

In the High Court of Judicature at Madras

(Orders reserved on 17.10.2016)

Dated : 19.10.2016

Coram

The Honourable Mr.Justice R.SUBBIAH

W.P.No.33573 of 2016

and

W.M.P.Nos.28974 & 30519 of 2016

Dr.C.Maharajan

.. Petitioner

..vs..

- 1.The Principal Secretary to
Government of Tamil Nadu,
Department of Higher Education,
Fort St. George, Chennai-600 009.
- 2.The Commissioner of Technical Education,
Office of the directorate of
Technical Education,
Guindy, Chennai-600 025.
- 3.The Board of Trustees of P.T.Lee
Chengalvaraya Naicker Trust,
rep. by its Secretary,
2-3, EVK Sampath Salai,
Vepery, Chennai-600 007.
- 4.The Governing Council of P.T.Lee
Chengalvaraya
Naicker Polytechnic College,
rep. By its Member Secretary,
The Principal, P.T.Lee Chengalvaraya
Naciker Polytechnic College,
2-3, EVK Sampath Salai,
Vepery, Chennai-600 007.

..Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, declaring the order issued in proceedings in vide Proc.No.P.T.Lee CNT/A1/1197/16, dated 08.09.2016 on the file of the 3rd respondent as illegal, invalid, void and unconstitutional and to direct the respondents to continue the petitioner's service as Correspondent in P.T. Lee Chengalvaraya Naicker Trust situated at Vepery, Chennai-600 007, and to pay all statutory emoluments attached to the office of the Correspondent in P.T.Lee Chengalvaraya Naicker Trust, with all arrears forthwith to the petitioner.

For Petitioner : Mr.R.Natarajan

For Respondents : Mr.K.Dhananjayan, Spl. GP (for R1 & R2)

Mr.K.Rajasekaran (For R3)

Mr.M.R.Jothimanian, (For R4)

ORDER

This writ petition has been filed by the petitioner, praying to declare the impugned order issued in proceedings in vide Proc.No.P.T.Lee CNT/A1/1197/16, dated 08.09.2016 on the file of the 3rd respondent, as illegal, invalid, void and unconstitutional and consequently, to direct the respondents to continue the petitioner's service as Correspondent in P.T. Lee Chengalvaraya Naicker Trust situated at Vepery, Chennai-600 007, and to pay all statutory emoluments attached to the office of the Correspondent in P.T.Lee Chengalvaraya Naicker Trust, with all arrears, forthwith to the petitioner.

2.The brief facts of the case of the petitioner are as follows:-

2-1.The petitioner is having good academic qualification besides having rich administrative experience. His educational qualification is M.Sc., M.Phil, and Ph.D. in the discipline of Botany. He had been appointed as Principal in Poompuhar College, Melayur, Myladuthurai on 21.11.2003 and served upto 23.04.2009 therein in the said capacity. On 20.11.2014, the 3rd respondent herein had issued a Notification, in the leading English and Tamil news dailies viz., The Hindu and The Daily Thanthi, inviting applications for the post of Correspondent in P.T.Lee Chengalvaraya Naicker Polytechnic College, Vepery, Chennai. In response to the said Notification, the petitioner had applied for the post of Correspondent in the P.T.Lee Chengalvaraya Naicker Polytechnic College, Vepery, Chennai, on 28.11.2014, based on which, the the petitioner was called for the interview scheduled on 10.01.2015 and in compliance of that, the petitioner attended the said interview. The petitioner was offered with appointment to the post of Correspondent in P.T.Lee Chengalvaraya Naicker Polytechnic College, Vepery, Chennai, on 22.04.2015. Event hough the Notification issued by the 3rd respondent for filling up the post of Correspondent in the said College was on regular basis, the offer of appointment has been termed as temporary by the 3rd respondent, knowing fully well that the office of the Correspondent is of perennial in nature, which has got to be kept alive round the clock without break.

2-2.The petitioner has joined the said post of Correspondent in P.T.Lee Chengalvaraya Naicker Polytechnic College, Vepery, Chennai, on 23.04.2015. Before the expiry of the period as stated in the Appointment Letter dated 22.04.2015, the 3rd respondent has acted upon to continue and extent the petitioner's service as Correspondent, on the requisition given by the petitioner for extension, by placing the same before the Board of Trustees of the 3rd respondent-Trust.

