

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2016

Coram :

The Honourable Mr.Justice B.RAJENDRAN

W.P. Nos. 9637 and 17329 of 2016
and
WMP No.8661 of 2016 in W.P.9637 of 2016

K. Gayathiri ...Petitioner in both WPs

Vs.

1.The Director of Collegiate Education
College Road,Chennai - 600 006. ... 1st Respondent in
W.P. No.9637/16

2.The Registrar
Annamalai University
Annamalai Nagar,Chidambaram - 608 002.... 2nd Respondent in
W.P. No.9637/16
& Sole respondent
in W.P.17329/2016

PRAYER IN W.P.No.9637 of 2016: This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records in Na.Ka. No. 28403/D/5/2015 pertaining to the transfer order dated 03.03.2016 issued by the Director of Collegiate Education, 1st respondent herein and quash the same and thereby direct the 1st respondent to reinstate the petitioner in Annamalai University and pass further orders.

PRAYER IN W.P.No.17329 of 2016: This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the Registrar, Annamalai University, the respondent herein to pay the petitioner's salary and pass further orders.

For Petitioner : Mr. N.Surya Senthil
in both WPs.

For Respondents : Mr. A. Kumar, Spl.G.P for R1
in W.P. No.9637 of 2016

Mr. R. Suresh Kumar for R2/
respondent in both W.Ps

C O M M O N O R D E R

The Writ Petitions have been filed challenging the impugned orders passed by the Director of Collegiate Education in Na.Ka. No. 28403/D/5/2015 pertaining to the transfer order dated 03.03.2016 and for the consequential order of reinstatement and payment of salary to the petitioner.

2. Brief facts leading to filing of the cases are :

The petitioner has obtained a degree in Master of Arts and a Doctorate in Philosophy in Tamil from Alagappa University and have also cleared the National Educational Test, thereby acquired the qualification to be posted as a Lecturer in Universities/ Colleges. On 09.11.2006, the petitioner is working in Annamalai University as an Assistant Professor, in the department of Tamil Studies and Research. Based on the orders of the Government of Tamil Nadu, Higher Education Department, in G.O. Ms. No. 14 dated 23.01.2016, a total of 370 faculty members working in Annamalai University were identified as surplus faculty, of which 38 faculty members from the Department of Tamil Studies and Research and they were transferred to various Universities in the State, on contract for a period of three years. Since the petitioner was not identified as a surplus faculty, she was continuing as an Assistant Professor in the Annamalai University. However, vide the impugned order of transfer dated 09.03.2016, the petitioner has been transferred to the Government Arts College, Kulithalai. Challenging the same, the petitioner has filed W.P. No.9637 of 2016 and subsequently filed W.P. No. 17329 of 2016 seeking for a direction to the Registrar, Annamalai University to pay her salary.

3. Learned counsel for the petitioner submitted that originally she was not in the surplus list and hence she was not transferred. On 03.03.2016, the Director of Collegiate Education, Chennai issued proceedings in Lr. No. 28403/ D5/ 2015 stating that the faculty transferred to Government Arts College, Kulithalai was not permitted to join since he did not possess the requisite qualification and so vide order dated 09.03.2016 the petitioner has been transferred and posted to the said place. Without the Government order being amended or without new order being issued, the petitioner being a qualified person has been re-located and transferred. Learned counsel further submitted that anticipating the impending transfer, the petitioner filed a W.P. No.7879 of 2016 on 01.03.2016. But, the same was dismissed by this Court, as the same was a premature one. Hence, the petitioner filed the present writ petition and this Court by its order dated 18.03.2016 granted an order of status-quo and also issued a direction to file a report as to whether the petitioner is a surplus staff or not.

4. It is further submitted that inspite of the order of status quo, the petitioner was not permitted to join in her post, though the post is kept vacant. The petitioner being a physically challenged person on account of polio attack, is shouldering tremendous responsibilities and financial burden having been placed under a liability to maintain her son aged 8 years and her aged dependant mother. Stating the above grounds, the petitioner submitted her representation on 22.02.2016. But the same was not considered by the respondents. This court by its order dated 05.05.2016 in W.P. No. 17329 of 2016, directed the respondents to permit the petitioner to join duty forthwith.

5. Counter has been filed by the Registrar of Annamalai University in W.P. No. 9637 of 2016 stating that having found that there were many teaching and non-teaching staff beyond the sanctioned or approved strength, in Annamalai University, it was decided to identify, depute and repatriate them to other Government Arts and Science Colleges and Teacher Education Colleges in consultation with the State Government. Accordingly, 723 teaching staff in the cadre of Assistant Professor in various disciplines of Annamalai University were identified and the list of those identified faculty staff were placed before the Syndicate of the University, for its decision. Pursuant to the decision of the Syndicate, the State Government was requested to re-deploy the 723 excess teaching staff in the cadre of Assistant Professors to other Universities or Colleges. Considering the said request, on the basis of the vacancies available, the Government accepted to take 370 surplus teaching staff initially and issued postings in their respective disciplines in various Government Arts and Science Colleges as well as Colleges of Education. Among the 723 identified excess faculties, only 38 were identified as Assistant Professors in Tamil study to be deputed by the respondent University to the Director of Collegiate Education and were issued with the posting orders.

