

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.14818 of 2010

Madurai Institute of Social Science,
Rep. by its Secretary,
Alagar Koil Road,
Madurai-625 001. ... Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Higher Education Department,
Fort St.George,
Chennai-600 009.
- 2.Director of Collegiate Education,
Chennai-600 006.
- 3.The Joint Director of Collegiate Education,
Madurai Region,
Madurai - 625 020. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to accord approval to the decision taken in the Minutes of the Meeting of the College Committee of the Petitioner Institute held on 15.09.2005 for filling up the post of Assistant by way of promotion.

For Petitioner : Mr.V.Kalyana Raman
for M/s.Aiyar and Dolia

For Respondent : Mr.V.Jaya Prakash Narayanan
Special Government Pleader for R1 to R3

O R D E R

The prayer in the writ petition is for a Writ of Mandamus directing the respondents to accord approval to the decision taken in the Minutes of the Meeting of the College Committee of the petitioner institute held on 15.09.2005 for filling up the post of Assistant by way of promotion.

2. The issue raised in this writ petition appears to be an innocuous one, but the case is having chequered history, as one N.Narayanasamy, who was working as Assistant in the petitioner institute, was facing disciplinary proceedings and ultimately on 17.08.1993, he was removed from service. When approval from the second respondent was sought for the said removal, the same was rejected by proceedings dated 15.02.1994 and the petitioner institute was directed to reinstate the said N.Narayanasamy from 20.08.1993. The said order dated 15.02.1994 was challenged by the petitioner institute in W.P.No.2993 of 1994 and the said N.Narayanasamy also filed W.P.No.13228 of 1994 seeking direction for reinstatement.

3. This Court, by order dated 30.08.2003, while allowing the writ petition filed by the petitioner institute, dismissed the writ petition filed by the said N.Narayanasamy. Thereafter, approval for the removal of N.Narayanasamy was sought for from the second respondent. However, the third respondent directed the petitioner institute to reconstitute a Committee and to hold a fresh enquiry on the issue of N.Narayanasamy. Thereafter, appeal and revisions were filed against the said order of the third respondent. The appeal as well as the revision were also rejected and ultimately, on 21.01.1999, the second respondent directed the petitioner institute to reinstate the said N.Narayanasamy. As against that appeal was filed and the Government dismissed the appeal. When the appeal was pending, the petitioner institute filed W.P.No.1972 of 2001 seeking for Mandamus directing the Government to dispose of the appeal and by order dated 02.02.2001, this Court has passed an order directing the Government to dispose of the appeal within a period of three months. Pursuant to the orders passed by this Court, the Government disposed of the appeal in G.O.(2D) No.112, Higher Education (D1) Department dated 03.07.2001, ordering reinstatement of the said N.Narayanasamy into the services of the petitioner institute. W.P.No.14368 of 2001 was filed by the petitioner challenging the Government Order dated

03.07.2001 insofar as it directed to reinstate the said Narayanasamy into the petitioner institute.

4. On 15.09.2005, General Body Meeting of the petitioner institute was conducted, where it was decided to promote one R.Santhanam to the post of Assistant which was remaining vacant consequent upon the dismissal of the said N.Narayanasamy from the services of the petitioner institute. On 16.09.2005, the said R.Santhanam was promoted from Junior Assistant to Assistant subject to the outcome of W.P.No.14368 of 2001. Thereafter, on 16.09.2005, the petitioner institute had requested the second respondent to accord approval for promotion given to the said R.Santhanam. But the third respondent by proceedings dated 27.03.2006 refused to give approval for promotion of said R.Santhanam for the reason that W.P.No.14368 of 2001 filed by the petitioner was pending. Even thereafter, when request was made to give promotion to fill up the vacancy, the same was not given and by proceedings dated 30.05.2006, the second respondent had expressed his inability to grant permission to fill up the post as the same arose on account of dismissal of N.Narayanasamy and the said issue was subjudice before this Court.

5. Thereafter, the Government created a supernumerary post at Yadava College, Madurai for the purpose of accommodating N.Narayanasamy and he was not reinstated at the petitioner institute. While creating the said post by G.O.Ms.No.368, Higher Education (D1) Department dated 08.11.2006, the Government has passed the following order with conditions:

"3. The Government after careful examination have decided to accept the recommendation of the Director of Collegiate Education and they accordingly sanctioned one supernumerary post of Assistant in favour of Thiru.M.Nayanasamy, Selection Grade Assistant (under suspension) so as to accommodate him in Yadava College Madurai which has given its willingness to take him with an additional supernumerary post of Assistant purely on "temporary basis" subject to the outcome of the W.P.No.14368/2001 as a "special case" and subject to the following conditions:

(a) The post held by the individual in the Madurai Institute of Social Sciences, Madurai is kept vacant from the date of suspension of Thiru Narayanasamy

shall not be filled up till the finalisation of the case pending in the High Court Madras.

