

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 26.04.2016

Pronounced on : 03-06-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 27160 of 2015

Writ Petition No. 129 of 2016

and

M.P. Nos. 1 and 2 of 2015 in WP No. 27160 of 2015

W.M.P. Nos. 64 and 65 of 2016

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N.K. Jha ... Petitioner in both the
Writ Petitions

Versus

1. Government of India
represented by The Joint Secretary to
the Government of India
Ministry of Human Resources Development and
Department of Higher Education
New Delhi
 2. Pondicherry University
represented by the Registrar (In-charge)
Pondicherry University
Dr. B.R. Ambedkar Administrative Building
R.V. Nagar, Kallapet
Puducherry - 14
 3. Professor Anisa Basir Khan
Acting Vice-President
Pondicherry University
Dr. B.R. Ambedkar Administrative Building
R.V. Nagar, Kaliapet
Puducherry - 14
- .. Respondents in both
the Writ Petitions

WP No. 27160 of 2015:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent in connection with the order dated 17.08.2015 in reference No.Pu/Regr/2015-16/58 and quash the same and direct the respondents to appoint the petitioner as Vice-Chancellor (in-charge) to Pondicherry University till the regular Vice-chancellor is appointed in accordance with Pondicherry University Act, 1985 and the Statutes of University.

<https://hcservices.ecourts.gov.in/hcservices/>

WP No. 129 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari

calling for the records on the file of the first respondent in connection with the order dated 21.08.2015 in his proceedings No.39-2/2015-Desk(U) and quash the same.

For Petitioners :Mr. R. Singaravelan, Senior Advocate
for Ms. M. Srividhya
in both the Writ Petitions

For Respondents :Mr. V.T. Balaji
Central Government Standing Counsel
for R1 in WP No. 29160 of 2015

Mr. K.S. Jeyaganesan
Central Government Standing Counsel
for R1 in WP No. 129 of 2016

Mr. Vijay Narayanan, Senior Counsel
for Mr. Stalin Abhimanyu for R2 in WP No. 129/2016

Mr. Stalin Abhimanyu
for R3 in WP No. 129 of 2016
and for RR2 and 3 in WP No. 27160 of 2015

COMMON ORDER

The issue arise for consideration of this Court in these two writ petitions is one and the same. The learned counsel on either side have advanced common arguments in both the writ petitions. Therefore, both the writ petitions are taken up for consideration together and are disposed of by this common order.

2. The facts which are germane and necessary for disposal of these writ petitions are as follows:-

(i) The petitioner was appointed as Associate Professor in the Department of International Studies (earlier it was designated as Reader) on 28.12.1993 in the Pondicherry University. Subsequently, on 28.12.2001, he was promoted as Professor and then to the post of Dean of the School of Social Sciences and International Studies for a period of 3 years or till attainment of superannuation, whichever is earlier. On completion of three years, the petitioner was asked to continue as the Dean of the above department until further orders and accordingly, he is continuing as Dean of the above department as on date. The petitioner states that he is the Senior Most Dean of the University and therefore, as per Section 1 (A) (7) the schedule notified under Section 26 (1) of the Pondicherry University Act, 1985 and the Statutes of the University, he is entitled to perform the duties of the Vice-chancellor in case the post of regular Vice-chancellor becomes vacant for any reason.

(ii) The grievance of the petitioner is that when the post of Vice-Chancellor of the Pondicherry University fell vacant, he was not considered for such post. According to the

petitioner, the incumbent Vice-Chancellor Dr. K. Chandra Krishnamoorthy was asked to go on leave and she was kept under compulsory wait. While so, the second respondent, instead of appointing the petitioner to the post of Vice-Chancellor passed the order dated 17.08.2015 requesting the third respondent to discharge the duties of the Vice-Chancellor for the period from 14.08.2015 to 23.08.2015 inasmuch as he is the senior most Dean of the University. Challenging the order dated 17.08.2015, the petitioner has filed WP No. 27160 of 2015.

(iii) On the date on which third respondent has assumed charge as Vice-chancellor (in-charge) the petitioner submitted a representation to the second respondent to take note of his seniority and to appoint him as Vice-chancellor (in-charge). However, the second respondent has passed the order dated 17.08.2015 appointing the third respondent as the Vice-Chancellor (in-charge) which is challenged in WP No. 27160 of 2015 as mentioned above. Thereafter, on 19.08.2015, the petitioner submitted a representation to the third respondent who was appointed as the Vice-chancellor (in-charge) to forward all the material facts to the first respondent so as to enable the first respondent to take appropriate immediate action to appoint him as Vice-chancellor (in-charge) inasmuch as he is the senior most Dean of the University. In spite of such representation, the first respondent passed an order dated 21.08.2015 permitting the third respondent to hold the post of Vice-Chancellor until further orders. Challenging the order dated 21.08.2015 of the first respondent, petitioner has filed WP No. 129 of 2016.