2-3.While considering the extension period for the second spell, as per the letter submitted by the Board of Trustees on 16.08.2016, the 3rd respondent has dealt with in the Board Meeting held on 20.08.2016 in a positive manner and proceeded to take decision in the next Board Meeting scheduled to be held on 06.09.2016. In the said Board Meeting held on 06.09.2016, the Board of Trustees has affirmed the earlier decision for continuance of the period of service of the petitioner as Correspondent in the said College. When things stood thus, abruptly, without any justifiable reasons whatsoever, the 3rd respondent had called for urgent meeting on 8.9.2016 and that it was in that urgent meeting on 8.9.2016, the 3rd respondent had resorted to adopt a contrary course and proceeded to take an opposite decision, not to continue the services of the petitioner in a laconic order without furnishing any reason, by ignoring the inviolable principles of natural justice, besides completely sidestepping the Grant-in-Aid Code of the Madras Technical Education Department, which denies and debars the 3rd respondent in taking an adverse decision against the petitioner who has been holding the post of Correspondent, which is a singular post, deriving its source of origin from the Grant-in-Aid Code of the Madras Technical Education Department, wherein and whereunder the Governing Council, which has been constituted under Article 9 of the said Grant-in-Aid Code mandating the governance of the affairs relating to the P.T.Lee Chengalvaraya Naicker Polytechnic College, Vepery, Chennai, in the hands of the Correspondent on day-to-day basis, without break as evidence from Article No.9(v) thereof. According to the petitioner, the 3rd respondent without prior approval and sanction from the 4th respondent has resorted to take an adverse decision against the petitioner, for not continuing his services as Correspondent in the P.T.Lee Chengalvaraya Naicker Polytechnic College, Vepery, Chennai. Hence, challenging the impugned order, the petitioner has filed the present writ petition.

3.The learned counsel for the petitioner would contend that the 3rd respondent viz., P.T.Lee Chengalvaraya Naicker Trust is being regulated and administered by a Scheme Decree formulated by this court in C.S.No.242 of 1986, dated 1.4.1999, as amended by the Appellate Bench of this Court in O.S.A.Nos.115 & 144 of 1999 dated 12.03.2002 and in O.S.A.No.14 of 2001, dated 30.8.2002. The Board of Trustees have been appointed as per the scheme formulated by this Court in the Scheme Decree. The 3rd respondent-Trust is governed by the Board of Trustees and the Chairman of the Board of Trustees is a retired Judge of this Court. The P.T.Lee Chengalvaraya Naicker Polytechnic College at Vepery is an aided institution by the respondents 1 & 2. The respondents 1 & 2 have framed a separate code to regulate and manage the administrative affairs of both the academic and non-academic subjects, under the name and style of Grant-in-Aid Code of the Madras Technical Education Department. The statutory provisions that are adumbrated therein would govern and bind without exception over the 3rd respondent with respect to management and regulatory measures concerning P.T. Lee Chengalvaraya Naicker Polytechnic College, Vepery, Chennai,

besides the other regulations brought out by the 3rd respondent in the form of By-laws for P.T. Lee Chengalvaraya Naicker Trust, under various heads and caption would govern the subjects specified therein. The 3rd respondent is vested with administration and management of P.T. Lee Chengalvaraya Naicker Trust in general. The post of Correspondent is an identifiable and specified office in terms of the guidelines and Articles framed by the respondents 1 & 2 in Grant-in-Aide Code of the Madras Technical Education Department. In this regard, the learned counsel for the petitioner has also invited the attention of this Court to Article 4(i) of the Grant-in-Code of the Madras Technical Education Department, which defines the word 'Correspondent', and submitted that as per the definition for "Correspondent" given under Article 4(i) of the said Grant-in-Code, it means and includes the Governing Council of the Institution; therefore, the office of the Correspondent comes within the fold of the 4th respondent - Governing Council, in terms of Article 4(i).

