the 4th respondent Polytechnic in accordance with the Guidelines issued by the Directorate of Technical Education. It is this order dated 20.06.2015 which is now under challenge in W.P.No.21517 of 2015.

5. According to the petitioner, paper advertisement was given on 10.06.2015 for appointment of Principal and Head of Department in various Departments calling for application for eligible candidates from outside and a circular dated 17.06.2015 was circulated to internal candidates also as if the 3rd respondent was conducting such selection process impartially. The petitioner has also submitted his application on the last date. But, on 14.07.2015, call letters were being sent confidentially by courier for Interview to be held on 20.07.2015 for the vacancy of Principal alone, even though the paper advertisement was given for various posts. As per G.O.Ms.No.1081 dated 19.08.1989 Higher Education Department, the candidates, who are working in the 3rd respondent College have to be promoted to the next higher post, when they are qualified and become eligible. The 3rd respondent Institution is governed by G.O.Ms.No.1081. But, the 3rd respondent did not follow the same and called for application to the post of

Principal and HODs to various departments. According to him, though he was acted as Principal-in-charge of the 4th respondent and he is fully eligible for the post of Principal, the 3rd respondent ought to have appointed him as Principal, but, he has not done so. On the other hand, the 3rd respondent conducted the interview on 20.07.2015. Therefore, the petitioner did not get his chance of being promoted as Principal. Challenging the paper publication dated 10.06.2015 and the circular No.173/A3/2015 dated 17.06.2015, the petitioner has filed the writ petition in W.P.No.21582 of 2015.

6. As far as W.P.No.21582 of 2015 is concerned, counter has been filed by the second respondent. In the counter, it is stated that the petitioner was terminated from service on 28.05.2002 by the Management for his unauthorized absence and thereafter, as per the Proceedings of the 2nd respondent dated 04.06.2008, he was reinstated into service and promoted to work as Senior Lecturer in Civil Engineering Department. After the voluntary retirement of the then Principal Thiru.Ramajayam, on 28.08.2012, Thiru.S.Mohan, the Seniormost Lecturer in the 4th respondent College was appointed as Principal-in-charge. Due to frequent leave applied by Thiru.S.Mohan, the petitioner was directed to act in the place of Thiru.S.Mohan, as Principal-in-charge, whenever he was on leave, by the Chairman of the Governing Council. The said decision was placed before the Trust Board and the same was unapproved by the Trust Board in view of the previous conduct of the petitioner. Therefore, the order dated 25.03.2015 was recalled and another person Thiru.R.Balasubramanian, Senior Lecturer was appointed by Trust Board order dated 20.06.2015. Based on the said order, Thiru.R.Balasubramanian is acting as Principal-in-charge of the Institution during the absence of regular Principal-in-charge.

7. It is further stated in the counter that the Government have issued orders in G.O.(Ms.)No.1282, Education Department dated 26.07.1967, according to which, all appointments in Government Aided Institutions can be made by direct recruitment through a Staff Selection Committee constituted for the purpose and there is no method of appointment / promotion indicated therein. The said government order is applicable to aided private Polytechnic Colleges. Further, as per the instructions issued in the Director of Technical Education's Circular No.4323/C2/1988, dated 03.01.1989, while filling up the vacant post, list of eligible candidates duly following the Communal Rotation will be obtained from the Employment Exchange and the candidate sponsored by the Employment Exchange will be called for interview. The eligible internal candidates will also be permitted to compete with them in the interview. The Staff Selection Committee will select the eligible candidate and it will be sent to the Directorate of Technical Education for approval before making appointment. As such, the candidates have to appear before the Staff Selection Committee for