(b) If the case is in favour of the Government, depending on the orders either the post in the Madurai Institute of Social Sciences may be abolished on Thiru M.Narayanasamy, Selection Grade, Assistant (under suspension) may be retransferred to Madurai Institute of Social Sciences.

(c) In case the Management of Madurai Institute of Social Sciences wins the case in lieu of the Supernumerary post to be created, one vacant post in any of the Government/Government Aided College may be abolished subsequently."

In the said created post, the said N.Narayanasamy joined in service. Once again, the petitioner institute had requested the second respondent to reconsider its decision and accord approval for filling up the post of Assistant which was vacated by the said N.Narayanasamy, as he has already joined Yadava College in the supernumerary post created for him. Thereafter lot of correspondences were there between the petitioner and the respondents.

6. On 10.09.2007, W.P.No.14368 of 2001 filed by the petitioner Institute was dismissed by this Court and so also W.P.No.15284 of 2001 filed by the said N.Narayanasamy. As against the said order of dismissal of W.P.No.14368 of 2001, the petitioner institute preferred an appeal in W.A.No.16 of 2008. The said N.Narayanasamy, as against the dismissal of W.P.No.15284 of 2001, preferred W.A.No.105 of 2009. On 07.08.2009, while disposing of the said appeals, a Division Bench of this Court directed the second respondent to consider the recommendation of the petitioner College Committee dated 17.08.1993 for imposing the punishment of removal from service of the said N.Narayanasamy, within a time frame.

7. On 07.09.2009, the petitioner institute had sent a communication to the second respondent requesting to accord approval for the promotion of the said R.Santhanam in the post of Assistant. However, the second respondent by proceedings dated 17.02.2010 had refused to accord approval on the recommendations of the College Committee by holding that the

proposed punishment is grave and harsh and that the same do not commensurate with the charges framed against the said N.Narayanasamy. The said order issued by the second respondent dated 17.02.2010 was again put to challenge by the petitioner institute in W.P.No.8625 of 2010. During the pendency of W.P.No.8625/2010 filed by the petitioner challenging the order of the second respondent dated 17.02.2010, the petitioner has filed the present writ petition with the aforesaid prayer.

8. Heard both sides.

9. The learned counsel appearing for the petitioner would contend that the only reason cited by the second respondent for not giving approval to the promotion given to the said R.Santhanam in the post of Assistant was that the writ petition in W.P.No.8625 of 2010 challenging the proceedings of the second respondent dated 17.02.2010 was pending. The said W.P.No.8625 of 2010 was finally heard by this Court and order was passed on 03.09.2014, wherein the learned Judge has passed the following order:

"... In order to maintain the better and effective administration of the Institution, the petitioner Institute is the appropriate and competent to decide the issues and having reached a categorical decision in the matter of 3rd respondent, has taken the decision to remove him and such decision, in my considered view, ought to have accepted by the second respondent and ought to have accorded the approval of the same. Therefore, the refusal of the approval of the punishment proposed by the petitioner Institution by the second respondent, cannot be sustained and it is liable to be set aside.

The learned counsel for 3rd respondent would submit that if this Court quashes the impugned order, 3rd respondent may not be in a position to get his retiral benefits which were already withheld due to the pendency of the writ petition. It is admitted fact that the 3rd respondent had already been relieved from service on 31.5.2013 since he attained the age of superannuation. Therefore, it is suffice to direct petitioner Institute to settle all the amounts that are payable to him consequent to the setting aside the impugned order.

For the reasons mentioned above, this Writ Petition is allowed, setting aside the impugned order, dated 17.2.2010. The petitioner Institute is directed to settle all the amounts that are payable to him consequent to the setting aside the impugned order.

The learned counsel appearing for the petitioner Institute would submit that because of pendency of the writ petition, the Government is not allowing the petitioner Institute to fill up the post. Now the Writ Petition is disposed of, there is no impediment for filling up of the post. No costs."

In view of the said order passed by this Court as stated above in W.P.No.8625 of 2010, there is no impediment for the respondents to approve the promotion given to R.Santhanam and accordingly, the consequential pay benefits payable to the said R.Santhanam can also be sanctioned.