4. The learned counsel for the petitioner has also invited the attention of this Court to Clause V of Article 9 of the said Grant-in-Aid Code, which deals about the position of office of Correspondent, stating that the office of the Correspondent is to transact the day-to-day business of the institution. Thus, by relying upon the said provision, the learned counsel for the petitioner submitted that office of the Correspondent has not been identified and shown in the P.T. Lee Chengalvaraya Naicker Trust Board, Special Service Rules, 2005. Only in Grant-in-Aid Code of the Madras Technical Education department, the office of the Correspondent is traced and identified. The said Polytechnic College is carrying with a special distinction and identity in its governance in as much as it is funded by the Government of Tamil Nadu in terms of which the 2nd respondent is a Member Secretary of the 4th respondent - Governing Council as Ex-Officio Member as evident from the text and nature of order passed by the 2nd respondent, while constituting the governing Council of the 4th respondent in terms of the proceedings dated 10.04.2015. The Chairman of the Board of Trustees had drawn a Governing Council by enlarging the strength of the composition of the Governing Council. Apart from Members constituting in the Board of Trustees of the 3rd respondent, there are other official members as being representative of different statutory bodies to be as Members in the governing council. In substance, the Governance Council for P.T. Lee Chengalvaraya Naicker Polytechnic College, Vepery, Chennai, is a distinct body which is directly answerable to the Government being the respondents 1 & 2. When such being the state of affairs, the 3rd respondent-Trust issued a Notification on 20.11.2014 for the appointment to the post of Correspondent to the said College. In response to the said Notification, the petitioner applied for the said post and the petitioner has also attended the interview on 10.01.2015; thereafter, the petitioner was given the offer of appointment to the post of Correspondent of the said College on 22.4.2015 vide Proceedings No. P.T. Lee CNT/A1/2319/2014. Even though the offer of appointment is termed as temporary, the office of the Correspondent is perennial in nature. Initially,

the appointment order was given to the petitioner for a period of one year from 22.04.2015. The 3rd respondent sent a communication on 28.05.2015 to the 2nd respondent, Commissioner of Technical Education, Guindy, Chennai, who is the Member Secretary of the Governing Council as Ex-Officio Member, seeking approval of the appointment of the petitioner as Correspondent. After expiry of one year period, the 3rd respondent issued a proceedings dated 23.06.2016 for extension to the petitioner for continuance as Correspondent of the said College, for a period of three months, based on a Resolution. But, well before the expiry of the three months, on 16.08.2016 a letter was submitted by the Board of Trustees to give further extension of three months. The 3rd respondent dealt with the same in the Board Meeting held on 20.08.2016 in a positive manner and it was placed in the next Board Meeting held on 06.09.2016, on which date the Members also confirmed the decision for continuance of the petitioner as Correspondent. In this regard, the learned counsel for the petitioner has also invited the attention of this Court to the minutes of the Board Meeting of the 3rd respondent-Trust held on 06.09.2016 and submitted that in Resolution No.1354, it was decided to consider the request of the petitioner for continuance of service as Correspondent from 11.09.2016 and a decision was also taken to extend the period for another three months from 11.09.2016. While so, all of a sudden, on 08.09.2016, the 3rd respondent has called for an urgent meeting and on 08.09.2016 the 3rd respondent adopted a contrary course and take a decision, not to allow the continuance of the petitioner as Correspondent of the said College.

5. In this regard, the learned counsel for the petitioner has also invited the attention of this Court to Clause 11 of the By-Laws and Service Rules for P.T.Lee Chengalvaraya Naicker Trust, which reads as follows_

"Minutes of the meeting:

(i) The minutes of every meeting of the Trust Board together with the names of the Trustees present shall be recorded and compiled by the secretary in an appropriate manner and approval obtained from all trustees present in the meeting and a copy furnished thereof to trustees subsequently. The minutes of Trust Board meeting shall be placed before the subsequent meeting as a first subject for confirmation."

The learned counsel for the petitioner submitted that as per Clause 11 of the By-laws, minutes of the Trust Board Meeting shall be placed before the subsequent meeting only for confirmation. Therefore, the contrary view cannot be taken, once the resolution was passed to extend the period.

