

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.9271 of 2016
W.M.P.Nos.8238 and 8239 of 2016

Dr.S.Manimozhi

... Petitioner

vs.

1. The Government of Tamil Nadu,
Rep., by its Secretary to Government,
Higher Education Department,
Fort St. George, Chennai 600 009.
 2. The Director of Collegiate Education,
College Road, Chennai 600 006.
 3. Dr.K.Sekar,
Director of Collegiate Education
(Full Additional Charge),
O/o.Director of Collegiate Education,
College Road, Chennai-6.
- ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in G.O.(ID)No.197, Higher Education (F1) Department, dated 05.08.2015, quash the same and direct the first respondent to promote the petitioner as Director of Collegiate Education in the place of the third respondent with effect from the date of his promotion and grant her all consequential benefits.

For Petitioner : Mr.P.Rajendran,
for M/s.Premnath

For Respondents 1 & 2 : Mr.A.Kumar,
Spl. Government Pleader

For 3rd Respondent : Mr.C.Selvaraj, Sr.Counsel,
for M/s.C.S.Associates

O R D E R

Dr.S.Manimozhi, aggrieved by the impugned order, dated 05.08.2015, passed by the Secretary to Government, Higher Education Department, Chennai, 1st respondent herein, in G.O.(1D) No.197, Higher Education (F1) Department, has come to this Court, to quash the same, with a further direction to the 1st respondent to promote her as Director of Collegiate Education in the place of the third respondent, with effect from the date of his promotion and grant her all consequential benefits.

2. Dr.S.Manimozhi possessed qualifications in M.Sc., B.Ed., M.Phil., Ph.D., and was appointed as Assistant Professor in Chemistry on 06.08.1982, under Rule 10(a)(1) of General Rules for the Tamil Nadu State and Subordinate Services and posted at NKR Government College, Namakkal. After a long time, she was promoted as Grade-II Principal in 2012 and in the year 2014, she was further promoted as Grade-1 Principal and posted at Government Arts College for Women, Salem. She is due to retire from service on 31.05.2017, on attaining the age of superannuation.

3. While so, the Director of Collegiate Education, Chennai, 2nd respondent herein, vide Proceedings in Na.Ka.No.30724/J2/2012, dated 11.09.2015, sent proposals to the 1st respondent, recommending the eligible persons to be appointed to the post of Director of Collegiate Education, along with an Annexure containing the seniority list. In the said proposals, the 2nd respondent emphasized that the incumbent to the post of Director, should have a left over service of not less than one year before retirement, as per the G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990. It was also mentioned in the said proceedings that no disciplinary proceedings were pending against the persons, who were included in the Seniority list.

4. In the said seniority list, the petitioner was placed at Serial No.18, whereas the 3rd respondent was placed at Serial No.2, though he is not eligible to be promoted as Director of Collegiate Education, since his left over service before retirement, is less than one year, as required under G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990. Therefore, the petitioner, who is the next eligible person, satisfying the requirements of the said Government Order, is entitled to be appointed to the post of Director of Collegiate Education.

5. On an earlier occasion, one Dr.M.Devadoss was promoted as Director of Collegiate Education, by proceedings of the 1st respondent in G.O.(Rt) No.45, Higher Education (F1) Department, dated 30.04.2014. When the said Dr.Devadoss was holding the said

post, the 3rd respondent herein was posted as Director (FAC) in the 2nd respondent's office, by proceedings of the 1st respondent, in G.O.(1D)No.197, Higher Education (F1) Department, dated 05.08.2015. Being aggrieved by the same, the said Dr.M.Devadoss filed W.P.No.25310 of 2015 and this Court in M.P.No.2 of 2015, dated 14.08.2015, granted an order of interim stay of operation of the order passed by the 1st respondent. Against which, the 3rd respondent has filed a Vacate Stay Petition and also W.A.No.1267 of 2015 and both are pending. However, stay was not vacated. In the mean while, Dr.M.Devadoss, has been continued in the post of Director of Collegiate Education, till his retirement.

6. However, the petitioner did not come forward to challenge the order of promotion issued to the 3rd respondent, since Dr.M.Devadoss was the eligible person at that time and he challenged the order issued to the third respondent. After the retirement of Dr.M.Devadoss, the petitioner should have been promoted as Director of Collegiate Education, as per G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990.

7. Mr.P.Rajendran, learned counsel appearing for the petitioner submitted that when G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990, makes it clear that a person, having more than one year of minimum period of service before retirement, should be appointed, the appointment of the 3rd respondent, having less than one year of minimum period of service before retirement, to the post of Director of Collegiate Education, is running contrary to the abovesaid Government Order and therefore, the same is liable to be set aside.