3. Mr. R. Singaravelan, learned Senior Counsel for the petitioner would submit that as per the schedule appended to Section 26 (1) of the Pondicherry University Act, 1985, Statute 1 (A) (7) of The Statutes of the University, if the office of the Vice Chancellor becomes vacant due to death, resignation or otherwise or he is unable to perform the duties owing to absence, illness or any other cause, the senior most Director or the Senior Most Dean, in case no Director is on roll, shall perform the duties of the Vice-chancellor until a new Vice-Chancellor assumes office or until the existing Vice-chancellor attends to the duties of his office, as the case may be. According to the learned Senior counsel for the petitioner, the petitioner is the senior Most Dean and therefore, as per Statute 1 (A) (7), he is entitled to be appointed as Vice-Chancellor. The learned Senior counsel for the petitioner brought to the notice of this Court that the petitioner was appointed as Reader on 28.12.1993 and on 28.12.2001, he was promoted as Professor in Department of Politics and International Studies of Pondicherry University. On 20.12.2011, the petitioner was appointed as Dean, School of Social Sciences and International Studies with effect from 30.12.2011 for a period of three years, whereas, the third respondent was appointed as Dean only on 04.10.2012. Therefore, as per the Statutes, the petitioner, being the

Senior Most Dean is entitled to be appointed as Vice-Chancellor. However, for the reasons best known, the respondents 1 and 2 have appointed the third respondent as Vice-Chancellor and therefore he prayed for allowing this writ petition as prayed for.

4. The learned standing counsel appearing for the first respondent in WP No. 129 of 2016, relying on the counter affidavit of the first respondent, would contend that the Registrar of the Pondicherry University examined the issue relating to seniority of the petitioner and the third respondent and also sought the advise of the Law Officer of the University for his opinion. Thereafter, as per the decision taken by the Executive Council with reference to the seniority of the faculties, it was decided to appoint the third respondent, being the Senior Most Dean of the University, to hold the post of Vice-Chancellor (in-charge). Such a decision taken was in accordance with Statute 1 (A) (7) of The Statute of the University. Further, the matter was examined by the first respondent. The first respondent also concluded that the order appointing the third respondent as Vice-Chancellor (in-charge) of the Pondicherry University as proper and correct one. The petitioner therefore cannot claim himself to be the Senior Most Dean of the University and such claim made by him is untenable. It is further stated that as regards fixation of seniority of the employees, it is to be decided by the University by applying the Rules, Regulations and Statutes in force. The conclusion arrived at by the University with regard to the seniority was also taken note of by the Ministry and it was in conformity with the Statute. The learned Standing counsel for the first respondent therefore prayed for dismissal of the writ petition.

5. Mr. Vijay Narayanan, learned Senior Counsel appearing for the second respondent in WP No. 129 of 2016, relying on the counter affidavit of the second respondent, would contend that as per the provisions of the Pondicherry University Act, the Vice Chancellor is the Executive Head of the University appointed by the President of India by following the procedure prescribed in the enactment. In the present case, Dr. Chandra Krishnamurthy was holding the post of Vice Chancellor of the University as on 01.02.2013. Subsequently, on the basis of the complaint received against her, she proceeded on leave for 10 days on 13.08.2015 inasmuch as there were wide protest for her continuance as Vice-Chancellor. In her absence, the third respondent, being the Senior Most regular Dean was appointed as Vice-Chancellor in-charge for discharge of the duties of the Vice-Chancellor and such appointment is as per Statute 1 (1A) (7) of The University. Thereafter, the third respondent also took charge as Vice-Chancellor (in-charge) on 17.08.2015. In the meantime, Dr. Chandra Krishnamurthy intended to join duty on expiry of leave on 21.08.2015, which resulted in commotion and disturbance in the University campus. Therefore, in order to restore peace in the campus, an order dated 21.08.2015 was

issued placing Dr. Chandra Krishnamurthy on compulsory wait and the third respondent was directed to continue to hold the post of Vice-Chancellor (in-charge) until further orders. According to the learned Senior counsel for the second respondent, the order appointing the third respondent as Vice-Chancellor (in-charge) has been issued in strict compliance with the provisions of the Pondicherry University Act and The Statutes. The third respondent has been appointed as Vice-Chancellor (in-charge) after putting the incumbent Vice-Chancellor to compulsory wait.