6. It is further stated that out of the 370 faculty staff, 5 were not permitted to join in the respective institutions, for want of minimum required qualifications. Therefore, those 5 faculty staff were returned to the respondent University, in the respective discipline, such as two in Political Science, one in Tamil Studies & Research and two in Psychology. In so far as the discipline of Tamil Studies & Research is concerned, the next junior-most Assistant Professor, placed in the 39th position is the petitioner K. Gayathri and so she was issued with the order posting her as Assistant Professor in Tami Studies & Research at Kuzhithalai Government Arts College and she was also relieved on 09.03.2016, with a direction to join duty in the new place, immediately. Instead of joining in the transferred post, the petitioner approached this Court and obtained an order of

status-quo on 18.03.2016. Pursuant to the said order, the petitioner neither joined the transferred post nor pursued the writ petition, but filed another petition in W.P. No. 17329 of 2016 seeking for a direction to the respondent to pay the salary. Since the petitioner was not assigned with any work, this Court was not inclined to issue a direction to pay salary to the petitioner. However, directed the respondent to permit the petitioner to join duty forthwith, on production of the order copy dated 05.05.2016 and then to pay salary. Since the petitioner has been relieved from the respondent University on 09.03.2016, for other service with the State Government for three years, her lien with the University has been severed on 09.03.2016 and that she has to join duty in the deputed place and have to claim her salary from them.

7. Learned counsel for the respondent submitted that as per G.O. Ms. No.14 dated 23.01.2016, out of 723 teaching faculties identified, 370 junior-most Assistant Professors have been deputed, out of which 38 staff were sent from Tamil Studies and Research Department, in first phase. As per the seniority in the Tamil Studies and Research Department, out of total 91 surplus staff, the petitioner is placed at Sl.No.40. Since one M. Ravi at Sl.No.6 is under suspension from service with effect from 02.06.2014, till Dr. A. Sundar at Sl.No.39 were deputed from Tamil Studies Department. Of which, one faculty was not permitted to join due to insufficient qualification. Hence, the petitioner who was in Sl.No.40 was deputed and so the petitioner cannot have any grievance and is liable to join in the deputed post. While the petitioner has already been identified as a surplus staff by the competent authority, along with other teaching staff, she has no vested right to be retained in the respondent University.

8. Heard both the parties and perused the material available on records.

9. At the outset, the petitioner is not entitled to the relief sought for, in W.P. No.9637 of 2016 for the following reasons:

The petitioner has been relieved from the respondent University as early as 09.03.2016. But the present W.P. No.9637 of 2016 has been filed only on 18.03.2016 and had obtained an order of status-quo. By then she has been relieved of her duty and so she was not in employment on that day and therefore she cannot be considered. Secondly, the Syndicate is the authority to consider and pass orders. Whiles, the Syndicate has passed the order way back on 23.12.2014, whereby they have identified not one individual but 723 faculty staff. Pursuant to the decision of the Syndicate, the State Government was requested to re-deploy the 723 excess teaching staff in the cadre of Assistant Professors to other Universities or Colleges. Considering the

said request, on the basis of the vacancies available, the Government accepted to take 370 surplus teaching staff initially. Hence a list was prepared as per seniority and from among the junior staff, issued postings in their respective disciplines in various Government Arts and Science Colleges as well as Colleges of Education. Among the 723 identified excess Assistant Professors, the petitioner stands at Sl.No.40 in Tamil Study. In that list, the staff till Sl.No.39 were deputed by the respondent University to the Director of Collegiate Education and were issued with the posting orders. Out of which, finding one person as ineligible he was sent back, on whom separate action has being taken for removal. Therefore, automatically the next person in the list is the petitioner and hence she has been rightly re-deployed. The other staff M. Ravi at Sl.No.6 is already under suspension from service and that cannot be questioned at this point of time. Ofcourse, the subsequent events also have to be taken note of. The status-quo order was granted by this Court on 18.03.2016, but the petitioner has been relieved on 09.03.2016. Moreover, as rightly pointed out by learned counsel for the respondent the petitioner has already been given a posting and so she has to join in the re-deployed post and get her pay.

10. At this point of time, learned counsel for the petitioner submitted that the petitioner is a physically handicapped person and that she may be considered in a nearby place. Therefore, Government may sympathetically consider the case of the writ petitioner, while issuing posting orders.

11. Accordingly, the W.P. No.9637 of 2016 is dismissed. In view of the order passed in the W.P. No. 9637 of 2016, the other W.P. No. 17329 of 2016 is closed. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Director of Collegiate Education
College Road Chennai - 600 006.

2.The Registrar
Annamalai University
Annamalai Nagar
Chidambaram - 608 002.

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+ 1 cc to M/s.N.Surya Senthil Advocate SR 41613

+ 1 cc to M/s.R.Suresh Kumar, Advocate SR 41966

+ 1 cc to the Govt.Pleader SR 41684

mp(co)
prk4/8

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