

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2016

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.Nos.19301 and 19302 of 2016
and

W.M.P.Nos.16779 to 16782 of 2016

Dr. P. Thambidurai ... Petitioner in both W.Ps.

Versus

1. The Government of Puducherry
rep.by its Chief Secretary
Chief Secretariat
No.1, Goubert Avenue (Beach Road)
Puducherry 605 001.
2. The Secretary to Government
(Education)-cum-Chairman
Perunthalaivar Kamarajar Institute
of Engineering and Technology
(PKIET), Government of Puducherry
Chief Secretariat, No.1, Goubert
Avenue (Beach Road)
Puducherry 605 001.
3. The Director of Higher and Technical
Education (DHTE), Government of
Puducherry, Lawspet
Puducherry 605 008. ... Respondents in both W.Ps.

Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to (i) the impugned order bearing Ref.No.008554/CS (H&T.Edn)/E3/2016 dated 30.05.2016 passed by the second respondent; to quash the same and consequently to direct the respondents to permit the petitioner to hold the post of Principal-in-charge of PKIET and (ii) the impugned Notification bearing Ref.No.035887/CS (H&T.Edn)/E3/2015 dated 23.12.2015 issued by the second respondent insofar as the post of Principal of PKIET is concerned to quash the same and consequently to direct the respondents to approve the resolution dated 05.10.2010 passed by the Governing Body regularising the petitioner in the post of Principal of the PKIET respectively.

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

For Respondents : Mr.R.Syed Mustafa
in both W.Ps. Special Government Pleader
(Puducherry)

COMMON ORDER

The prayer in these writ petitions is for the issuance of a writ of certiorarified mandamus to call for the records relating to (i) the impugned order bearing Ref.No.008554/CS (H&T.Edn)/E3/2016 dated 30.05.2016 passed by the second respondent; to quash the same and consequently to direct the respondents to permit the petitioner to hold the post of Principal-in-charge of PKIET and (ii) the impugned Notification bearing Ref.No.035887/CS(H&T.Edn)/E3/2015 dated 23.12.2015 issued by the second respondent insofar as the post of Principal of PKIET is concerned to quash the same and consequently to direct the respondents to approve the resolution dated 05.10.2010 passed by the Governing Body regularising the petitioner in the post of Principal of the PKIET respectively.

2. The case of the petitioner in brief is as follows:

(i) The petitioner, who got Doctorate in Computer Science and Engineering from Alagappa University, Karaikudi joined Bharathiyar University, Coimbatore as a Reader in Computer Science. Subsequently, he was promoted as a Professor and thereafter as Head of the Department. While so, the petitioner applied to the post of Professor, Computer Science and Engineering to the Pondicherry Engineering College and he got selected for the said post, which is affiliated to the Pondicherry University. He was also given pay protection in the said post. When that being the position, the first respondent issued G.O.Ms.No.67 dated 17.07.2007 by which a separate Society was constituted namely Engineering College (Karaikal) Society for establishing an Engineering College called PKIET and that the petitioner was posted as an Officer on Special Duty to look after the affairs of the said College. Thereafter the second respondent asked the petitioner to officiate the said College in the capacity of Principal-in-Charge from 19.11.2007 to 17.09.2009. According to the petitioner again from 24.03.2010 to till date he is officiating in the said College as Principal-in-Charge.

(ii) It is the further contention of the petitioner that on 05.10.2010 the Governing Body of the Engineering College (Karaikal) Society passed a resolution to regularize the services of the petitioner as Principal-in-charge. However, without doing so, the second respondent has issued the impugned Notification dated 23.12.2015 calling for application for recruitment to the post of Principal, Pondicherry Engineering College, Puducherry and Principal, Perunthalaivar Kamarajar Institute of Engineering and Technology, Karaikal [PKIET]. Aggrieved by the said Notification the petitioner has filed the first writ petition in WP No. 19301 of 2016.

(iii) While the petitioner was anticipating for regularisation of his service as Principal, the second respondent has passed an order dated 30.05.2016 repatriating the petitioner back to his parent body and posting him as Professor, Department of Computer Science and Engineering, Puducherry Engineering College, Puducherry. Challenging the order dated 30.05.2016, the petitioner has filed the second writ petition No. 19302 of 2016.

3. Heard Mr.N.G.R.Prasad, learned counsel appearing for the petitioner and Mr. Syed Mustafa, learned Special Government Pleader for respondents.