6. As regards the claim of Seniority made by the petitioner, the learned Senior counsel for the second respondent in WP No. 129 of 2016 would contend that the third respondent was appointed as Reader on 25.09.1989, whereas, the petitioner was appointed to such post after a period of four years on 28.12.1993. Subsequently, the third respondent was promoted as Professor on 27.07.1998, but such promotion was conferred on the petitioner only on 28.12.2001 after three years. It is further stated that the position of Dean belongs to the cadre of Professor. There is no separate seniority in the post of Dean as it belong to Professor Cadre. Therefore, the reference to the senior most Dean in the Statute has to be construed as the senior most professor serving as regular Dean. Therefore, it is incorrect to state that the petitioner is entitled to perform the duties of Vice-Chancellor as per the Statute. It is further stated that as per Statute 6 (1) the regular Dean is appointed for a period of three years and in accordance with the same, the third respondent has discharged his duties as Dean in the School of Life Science. The office of the Dean is for a period of three years and the appointment commences on the date the person joins duty and ends on the date when the three year period completed. The petitioner was appointed to the Executive Council under the Dean slot from 22.11.2014 to 29.12.2014 and his period ended on 29.12.2014. Thereafter, he ceased to be a member of the Executive Council. At that time, the two senior most Deans who are members of the Executive Council are the third respondent and Dr. S. Pannirselvame whose tenure is valid till 27.02.2016. Therefore, taking into consideration the over all seniority in the post of Professor and that of Dean, the third respondent was appointed as Vice-Chancellor in-charge. In such circumstances, the learned Senior counsel for the second respondent in WP No. 129 of 2016 prayed for dismissal of the writ petitions.

7. The learned counsel appearing for the third respondent in both the writ petitions, relying on the counter affidavit of the third respondent, would contend that the third respondent is the senior most regular Dean of the University as contemplated under Statute 6 (1). When the post of Vice-chancellor became vacant, as per Statute 1 (A) (7), the third respondent was appointed in strict compliance of all the Rules and Regulations. According to the learned counsel for the third respondent, when once the third respondent was appointed

to the post of regular Dean as per the Statute 6 (1), the regular Deanship being a tenure post, there cannot be any re-appointment as per Statute 6 (2) and the petitioner could not be reappointed. The University maintains two lists of seniority of two different categories of Deanship, one regular tenured position and another ad hoc temporary or until further orders dean/dean in-charge. It is further stated that the senior most regular Deanship emerges from the list of University Professors according to their continuous service in the Pondicherry University. The petitioner not being a senior most professor among the various regular Deans when compared to the third respondent, he cannot claim seniority in the post of regular Deans appointed for a fixed tenure. It is further stated that seniority can be attached only to the cadre and grade viz., Professor and not to the position of dean. In any event, the petitioner has no locus standi to file this writ petition by erroneously claiming himself to be the Senior Most Dean and therefore, the learned counsel prayed for dismissal of the writ petitions.

8. I heard the learned counsel on either side and gone through the materials placed. On appreciation of the above factual matrix, it is clear that the first and foremost claim made by the petitioner is that he is the Senior Most Dean of the Pondicherry University and therefore, he ought to have been appointed to the post of Vice-Chancellor and the third respondent ought not to have been appointed. Before dealing with the question of seniority of the petitioner and the third respondent, it would be useful to refer to the Statutes of the Pondicherry University which governs the appointment of the Vice-chancellor. Clause 1 (A) (7) of The Statutes of the University reads as follows:-

"(7) If the office of the Vice Chancellor becomes vacant due to death, resignation or otherwise or he is unable to perform the duties owing to absence, illness or any other cause, the senior most Director or the Senior Most Dean, in case no Director is on roll, shall perform the duties of the Vice-chancellor until a new Vice-Chancellor assumes office or until the existing Vice-chancellor attends to the duties of his office, as the case may be."

9. In the present case, the office of the Vice-Chancellor of the Pondicherry University was occupied by Dr. Chandra Krishnamoorthy. Admittedly, due to several allegations made against the incumbent Vice-Chancellor, she was asked to proceed on leave. In such a situation, the post of Vice-Chancellor fell vacant. At that time, the Pondicherry University examined the Seniority of the Deans of the Pondicherry University for being appointed as Vice-Chancellor (in-charge). By applying the principle of "senior most Dean" contemplated in the Statute 1 (A) (7) referred to above, the third respondent was appointed to the post of Vice-Chancellor (in-charge).

10. As regards the seniority, the third respondent was appointed as Reader in the Pondicherry University on 25.09.1989 and the petitioner was appointed to the same post after four years on 28.12.1993. Therefore, the very appointment of the third respondent to the post of Reader in the Pondicherry University is earlier in point of time, though it is not a criteria for her appointment to the post of Vice-Chancellor (in-charge). The respondents 1 and 2 have considered the date of entry of the third respondent for the purpose of assessing her experience in the University campus to hold the post of Vice-chancellor (in-charge). Be that as it may, the next promotional post of Professor was conferred on the third respondent on 27.07.1998, to which post the petitioner was promoted on 28.12.2001. Here again, the third respondent was the senior most person in the cadre of Professor. The petitioner claims that he was appointed as Dean, School of Social Sciences with effect from 30.12.2011 but the third respondent was appointed as Dean only on 04.10.2012. Therefore, according to the petitioner, he is the senior most person who came to hold the post of Dean earlier than the third respondent and consequently he is entitled to hold the post of Vice-Chancellor. In this context, it will be useful to refer Clause 25 (1) of The Statutes relating to terms and conditions of service in the University. Clause 25 (1) reads as follows:-

"Whenever, in accordance with the Statutes, any person is to hold an office or be a member of an authority of the University by rotation according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade, and, in accordance with such other principles as the Executive Council may, from time to time, prescribe."