appointment to the posts in Aided Polytechnic College. The staff can be appointed to the vacant post only through the Staff Selection Committee and cannot seek for appointment to the vacant posts without appearing and getting selected to the post through Staff Selection Committee. There is no method of appointment by promotion is available in Government aided Polytechnic College. Therefore, the 4th respondent has given advertisement on 10.06.2015 for appointment of Principal and Heads of Departments and internal circular was also issued by the petitioner himself as Principal-in-charge on 17.06.2015 to participate in the selection after satisfying the qualifications prescribed in G.O.(Ms.) No.111, Higher Education Department, dated 25.10.2010. After the advertisement and internal circular, the petitioner has applied only for the post of Head of the Department in Civil Engineering and he is not qualified for the post of Principal. Further more, the qualification for the post of Principal is Bachelor's degree and Masters degree in appropriate branch in Engineering and Technology with First Class with Ph.D. along with 10 years relevant experience in the teaching with at least 3 years experience at the level of Head of the Department. The petitioner does not possess Ph.D. Degree and he is in possession of AMIE and M.E. Degree and hence, he is not qualified for the post of Principal as per the order issued in G.O.Ms.No.111, dated 25.05.2010. Further, the petitioner is now working in the regular capacity as Senior Lecturer only and even he has not been appointed as regular Head of Department. Therefore, the paper publication dated 10.06.2015 and the circular No.173/A3/2015 dated 17.06.2015 warrant no interference by this Court. Hence, the writ petition in W.P.No.21582 of 2015 is liable to be dismissed.

8. As far as W.P.No.21517 of 2015 is concerned, counter has been filed by the second respondent. In the counter, it is stated that the Director of Technical Education, by Circular No.4323/C2/1988, dated 03.01.1989, issued guidelines for appointment of Principal-in-charge in the Private Aided Polytechnic Colleges as and when the post of regular Principal fell vacant. As per the said Circular, the senior most Head of Department could be appointed as Principal-in-charge in case a vacancy arise. Such appointment should be approved by the Governing Council with prior permission of the Director of Technical Education. In the instant case, when the then Principal Thiru.Ramajayam was permitted to retire from service on voluntary retirement, the senior most Lecturer of the College Thiru.S.Mohan was rightly appointed as Principal-in-charge in the respondent polytechnic college. However, at that time, no regular eligible hands was available for appointment as Principal-in-charge. The said appointment of Thriu.S.Mohan as Principal-in-charge was approved by the Director of Technical Education. Further, since Thiru.S.Mohan has taken frequently leave for his illness, the petitioner, who is a senior lecturer and Head of Department-in-charge in Civil Engineering Department was permitted to act in the place of

Thiru.S.Mohan Principal-in-charge, whenever Thiru.S.Mohan is on leave as per the order of the Governing Council dated 25.03.2015. There is no necessity to get the approval from the Director of Technical Education for appointment of second Principal-in-charge once again when the Principal-in-charge already approved by the Director of Technical Education is proceedings on leave. It is for the respondent College to take a decision to appoint a suitable substitute in the interest of student welfare and smooth running of the college. Hence, the 2nd respondent has no role over subsequent Principal-in-charge appointment, when already the appointed Principal-in-charge proceeded on leave. The petitioner has challenged only the order of the 3rd respondent and he has not challenged any of the order of the 2nd respondent. Hence, the role of the 2nd respondent is negligible in the case of appointment of substitute Principal-in-charge when the approved Principal-in-charge proceeds on leave.

9. Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for respondents 1 to 4 and perused the papers available before this Court.

10. Insofar as the writ petition in W.P.No.21582 of 2015 is concerned, the petitioner has challenged the circular dated 17.06.2015 issued by the Principal of the Polytechnic College. Originally, the said circular was issued by the petitioner and the same was signed by him in the capacity of Principal-in-charge to the internal staff members of the Polytechnic, inviting applications for the post of Principal. After issuing the said Circular dated 17.06.2015, the petitioner has filed this writ petition challenging the said Circular, claiming that he is the Head of the Department-in-charge in the Civil Engineering Course and if his services were regularized, he would have become as a regular Principal as he is the only candidate to be appointed as Principal.

11. According to the petitioner, since the present Principal-in-charge was going on frequent leave, he was directed to take charge of Principal-in-charge and hence, he continues the post further. According to him, he was directed to make a publication for the post of Principal and other posts and he also applied for the same.