6. The learned counsel for the petitioner would further submit that the impugned order dated 08.09.2016 was passed without referring to the Resolution dated 06.09.2016, in which a decision was taken to extend the tenure of the petitioner as

Correspondent for further period of three months. In this regard, the learned counsel for the petitioner has also submitted that Clause 7 of the By-laws and Service Rules of P.T.Lee Chengalvaraya Naicker Trust, an ordinary or emergent meeting of the Trust Board can be held in continuation of the adjourned meeting, if notice for the same has been duly given. But, in the instant case, after passing the resolution on 6.9.2016, suddenly within a period of one day, emergent meeting was held and contrary view was taken, without referring to the earlier decision taken on 06.09.2016. The learned counsel for the petitioner has also relied upon the judgment reported in (2016) 1 SCC 724 [State of Punjab Vs. Bandeep Singh] in support of his contention that since no reason was recorded in the impugned proceedings for not granting extension of the tenure of the petitioner as Correspondent, the impugned proceedings is illegal and void. Thus, the learned counsel for the petitioner sought for a suitable direction to the respondents.

7.This Court by order dated 23.09.2016 in W.M.P.No.28974 of 2016 in W.P.No.33573 of 2016 has granted interim stay.

8.The learned counsel for the 3rd respondent, by filing a counter along with the vacate stay petition W.M.P.No.30519 of 2016, made a detailed submissions. According to the learned counsel for the 3rd respondent, the petitioner has no locus standi to maintain the present writ petition because his appointment was only in temporary nature and he was paid only a consolidated salary of Rs.20,000/- from the funds of the Trust; therefore, he will not come under any of the Rules/Acts enacted by the State Government for the private colleges, since he does not hold any substantive post, and he is only a temporary employee, he was appointed as a Correspondent of P.T.Lee Chengalvaraya Naicker Polytechnic College, Vepery, Chennai, for a limited period only. Therefore, the petitioner cannot claim any privilege or protection which are available to the person who is holding substantive post under regular appointment. Originally, by proceedings dated 23.06.2016 the petitioner's service was extended for a period of three months only from 11.06.2016. Since the Board of Trustees felt that having a person who crossed the age of 65 years as Correspondent is not desirable, again the issue was reconsidered by the Board of Trustees and it was resolved not to extend the tenure of the petitioner. Hence, the impugned order was passed on 08.09.2016 and the petitioner's tenure came to an end on 10.09.2016. But, by suppressing the entire facts and creating an impression as if he was a permanent employee getting salary from the Government grants, the petitioner filed the present writ petition and managed to get an interim order of stay of the operation of the impugned order dated 08.09.2016 to continue in service. The learned counsel for the 3rd respondent has also relied upon the judgment delivered by a learned Single Judge of the Jharkhand High Court reported in 2003(2) JCR 610 Jhr [Deobrat Sahay Vs. Union of India and ors], in support of his contention that since the petitioner is not holding any substantive post, he has no

right to that post and as such, extension of his tenure is not a matter of right. Thus, the learned counsel for the 3rd respondent sought for dismissal of the writ petition.

9.The learned Special Government Pleader appearing for the respondents 1 & 2 as well as the learned counsel appearing for the 4th respondent have also made their submissions in line with the submissions made by the learned counsel for the 3rd respondent.

10.Keeping in the view the submissions made on either side, I have carefully gone through the entire materials available on record.

11.Though very many contentions have been raised by the learned counsel for the petitioner by referring the various provisions in the Grant-in-Code of the Madras Technical Education Department, the core question that falls for consideration in this writ petition is as to whether the petitioner has any legal right to seek for a prayer to declare the impugned proceedings of the 3rd respondent dated 08.09.2016, whereby a resolution was passed not to continue the service of the petitioner as Correspondent in the above said College, as illegal, invalid, void and unconstitutional. If this question is decided, that would suffice to dispose of this writ petition.

12.According to the learned counsel for the petitioner, though the offer of appointment to the petitioner is termed as temporary, the office of the Correspondent is perennial in nature. It is further contention of the learned counsel for the petitioner that in the Notification dated 20.11.2014 issued in the News Papers calling for the applications for the post of Correspondent in the College, it has not been mentioned that the said post is temporary in nature.

