

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 22.06.2016

CORAM:

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THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOohana RAO
AND
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.A(MD)No.984 of 2016

K.Raveendra Retnam

... Appellant/Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its
Secretary,
Higher Educational Department,
Chennai.

2.Teachers Recruitment Board,
Chennai - 6,
by its Chairman,
EVK Sampath Maligai,
College Road,
Chennai - 6.

3.The Director of Collegiate Education,
College Road,
Chennai - 6.

... Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 30.11.2015 passed in W.P(MD)No.21234 of 2015.

Prayer in WP(MD). 21234/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to sanction the salary to the petitioner from 07.07.2009 since the petitioner has been appointed in the year 2008-2009 vacancy.

For Appellant : Mr.S.Muthukrishnan

For Respondents : Mr.B.Pugalendhi,
Special Govt. Pleader



(Judgment of the Court was delivered by
NOOTY.RAMAMOHANA RAO.J.)

This in-house appeal, is preferred by the writ petitioner. His grievance was that he applied for selection to the post of Lecturer in Botany when as many as 71 vacancies were notified for recruitment for the academic year 2008-2009. It appears that the list of provisionally selected candidates for all the 71 vacancies has been notified on 26.06.2009. But however, entertaining a writ petition in W.P(MD)No.4578 of 2009, an interim order was passed by this Court on 06.11.2009, directing one vacancy to be kept unfilled. Ultimately, the writ petition came to be allowed and notwithstanding the directions issued therein, the case of the writ petitioner was not taken up for reconsideration of his selection. In those circumstances, Contempt Petition(MD)No.356 of 2012 was moved. That was disposed of by this Court on 30.08.2013, with a direction to the respondents to intimate the Director of Collegiate Education, Chennai, to issue suitable orders, appointing the writ petitioner as Lecturer within a period of one year. Accordingly, the writ petitioner came to be appointed as Assistant Professor in Botany in one of the Government Colleges of Ramanathapuram on 24.09.2014. Since no payment was made to him since 07.07.2009, he instituted W.P(MD)No.21234 of 2015, seeking payment of salary and allowances from 07.07.2009 onwards. That writ petition was dismissed by the learned Single Judge on the principle of 'No Work - No Pay'. It is that order which is challenged in this writ appeal.

2. The learned Counsel appearing for the writ petitioner would urge that when the writ petitioner has been wrongfully denied, the selection and appointment, during the academic year 2008-2009 and it took nearly six years, for the State Government to rectify the error committed by it, when it appointed the writ petitioner on 24.09.2014, it is only necessary that the writ petitioner shall be paid salary and allowances attached to the said post from 07.07.2009, when similarly placed candidates, like the writ petitioner, were selected and appointed for the academic year 2008-2009.

3. It was further urged that when the termination of an employee was found to be wrongful, Courts have been consistently ordering for payment of backwages completely. By parity of reasoning, when a person has been successfully denied the right of selection and consequent appointment in public services, he shall also be compensated in equal measure, by ordering for payment of salary and allowances for the period, he was unjustly denied from functioning.

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4. The principle 'No Work - No Pay' derives its strength from



the basic concept that wages are paid as part of the remuneration for the work performed. When it comes to the question of Government services, the State cannot draw money from the Treasury, without the sanction of the Legislature. That is the reason why the Budget Estimates are prepared and they are presented to the Legislature for its scrutiny, approval and for passing the Bill. Consequently, the Budget Estimates delineate as to how much money is needed to be drawn by the Government towards payment of salary and wages of it's servants. Therefore, without any provision being made, for such payments to be made to a person, who is not appointed to the services of the State, salary and allowances could not have been drawn for nearly five years period antecedent to the date of actual appointment of the writ petitioner on 24.09.2014. It is not in dispute that the writ petitioner did not render any service to the State during the period commencing from 07.07.2009 onwards. He started discharging of the functions of a civil post, only after 24.09.2014. Therefore, for having not rendered any work to the State, he is not entitled to be remunerated.

5. So far the concept of payment of backwages is concerned, one of the salient features of this compensatory principle is that the employee/workman was otherwise willing to render services and it is the employer who has prevented him from doing so and that was the reason why a wrongful termination brings forth the issue of consideration of payment of backwages and in the instant case, there is no pre-existing right, like in the case of serving workman/employee, in the hands of an aspirant for public employment. A notification taken out by the State or its agencies is only an invitation to the best talent available to respond and there is no guarantee that all those who responded would get selected. If any one of the constitutional rights of a candidate is violated in the process of selection carried out, corrective measures are required to be taken and one such measure is by issuing a direction to the concerned to consider the candidature of the wrongfully denied person once again, vis-a-vis, those who are selected or those who are not eligible to be selected. That is how in cases of some of the successful writ petitioners, orders of appointment are issued over a period of time, like in the instant case. Since the writ petitioner/appellant has been appointed only on 24.09.2014, the question of making payment, for an earlier period, than his date of appointment, would not arise and hence, we do not find any merit in this writ appeal and accordingly, the same is dismissed without costs.

Sd/
Assistant Registrar(AS)



To

1.The Secretary,
Government of Tamil Nadu,
Higher Educational Department, Chennai.

2.The Chairman,
Teachers Recruitment Board,
EVK Sampath Maligai,
College Road, Chennai - 6.

3.The Director of Collegiate Education,
College Road, Chennai - 6.

+1cc to Special Government Pleader in SR.No.32460

SDR/PEK/13.07.2016/4P/5C

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