10. Per contra, the learned Special Government Pleader appearing for the respondents would contend that no doubt W.P.No.8625 of 2010 was decided on 03.09.2014. Even though this Court was placed to set aside the order impugned therein i.e., the order passed by the second respondent dated 17.02.2010, has further stated that the said N.Narayanasamy after having worked for some time at Yadava College, Madurai in the supernumerary post, retired from service on attaining superannuation on 31.05.2013 and therefore, the petitioner institute was directed to pay all the service dues to the said N.Narayanasamy. Therefore, the said N.Narayanasamy has completed his service till his superannuation and the same have been taken note of by this Court and further the terminal benefits payable to N.Narayanasamy was directed to be paid and even the petitioner institute was directed to settle all the amounts that are payable to him consequent to the setting aside of the order impugned in that writ petition, was passed. In this context, the learned Special Government Pleader would submit that while creating supernumerary post which was created on the condition that it is attached to the person concerned and once the said person N.Narayanasamy retires, the post will get automatically abolished. However, till the said N.Narayanasamy worked in the said post i.e., 31.05.2013, he was fully paid with the salary for the post of Assistant. Since supernumerary post of Assistant was created for the said N.Narayanasamy and his removal from service was not approved,

he would be entitled to get salary which he has been fully paid. Assuming that the order of the second respondent dated 17.02.2010 is set aside by this Court in W.P.No.8625 of 2010 dated 03.09.2014, that did not make the said N.Narayanasamy dis-entitled to claim his benefits and infact the petitioner institute settled all the amounts due to the said N.Narayanasamy. When that being so, the petitioner if at all seek approval in the post of Assistant in the petitioner institute it must be only from the date of retirement of the said N.Narayanasamy and not prior to that. In that view of the matter, the learned Special Government Pleader would contend that the prayer sought for in the writ petition cannot be granted and therefore, this writ petition is liable to be dismissed.

11. These rival submissions of the respective learned counsel have been considered.

12. No doubt there were lot of issues and litigations between the petitioner institute and the respondents insofar as removal of service of the said N.Narayanasamy and subsequently resolving to appoint the said R.Santhanam in the post of Assistant which was permanently lying at the petitioner institution for which the salary sanctioned is received throughout from the Government. Since the removal of the said N.Narayanasamy was not approved by the Government and even though litigations were there, ultimately, the said N.Narayanasamy during the pendency of the litigations had put in service as Assistant in a supernumerary post created at Yadava College, Madurai where he safely worked till his superannuation till 31.05.2013. Even in the order dated 03.09.2014 passed by this Court in W.P.No.8625 of 2010, challenging the order of the second respondent dated 17.02.2010 refusing to accord approval on the recommendation of the petitioner College Committee, the punishment of removal from service as inflicted on the said N.Narayanasamy was taken note of by this Court. In the said order itself, after having taken note of the fact that N.Narayanasamy worked till 31.05.2013 in the supernumerary post, directed the petitioner institute to settle all the dues.

13. As rightly pointed out by the learned counsel appearing for the respondents, the service of the said N.Narayanasamy even in the supernumerary post till 31.05.2013 was not disturbed and there is no order to that effect and

either the creation of supernumerary post or appointment of the said N.Narayanasamy in the said post or his continuance was not put under challenge. Therefore, he was allowed to work till his superannuation and therefore, the Government had paid salary to the said N.Narayanasamy in the cadre of Assistant. During this period, though the said R.Santhanam was promoted as Assistant, there was no communication to sanction salary equivalent to the Assistant post to the petitioner institute. However, after 31.05.2013, i.e., after retirement of the said Narayanasamy, there is no post of Assistant occupied by anyone except the said R.Santhanam in the petitioner institute and therefore, there is a justification on the part of the petitioner institute to pay salary to R.Santhanam in the cadre of Assistant atleast from 01.06.2013 till his superannuation, which according to the learned counsel appearing for the petitioner was till some time in 2014. In that view of the matter, this Writ Petition is disposed of with the following directions:

The respondents shall accept the appointment made by the petitioner institute in respect of one R.Santhanam in the post of Assistant by way of promotion at least from 01.06.2013. Since from 01.06.2013, the said individual worked in the post of Assistant till superannuation, the individual, namely R.Santhanam shall be entitled to get salary for the post of Assistant and therefore, the petitioner institute can claim i.e, difference of salary for the post of Assistant and Junior Assistant from 01.06.2003 for the said R.Santhanam promoted as Assistant, from the respondents and if any such claim is made by the petitioner institute, the same shall be taken into consideration and the difference of salary shall be disbursed by the respondents within a period of eight weeks from the date of receipt of the request from the petitioner institute. Since the said R.Santhanam also retired from service, it is open to the petitioner institute to fill up the post of Assistant with any qualified candidates in accordance with law and from that time, the petitioner institute can claim salary for new incumbent to be appointed, from the respondents.

14. With these observations, this Writ Petition is disposed of. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
The State of Tamil Nadu,
Higher Education Department,
Fort St.George, Chennai-600 009.

2.Director of Collegiate Education,
Chennai-600 006.

3.The Joint Director of Collegiate Education,
Madurai Region, Madurai - 625 020.

+1cc to the Government Pleader SR.No.65862

+1cc to M/s.Aiyer S.Dolia, Advocate SR.No.65060

SDR 03.01.2017

W.P.No.14818 of 2010

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