

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.4594 of 2017 &
W.M.P.No.4818 of 2017

1. Dr.S.Arul Antony
2. Dr.C.V.Deepa
3. Dr.B.P.Chandramohan
4. Dr.V.Arivazhagan
5. Dr.R.Ulagi
6. Dr.K.S.Meena
7. Dr.S.Parimalam
8. Dr.R.Jamuna Rani
9. Dr.K.Elizabeth Premakumari
10. Dr.Varalakshmi
11. Dr.S.Devi
12. Dr.L.V.Uvaraj
13. Dr.D.Seghar
14. Dr.N.Ramalakshmi
15. Dr.B.Narayanan
16. Dr.R.Chandran
17. Dr.M.Banumathi
18. Dr.G.Poongothai
19. Dr.R.Rubavathy Paul
20. J.L.Sheila Sylvia
21. Dr.E.Padmini
22. Dr.U.Rosari Ranjitha Bai
23. T.Padmaja
24. Dr.K.Ravichandran
25. Dr.G.Venkatesan
26. Dr.C.Thiruchelvam
27. Dr.C.Vedanayaki
28. Dr.Pon Muthuramalingam .. Petitioners

Versus

1. The State of Tamilnadu
Rep. By the Secretary to Government,
Higher Education Department,
Secretariat, Fort St.George, Chennai - 9.
2. The Director of Collegiate Educational
DPI Complex,
College Road, Chennai - 6.

3. The Chairman
Teachers Recruitment Board,
4th Floor, E.V.K. Sampath Maligai,
College Road, Chennai - 6.
4. Dr.N.Amudha
(4th respondent is impleaded
vide order of this Court in
WMP No.9032/2017 dated 11.07.2017)
5. Dr.C.P.Saraswathy
(5th respondent is impleaded
vide order of this Court in
WMP No.9355/2017 dated 11.07.2017)
6. Dr.M.K.Rajkumar
(6th respondent is impleaded
vide order of this Court in
WMP No.10815/2017 dated 11.07.2017)
7. Dr.G.Geetha
8. Dr.K.Parameswari
9. Dr.Jayakkodi Gauthaman
10. Dr.C.V.Mythili
11. Dr.D.Aravazhi
12. Dr.R.Ransom Ruth Hephzibah
13. Dr.M.Easwaramoorthi
14. Dr.A.Megala
15. Dr.A.Geetha
16. Dr.Gladis
(respondents 7 to 16 are
impleaded vide order of
this Court in WMP No.10963/2017
dated 11.07.2017) .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus directing the respondents to draw up an inter-se seniority list for the post of Associate Professors regularized vide G.O.Ms.No.81 dated 13.03.1998 and appointed between 1986-1992 in all Government Colleges under the 2nd respondent based upon the date of their initial appointment as Contract Lecturers in accordance with law.

For Petitioners :Mr.Richardson Wilson

For Respondents :Mr.K.Venkatamani
1 to 3 Additional Advocate General

assisted by
Mr.K.Dhananjeyan
Special Government Pleader for R1 to R3

For Respondents

5 to 6 : Mr.K.Srinivasamurthy
for M/s.Row & Reddy

For Respondents

7 to 16 : Mr.S.Kumara Devan

For Respondent

No.4 : Mr.T.Ranganathan

O R D E R

The entire claim of the writ petitioners in this writ petition is to draw up an inter-se seniority list for the post of Associate Professors regularized vide G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998

2. All the writ petitioners were initially recruited as Lecturers on contract / temporary basis, from the year 1986. Considering the length of their services in the post of contract lecturership, the Government issued orders in G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998, to regularize their services from the date mentioned in the said G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998. Accordingly, the services of the writ petitioners were regularized with effect from the date mentioned in the G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998 and consequently, they were brought under the regular establishment in the regular time scale of pay. All the writ petitioners are continuing their service and their respective seniority was also fixed, taking into account the date of regularization accorded as per G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998. Therefore, the right of regularization and the seniority of all the writ petitioners are fixed by the Department based on the order passed in G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998.

3. This Court is of the view that any grievances left out for the petitioners from the said Government Order dated 13.03.1998, ought to have been adjudicated in time, by filing the writ petitions if necessary. Contrarily, the writ petitioners waited for more than 19 years and now filed the writ petitions on the ground that they are entitled for regularization from the year 1986, during which period they worked as contract/temporary lecturers. The services rendered by the writ petitioners on contract/temporary basis cannot be counted for the purpose of seniority. The regular services rendered by the writ petitioners alone can be counted for the

purpose of seniority. At the most, the period rendered on contract/temporary basis may be counted for the purpose of pensionary benefits, that too, 50% of the service alone under Rule 11 of the Tamilnadu Pension Rules. But the services certainly cannot be taken into account for the purpose of seniority in the cadre of lecturers. Therefore this Court is of the view that the very basis of the claim is to be ascertained when there is no right what so ever to count the period rendered by the writ petitioners on contract/temporary basis. The claim for fixation of seniority is to be rejected on threshold.