13.But, a careful perusal of the Notification dated 20.11.2014 published in the News Paper Daily Thanthi, inviting the applications for the post of Correspondent, it is seen that in the said Notification, it has been clearly stated that only on contract basis, the applications are invited for the post of Correspondent. Therefore, the submission made by the learned counsel for the petitioner that in the paper publication/Notification dated 20.11.2014, inviting the applications for the post of Correspondent, it has not been clearly mentioned as to whether the said post is temporary or not, cannot be accepted. In fact, in the appointment order dated 22.04.2015 issued to the petitioner, it has been clearly stated that the appointment is purely temporary and the petitioner's service will be terminated at any time without assigning any reason. Therefore, it is clear that even at the time of appointment, the petitioner is aware of the fact that his appointment is only temporary in nature. Having accepted such appointment, he continued his service as Correspondent for a period of one year and thereafter, he was given extension from 11.06.2016 for a period of three months by Resolution dated

23.04.2016. In between the period from 23.04.2016 to 11.06.2016, the petitioner did not act as Correspondent and he was not paid salary during that period. Further more, the materials available on record would show that the petitioner was paid salary from the funds of the Trust and not from the Government aid. Therefore, the cumulative effect of all these factual aspects found in the instant case would show that the petitioner is not holding any substantive post and his post is only temporary in nature. It is the submission of the learned counsel for the petitioner that the 3rd respondent-Trust, after having taken a decision by resolution dated 06.09.2016 to give extension to the tenure of the petitioner as Correspondent for a period of three months, the Trust ought not to have cancelled the same within a period of one day ie., on 08.09.2016 by calling for an urgent meeting, which is contrary to the By-laws and Service Rules for P.T.Lee Chengalvaraya Naicker Trust. But, I am of the opinion that though a resolution was passed on 06.09.2016 to extend the tenure of the petitioner as Correspondent for a period of three months, no order was issued to the petitioner. So long as no order was issued by the 3rd respondent extending the tenure of the petitioner, the 3rd respondent has every right to reconsider their decision and the same cannot be questioned by the petitioner, who was appointed to the post of Correspondent only on temporary basis. In this regard, a reference could be placed in the decision of a Division Bench of Jharkhand High Court reported in 2004 (1) JCR 354 Jhr [Deobrat Sahay Vs. Union of India and ors], wherein it has been held as follows—

"15. In the result, I find that the Board Level post held by the appellant was not a substantive post held by him, he has no right to that post, the extension of the tenure was not a matter of right and only because his case was being considered did not confer him any legitimate expectation of his further extension on the post because even for extension, the integrity of the holder of the Board Level post may be examined and considered. Consequently, there is no merit in this appeal, but one thing which requires some attention is that under Annexure F, the letter issued in the year 1999, even in the matter of termination, the ACC's approval was necessary which does not appear to have been complied. In such circumstances, the appellant will hold the post of G.M. which he is occupying at present and he is given liberty to file representation, which will be considered by the authorities in the light of their circulars, particularly the circular contained in Annexure F. The appeal is dismissed."

A reading of the above said judgment would show that when a person is not holding a substantive post, he cannot claim extension of his tenure as a matter of right. Even in the instant case also, the petitioner is not holding any substantive

post and he was not paid salary from the Government Aid and only a consolidated pay is paid to the petitioner from the funds of the Trust. Therefore, the petitioner has no right to ask for any extension as a matter of right. Since the petitioner is not receiving salary from the Government Aid, the submission made by the learned counsel for the petitioner by relying upon the Grant-in-Aid Code of the Madras Technical Education Department, has no significance in this matter. Therefore, this Court is of the opinion that the petitioner does not have any legal right to seek for a prayer to declare the impugned proceedings of the 3rd respondent dated 08.09.2016, as illegal & invalid, whereby, void and unconstitutional, since he is not holding any substantive post. Hence, on this ground alone this writ petition is liable to be dismissed.

14. Accordingly, the writ petition is dismissed and interim stay is vacated. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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

2. The Commissioner of Technical Education,
Office of the directorate of
Technical Education,
Guindy, Chennai-600 025.

+1cc to M/s. M.r. Jothimanian, Advocate, S.R.No.59185
+1cc to M/s. K. Rajasekaran, Advocate, S.R.No.59489
+2ccs to R. Natarajan, Advocate SR.59032

MP(CO)
EU(21/10/2016)

W.P.No.33573 of 2016
and
W.M.P.Nos.28974 & 30519 of 2016