8. Opposing the above prayer, a Vacate Stay Petition has been filed by the 3rd respondent. Reiterating the same, Mr.C.Selvaraj, learned Senior Counsel appearing for the 3rd respondent would submit that the post of Director of Collegiate Education became vacant, only on 01.05.2014 and therefore, the Government, being the appointing authority, called for the list of candidates, working as Joint Director or persons, holding equivalent cadre, according to seniority, for selecting the suitable person, who must be free from any disciplinary proceedings. Accordingly, the list was forwarded to the Government by the Directorate. In the said list, the Government have called for some clarification about the persons included in the list. Pending finalization of the selection of the Director of Collegiate Education, by way of an interim measure, senior most person was put in full additional charge and accordingly, Dr.M.Devadoss was put in full additional charge, vide G.O.(Rt.)

No.45, Higher Education Department, dated 30.04.2014. Subsequently, the Government have modified the above order and passed a revised order in G.O.(1D)No.197, Higher Education Department, dated 05.08.2015, relieving Dr.M.Devadoss from the said post and asking the 3rd respondent to be in full additional charge of Director of Collegiate Education, as Dr.M.Devadoss was due to retire on 30.09.2015. However, challenging G.O.(1D) No.197, Higher Education Department, dated 05.08.2015, the said Dr.M.Devadoss filed W.P.No.25310 of 2015 and this Court has granted an interim stay in M.P.No.2 of 2015, dated 14.08.2015. Since the 3rd respondent was also impleaded as one of the respondents, a detailed counter affidavit has been filed in the said Writ Petition and also a Vacate Stay Petition to vacate the interim order of stay. Since the interim order itself was restricted upto 28.09.2015, W.A.No.1267 of 2015 has been filed and the matter was posted for final hearing on 15.09.2015. Again, for the convenience of the parties, the matter was adjourned to 23.09.2015. In the mean while, the said Dr.M.Devadoss, retired from service. Therefore, a Hon'ble Division Bench of this Court did not want to interfere with the said position, at that stage. Since there was no further interim order and the said Dr.M.Devadoss reached the age of superannuation on 30.09.2015, as per the order issued by the Government in G.O.(1D) No.197, Higher Education Department, dated 05.08.2015, the 3rd respondent was asked to be in full additional charge and therefore, the contentions raised by the petitioner that the 3rd respondent is ineligible to hold the post of Director of Collegiate Education, is unsustainable and untenable. Inasmuch as G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990, specifically mentions that a person, who is to be promoted or appointed as Head of Department, must have one year left over service and since in the present case, there is no regular promotion or appointment and it is only full additional charge given to the 3rd respondent, senior most person, which is also admitted by the petitioner, there cannot be any grievance that the petitioner should be promoted to the post of Director of Collegiate Education. सत्यमेव जयते

9. Learned Senior Counsel appearing for the 3rd respondent would submit that in addition to the full additional charge as Director of Collegiate Education, the 3rd respondent has been holding three more additional charges, viz., (1) Member in the Syndicate Committee, constituted for the purpose of performing the duties of Vice-Chancellor of the University of Madras, (2) Member Secretary, Tamil Nadu State Council for Higher Education (TANSCH), and (3) Member in the Panel of Selection Committee, for the selection of candidates, for appointment to the post of Assistant Professor for the Constituent Colleges of Anna University, Chennai. Therefore, it is submitted that when the 3rd respondent has been found suitable to have full additional charge,

as Director of Collegiate Education, since he has also performed well, while holding the other posts mentioned above, the contention of the petitioner that she is the only eligible person to be appointed, is untenable.

10. During the course of selection of candidates, seniority is also under consideration and that the petitioner cannot attribute any violation of G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990, calling for interference with the impugned order passed by the 1st respondent. Supporting the above stand, a detailed counter affidavit has been filed by respondents 1 and 2.

11. Mr.A.Kumar, learned Special Government Pleader appearing for respondents 1 and 2 would submit that the 3rd respondent, Joint Director of Collegiate Education (Finance), Office of the Directorate of Collegiate Education, Chennai-6, has been called upon, to hold full additional charge of the post of Director of Collegiate Education, until further orders. Till date, when the 1st respondent has not passed any orders, promoting the 3rd respondent to the post of Director of Collegiate Education, the petitioner cannot complain that G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990, has been violated.

12. He would further submit that admittedly, the 2nd respondent, in his letter in Na.Ka.No.30724/J2/2015, dated 11.09.2015, has sent a panel/proposal for the appointment of Director of Collegiate Education. On receipt of the same, the 1st respondent, in their letter No.17897/F1/2015-1, Higher Education (F1) Department, dated 20.10.2015, has called for certain additional particulars from the 2nd respondent and the same is yet to be received. Only after the receipt of the same, regular panel for the post of Director of Collegiate Education, would be considered, in accordance with the rules/instructions. Since the model code of conduct has come into force from 04.03.2016 and the same would continue to be in operation till the elections to the State Assembly are over, no transfers or promotions could be effected. During the interregnum period, when the 3rd respondent was given only additional charge, it cannot be construed as fully charged promotion, overlooking G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990.