11. It is evident that the seniority for appointment to the post of Vice-Chancellor shall be determined on the basis of the continuous length of service put in by the incumbent Dean. In the present case, admittedly, both the petitioner and the third respondent have held the post of Dean. As far as the petitioner is concerned, he held the post of Dean from 22.11.2014 to 29.12.2014 and his period ended on 29.12.2014. Thereafter, he ceased to be a member of the Executive Council. At that point of time, the third respondent and one Dr. S. Pannirselvame were holding the post of Dean and their tenure is valid till 27.02.2016. Among the third respondent and Dr. S. Pannirselvame, the Executive Council has appointed the third respondent to the post of Vice-Chancellor (in-charge) as the Senior Most Dean by applying Clause 25 (1) referred above. It is also an admitted fact that after the tenure of the petitioner expired on 29.12.2014, he was once again appointed as Dean on 17.02.2015 after a break of 49 days. Thus, the petitioner did not hold the post of Dean continuously and at the relevant point of time, he was not holding the post of Dean at all which necessitated the respondents 1 and 2 select and

appoint the third respondent to hold the post of Vice-Chancellor (in-charge). Thus, there was a vacant post of Vice-Chancellor to the Pondicherry University by reason of the incumbent Vice-chancellor proceeding on leave in which the third respondent was rightly appointed to perform the duties and functions of the Vice-Chancellor (in-charge) as senior most Dean.

12. In this context, it is also brought to the notice of this Court that the then Vice-Chancellor Dr. Chandra Krishnamurthy has challenged the order dated 21.08.2015 asking her to compulsory wait from joining the post of Vice-Chancellor and to show cause as to why she should not be dismissed from service by filing WP No. 29351 and 29352 of 2016 before this Court and the same were dismissed on 15.12.2015. Challenging the same, she has unsuccessfully filed W.A. Nos. 18 to 21 of 2016 before the Division Bench of this Court and the writ appeals were also dismissed on 11.01.2016. A further appeal preferred by Dr. Chandra Krishnamurthy before the Honourable Supreme Court in Special Leave to Appeal No. 4853 to 4856 was also dismissed on 14.03.2016. The filing of the writ petitions and writ appeals referred to above are also taken note of by this Court to hold that there is a permanent vacancy arose in the Pondicherry University owing to the orders passed against the then Vice-Chancellor in which the third respondent was lawfully appointed.

13. The learned Senior counsel for the petitioner would contend that the second respondent has no jurisdiction to appoint the third respondent as Vice-Chancellor (in-charge) and such appointment is without authority of law. In this context, it is worthwhile to refer to Clause 25 (2) of The Statutes wherein it is clearly stated that "it is the duty of the Registrar to prepare and maintain, in respect of each class of persons to whom the provisions of the Statutes apply, a complete and up-to-date seniority list in accordance with the provisions of Clause (1)." Therefore, it is evident that the second respondent, being the Registrar of the Pondicherry University is empowered to maintain and prepare a list of seniority and by virtue of such clause, the second respondent has forwarded his recommendations to the first respondent. In the meantime, by order dated 17.08.2015 the second respondent requested the third respondent to discharge the duties of the Vice-Chancellor for the period from 14.08.2015 to 23.08.2015 and subsequently it was ratified, approved and confirmed by the first respondent in the order dated 21.08.2015. Therefore, I hold that the argument of the learned Senior counsel for the petitioner that the second respondent has no right or authority to appoint the third respondent as Vice-Chancellor (in-charge) has no force of law and it has to be rejected.

14. For all the above reasons, I do not find any reasons to interfere with the orders passed by the respondents 1 and 2 appointing the third respondent as Vice-Chancellor of the

Pondicherry University. The writ petitions are therefore dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. Government of India
represented by The Joint Secretary to
the Government of India
Ministry of Human Resources Development and
Department of Higher Education
New Delhi
2. Pondicherry University
represented by the Registrar (In-charge)
Pondicherry University
Dr. B.R. Ambedkar Administrative Building
R.V. Nagar, Kaliapet
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1 cc to Mr.K.S.Jeyaganesan, Advocate, sr.29577
1 cc to M/s.M.Vajayakumar, Advocate, sr.29417

WP No. 27160 of 2015
WP No. 129 of 2016

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