12. Now, the question is that the petitioner, who signed the said Circular in the capacity of Principal-in-charge, can be permitted to challenge the same by way of filing the writ petition.

13. It is no doubt that if the petitioner is eligible, naturally, he can participate in the selection process for the post of Principal. Therefore, at this juncture, the writ petition filed by the petitioner challenging the very same Circular calling for the applications to the post of Principal

from internal candidates, which was signed by him in the capacity of Principal-in-charge, is not maintainable. In fact, the petitioner has been acting as Principal-in-charge whenever the present Principal-in-charge was proceeding on leave.

14. Be that as it may, in respect of W.P.No.21517 of 2015, the petitioner claims that he is the Head of the Department-in-charge of the Civil Engineering Course. Admittedly, he is the Senior most person. According to the petitioner, he has been in service for quite long time and therefore, his services have to be definitely taken into consideration. Now, the grievance of the petitioner is that right from the beginning, he has not been given proper appreciation of his service and the same has to be looked into for consideration. As long as the petitioner continues as Head of the Department-in-charge, he is eligible for the post of Head of the Department. According to the petitioner, merely because, a person, who has been working there, should not be stopped from continuing there.

15. The fervent argument made by the respondent is that the petitioner has not applied for the post of Principal and he has applied for the post of HOD. The petitioner has not been appointed as Head of the Department at any time and he is only in-charge of the Head of the Department in the Civil Engineering Course. According to the petitioner, he had been continuing as HOD-in-charge which has to be considered by the official respondents, however, the Trustees of the College are attempting to appoint a person, who is 14 years junior to him, as Principal.

16. It is seen from the records that the third respondent/Polytechnic is administered by a Retired Judge of this Court. In fact, in the earlier order dated 02.03.2016 passed by the Division Bench of this Court in C.M.P. Nos. 1062 of 2016 etc., batch in O.S.A. No. 115 of 1999, the Division Bench of this Court has observed the members of the Board of Trust have been at loggerheads either amongst themselves or with the Honourable Judge appointed as Trustees-cum-Chairman. The Division Bench also recorded the fact that the earlier Division Bench of this Court, in the order dated 08.10.2014, directed the Trustee-cum- Chairman to go ahead with the selection process and accordingly eight Trustees were appointed. The fact remains that the petitioner continued as HOD-n-charge. In so far as continuance in the post of HOD is concerned, pending the writ petition, by interim order dated 16.07.2015, the petitioner continued to hold both the post of HOD as well as Principal-in-charge. As far as the mode of appointment is concerned, the post of Principal can be made either from the internal candidates or external candidates and it has to be done by the Committee which has been constituted by the Chairman along with other Board members or other Internal or External officers, who are well-versed with the administration of the College to select and appoint a person as a Head of the Institution. Therefore, it is suffice to state

that in so far as the writ petition in W.P.No.21582 of 2015, the relief prayed for to quash the Circular which was issued to fill up the existing posts cannot be interfered with by this Court, especially when the Circular itself was signed by the petitioner in his capacity as Principal-in-charge.

In so far as W.P.No.21517 of 2015 is concerned, the petitioner was allowed to continue as HOD-in-charge. As far as the post of Principal is concerned, if the petitioner is eligible, he can also apply for the same along with others. The petitioner is allowed to continue as HOD-in-charge in the Civil Department till the new selection is made. Till such time, there will not be any impediment for the petitioner to continue as Principal-in-charge.

Accordingly, W.P.No.21517 of 2015 is disposed of and WP No. 21582 of 2015 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government
of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Technical Education,
Guindy, Chennai - 600 025.

+2cc's to Mr.M.R.Jothimaran, Advocate, S.R.Nos.49844 & 49845
+2cc's to Mr.K.Venkatakrisnan, Advocate, S.R.No.49746

W.P.Nos. 21517 & 21582 of 2015

UG(CO)
CA(06/10/2016)