13. I find some merits on the submissions of the learned Special Government Pleader. When the vacancy in the post of Director of Collegiate Education, had occurred, after the

superannuation of Dr.M.Devadoss, the 2nd respondent, in his letter in Na.Ka.No.30724/J2/2015, dated 11.09.2015, has sent a panel/proposal to the 1st respondent, for appointment to the post of Director of Collegiate Education. Pursuant thereto, the 1st respondent, in their letter No.17897/F1/2015-1, Higher Education (F1) Department, dated 20.10.2015, has called for certain additional particulars from the 2nd respondent and the same is yet to be received. Only after the receipt of the same, regular panel for the post of Director of Collegiate Education, would be considered, in accordance with the rules/instructions. In the mean while, the model code of conduct for the State Assembly Election to this State has come into force, with effect from 04.03.2016 and as a matter of fact, no transfers or promotions can take effect, therefore, the 3rd respondent, admittedly being senior to the petitioner, who has been found effectively discharging three more additional charges, viz., (1) Member in the Syndicate Committee, constituted for the purpose of performing the duties of Vice-Chancellor of the University of Madras, (2) Member Secretary, Tamil Nadu State Council for Higher Education (TANSCH), and (3) Member in the Panel of Selection Committee, for the selection of candidates, for appointment to the post of Assistant Professor for the Constituent Colleges of Anna University, Chennai, has been put full additional charge of the post of Director of Collegiate Education, until further orders.

14. The respondents 1 and 2, in their counter affidavit also have stated that it is not a promotion given to the 3rd respondent and it is only a full additional charge given by way of stop gap arrangement, during the interregnum period, till the elections to the State Assembly are over, therefore, this Court is not inclined to entertain this Writ Petition. In any event, for the reason that the Election Code of Conduct has come into force, the stop gap arrangement made by the respondents 1 and 2 giving full additional charge to the 3rd respondent cannot be disturbed virtually, which will unnecessarily cause grave prejudice to the Higher Education Department viz., the Department of Collegiate Education. Hence, the writ petition is dismissed.

15. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

skm

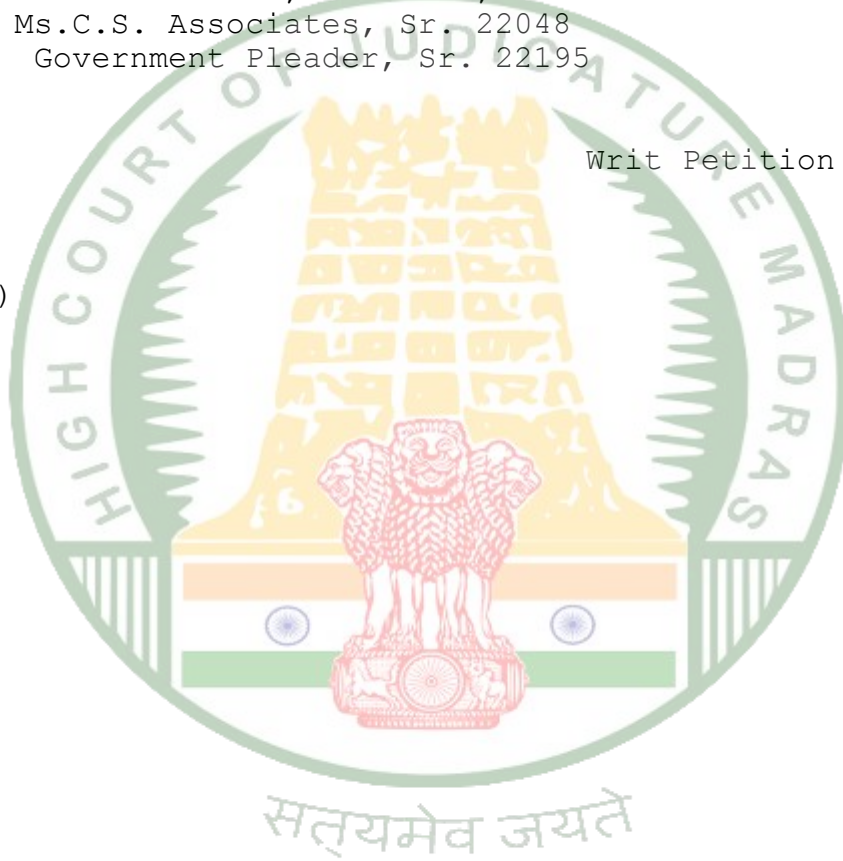
To

1. The Secretary to Government,
Government of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai 600 009.
2. The Director of Collegiate Education,
College Road, Chennai 600 006.

1 cc to Mr.K. Premnath, Advocate, Sr. 22075
1 cc to Ms.C.S. Associates, Sr. 22048
1 cc to Government Pleader, Sr. 22195

Writ Petition No.9271 of 2016

LRS (CO)
kk 11/5



WEB COPY