4. The learned counsel appearing for the writ petitioners contended that the writ petitioners have served fully as lecturers on contract/temporary basis and therefore they are entitled for seniority. Such a concept is unknown to service jurisprudence. The temporary services can be taken into account for the limited purpose under the Pension Rules and not for covering seniority.

5. The learned counsel for the petitioners further contended that the seniority list should be prepared independently, without adopting the seniority followed in G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998. To meet out this ground, the learned Additional Advocate General brings to the knowledge of this Court, para 2 of G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998, which has ascertained that the contract lecturers are allowed to continue based on the rank list published by the Teachers Recruitment Board and the seniority will be followed based on the rank list allotted by the Teachers Recruitment Board. Thus the learned Additional Advocate General contended that the regularization itself was done in accordance with the ranking list published by the Teachers Recruitment Board in this regard. This apart, the learned Additional Advocate General further referred the Government Order in G.O (Ms) No.203, Higher Education (F1) Department dated 09.12.2014, which is extracted here under:

"In Government order third read above, orders were issued Regularizing the services of the above 314 contract lecturers from 26.03.1993 (i.e) from the date on which they were regularly appointed as Lecturers."

6. It is contended that neither the order of regularization passed in G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998, nor G.O (Ms) No.203, Higher Education (F1) Department dated 09.12.2014, are challenged by the writ petitioners. The question of considering the retrospective regularization and

claiming the seniority for the services rendered as contract lecturers by the writ petitioners does not arise at all.

7. Let us now look into the manner in which the cause was brought before this Honourable Court. The writ petitioners worked as contract/temporary lecturers from the year 1986 and their services were regularized with effect from 1993. Though they peacefully continued in service for 17 years without raising this issue, soon after the official respondents started preparing the panel for promotion, they have suddenly woke up and raised this ground and filed this writ petition, stating that they are entitled for seniority for the period from which date they served as contract/temporary lecturers. In fact, this Court is of the opinion that the writ petitioners have slept over their right, for the past 17 years and only at the time of preparation of panel for promotion they started waking up and filed this writ petition with the claim that they are entitled for seniority.

8. The learned Senior Counsel appearing for the contesting respondents urged this Court that even on earlier occasions promotions were accorded and even at that point of time the writ petitioners have not raised this point. Therefore, it is a clear case, to be dismissed on the ground of laches also. Further the other co-employees, who are likely to be affected on account of the prayer sought for in this writ petition, have not been impleaded as parties. For all the reasons the writ petition deserves to be dismissed.

9. Considering the arguments advanced by the respective counsels both appearing for the petitioners as well as the respondents, this Court is of the firm view that

(i) The writ petitioners were working as lecturers on contract/ temporary basis from 1986 to 1993. Thus the services rendered on contractual basis cannot be counted for seniority.

(ii) The services of the petitioners were regularized and they were brought under the regular time scale of pay, only pursuant to the order passed in G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998. Therefore, the right of seniority has to be conferred on the writ petitioners only from the date of regular absorption.

(iii) The writ petitioners were regularized with effect from 1993, in pursuant to the order G.O.Ms.No.81, Higher Education (F2) Department, dated 13.03.1998. Therefore, if at all they have got any grievances, left over to them, they should have agitated the matter within the reasonable period of time.

10. Contrarily, they have allowed the time to lapse for 17 years and moved this writ petition. Thus the writ petition is to be dismissed on the ground of laches. Considering the above three grounds this Court is of the view that the writ petition deserves no merit and accordingly stands dismissed. However, no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
The State of Tamilnadu,
Higher Education Department,
Secretariat, Fort St.George, Chennai - 9.
2. The Director of Collegiate Educational
DPI Complex,
College Road, Chennai - 6.
3. The Chairman
Teachers Recruitment Board,
4th Floor, E.V.K. Sampath Maligai,
College Road, Chennai - 6.

+2cc to M/s.Row & Reddy, Advocate, S.R.No.48284

+1cc to M/s.Richardson Wilson, Advocate, S.R.No.48900

+1cc to the Government Pleader, S.R.No.49380

W.P.No.4594 of 2017

RR(CO)
CU(28/08/2017)