4. The learned counsel for the petitioner would contend that the petitioner herein was originally appointed as a Professor in Computer Science and Engineering in the Pondicherry Engineering College and subsequently, when the Government intended to start an Engineering College in Karaikal, he was posted as Principal-in-charge of the said College by virtue of an order dated 19.11.2007 and 24.03.2010, however, with a rider that the petitioner can hold the post till regular Principal is posted. According to the learned counsel for the petitioner, since the petitioner is a Senior Professor and he has got more than 25 years of unblemished service, he was selected for the said post. The Governing Body also vide its resolution dated 05.10.2010 has categorically approved the regularisation of the service of the petitioner as Principal in-charge of the said PKIET College. According to the petitioner, the said minutes was also sent for approval to the Government as early as in the year 2010; however, till date no action was taken on the same either approving the said minutes or rejecting the same and it was kept pending. When such being the case, all of a sudden the second respondent has issued the impugned Notification dated 23.12.2015 calling for applications from eligible candidates for filling up the post of Principal in the said PKIET College, which is arbitrary in nature. He would also submit that since

the petitioner has crossed the age of 50 years, he is ineligible to apply for the said post. Further, when the petitioner was anticipating regularisation of his service, by the order dated 30.05.2016, the petitioner was repatriated to the parent post as Professor, Department of Computer Science and Engineering, Pondicherry Engineering, which is arbitrary and uncalled for thereby the petitioner's right to continue in the officiating post has been unceremoniously denied. Accordingly, he would pray for quashing the said Notification and for approving the minutes of the Governing Body to regularize the services of the petitioner in the post of Principal, PKIET College.

5. When this Court put a question to the learned counsel for the petitioner that when the Notification calling for applications was issued as early as on 23.12.2015 and the last date for receipt of the application being 22.01.2016 at 5.00 p.m., how this writ petition at this distant point of time is maintainable, the learned counsel for the petitioner himself would submit that the petitioner is ineligible to apply for the said post as on the date of issuance of the Notification inasmuch as he crossed the age of 50 years. When such is the position and when the Government has decided to resort to fill up the post by calling for applications from eligible candidates by fixing the cut off age as 50 years and at present the petitioner is aged 58 years, the contention raised by the learned counsel for the petitioner that the very impugned Notification itself is arbitrary in nature and the same has to be quashed, cannot be accepted. Further on a perusal of the order issued by the first respondent dated 24.03.2010 appointing the petitioner as Principal-in charge of the said College, it is seen that it was made very clear that the petitioner is transferred and posted as Principal-in-Charge of the Perunthalaivar Kamarajar Institute of Engineering and Technology, Karaikal with immediate effect till regular Principal is posted.

6. It is an admitted fact that the respondents have commenced the process of filling up the post of Principal for Pondicherry Engineering College, Puducherry and for Perunthalaivar Kamarajar Institute of Engineering and Technology, Karaikal by issuing a notification dated 23.12.2015. Subsequently, to facilitate the selected candidate to hold the post, the petitioner was repatriated to his parent post. As mentioned above, it was clearly stated in the order dated 24.03.2010 appointing the petitioner as Principal-in charge of the College that he can hold the post until a regular Principal is posted. The petitioner, having aware of the position that his appointment as an Officiating Principal is only till the regular Principal is posted, has come forward with this writ petition. It is also seen from the order dated 20.05.2016 of the second respondent that a staff selection committee is to be constituted comprising two experts in the field as members of

the committee for the purpose of conducting the interview to fill up the post of Principal in both the colleges as the second respondent has received applications from the candidates on the basis of the notification dated 23.12.2015. Therefore, at this stage, at the instance of the petitioner, the relief cannot be granted in this writ petition. Moreover, the subsequent development has also to be taken note of by this Court whereby the petitioner was repatriated to his parent department inasmuch as the petitioner was appointed as Principal-in charge of the College until a regular Principal is posted.

7. In such view of the matter and also in view of the fact that the Resolution of the Governing Body requesting the Government to approve the petitioner's post as Principal in-Charge of the PKIET College was also not considered till date, the writ petitions are not maintainable and the same have to be dismissed in limine at the admission stage itself. Accordingly, both these writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Chief Secretary
Government of Puducherry
Chief Secretariat
No.1, Goubert Avenue (Beach Road)
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2. The Secretary to Government
(Education)-cum-Chairman
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3. The Director of Higher and Technical
Education (DHTE), Government of
Puducherry, Lawspet Puducherry 605 008.

+ 2 ccs to M/s.Row and Reddy Advocate SR 30747

+ 2 ccs to Govt.Pleader, Puducherry SR 31139 & 31140

ksj(co)
prk10/6

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