

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2017

CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13805 of 2017

Dr.P.Karthikeyan

.. Petitioner

-vs-

1. The State of Tamil Nadu
rep. by its Principal Secretary to Government
Higher Education Department
Secretariat, Chennai 600 009
 2. The Director of Collegiate Education
DPI Campus, College Road
Chennai-600 006
 3. Annamalai University
rep by Registrar
Annamalai Nagar - 608 002
Cuddalore District
 4. Rajah Sarfoji Government
College (Autonomous)
Near New Bus Stand
Trichy Main Road, New Housing Unit
Thanjavur- 613 005
- .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records from the first respondent relating to order in G.O.Ms.No.107 Higher Education (F2) Department dated 28.04.2017 in so far redeploing the petitioner to fourth respondent college and the consequential order of second respondent in proceedings in Na.Ka. No.28557/D5/2016 dated 22.05.2017 and the third respondent proceedings in University Order No.662/2017(C) dated 29.05.2017 and quash the same.

For Petitioner :: Mr.N.G.R.Prasad for M/s Row & Reddy

For Respondents :: Mr.P.Sanjay Gandhi
Additional Government Pleader
for R1 & 2
Mr.P.Godson Swaminath for R3

ORDER

This writ petition is directed against the impugned G.O.Ms.No.107 Higher Education (F2) Department dated 28.4.2017 issued by the first respondent, identifying surplus teachers in various disciplines in the Annamalai University, and the consequential orders passed by the second and third respondents redeploying the petitioner to the fourth respondent college, on various grounds.

2. Mr.N.G.R.Prasad, learned counsel for the petitioner heavily submitted that when there are only two Assistant Professors in Bio-Technology and the petitioner being one among them, the impugned Government Order so far as it declares two teaching staff of bio-technology subject as surplus, is illegal. Therefore, when there is bio-technology subject courses like M.Sc. (Bio-technology), M.Sc. (Environmental Bio-technology), M.Sc. (Integrated Bio-technology), M.Phil (Bio-technology), M.Phil (Environmental Bio-technology), Ph.D (Bio-technology), Ph.D (Environmental Bio-technology), P.G.Diploma in bio-technology management, P.G.Diploma in Generic engineering in the third respondent University, only two Assistant Professors of bio-technology are working. Hence, they cannot be declared as surplus. Moreover, when the petitioner is teaching all those subjects and allied subjects, the decision to re-deploy the teaching staff of bio-technology is sheer non-application of mind. Hence the impugned orders, being arbitrary and mala fide, are liable to be set aside. Adding further, he submitted that the third respondent has not even obtained consent from the petitioner before re-deploying him to the fourth respondent. Therefore, when the respondents sought to re-deploy any working teacher to any other college or university, prior consent of the concerned teacher is a must, which has not been complied with. On this ground also, the impugned order is liable to be set aside. In support of his submissions, he has also relied upon the judgment of the Apex Court in Jawaharlal Nehru University v. Dr.K.S.Jawatkar and others, 1989 Supp. (1) SCC 679, in which the members of the faculties of the centre of Jawaharlal Nehru University were transferred to be controlled by the Manipur University. In that case, it was held that the employees of university could not be transferred to Manipur University without the consent of the affected teacher. In the case on hand, after appointing the petitioner as Assistant Professor in Bio-Technology in Annamalai University, his services were also confirmed on 16.10.2009. Now when there are two posts of Assistant Professors in bio-technology subject in Annamalai University, both of them were found to be surplus in the bio-technology department functioning in the third respondent university. In the event of agreeing with the impugned orders, after identifying two teachers, namely, Dr.G.Sindhu and

Dr.A.Justin Thenmozhi, they were deputed to the fourth respondent college and Bharathi Women's college (Autonomous), Chennai respectively. But the said colleges refused to take them in. After finding that these two teachers were not able to join the college to which they were re-deployed, the second and third respondents have wrongly passed the impugned orders dated 22.5.2017 and 29.5.2017 respectively. If the impugned order of re-deployment of the petitioner is accepted, there will be no Assistant Professor qualified in bio-technology in the third respondent university to teach bio-technology and its related subject in the Department of Zoology. Therefore, the interest of the students having been forgotten by the respondents, the impugned orders are liable to be set aside.

3. After filing a counter affidavit, an additional counter affidavit also has been filed by the third respondent. It is averred in the counter affidavit that the Annamalai University was originally established pursuant to the provisions of the Annamalai University Act, 1928. In the year 2013, the State Legislature have enacted the Annamalai University Act, 2013 and by virtue of Section 58, all colleges established and maintained by the Annamalai University shall be deemed to have been established and maintained by the University. Except the appointment of the Vice-Chancellor and the Registrar, all other appointments of teachers, officers and employees of the University subsisting immediately prior to the commencement of the new Act shall be deemed to have been made under the new Act. After sometime, the University had furnished the details of surplus teaching staff to the Government. The Vice-Chancellor of Annamalai University, finding large number of teaching and non-teaching staff as surplus, requested the Government to depute the surplus teaching staff of Annamalai University to Government colleges for a temporary period to tide over the financial crisis in the University. In this regard, 368 staff members were deputed to Government colleges. The Finance Committee of the University also in its resolution dated 18.1.2017 has requested to depute 1106 teaching staff to Government colleges and the University Syndicate in its resolution dated 8.2.2017 has also approved the decision of the Finance Committee. Even the Directorate of Collegiate Education, the second respondent herein has requested the Government in their letter dated 13.10.2016 to appoint the 208 surplus teaching staff in the cadre of Assistant Professor of the University in the existing vacancies of Assistant Professors in the Government Arts and Science Colleges. Immediately thereafter, G.O.Ms.No.107 Higher Education (F2) Department dated 28.4.2017 was issued directing the above 208 surplus teaching staff in various disciplines in the University to be appointed for a period of three years on agreement basis, as per Section 19 of the Tamil Nadu Government

Servants (Conditions of Service) Act, 2016 subject to the terms and conditions annexed to the said G.O.Ms.No.107.

4. The learned standing counsel for the third respondent University has explained further that in the Department of Bio-Chemistry and Bio-technology, there were totally 28 posts of Assistant Professors and 10 out of 28 posts were found as surplus. Therefore, initially G.O.Ms.No.14 Higher Education (F2) Department dated 23.1.2016 was issued providing 10 posts to be deployed on deputation to Government colleges. Accordingly, they were also accommodated by the second respondent-Director of Collegiate Education. Now there are 18 Assistant Professors working in the Department of Bio-chemistry and Bio-technology. While so, the petitioner is not working in the Department of Bio-chemistry and Bio-technology, as he was initially appointed as Lecturer in Bio-technology in the Zoology wing of the Directorate of Distance Education of the University on 27.7.2007. Later on, by order dated 16.7.2012, his services were confirmed as Assistant Professor in Bio-technology in the Zoology wing of the Directorate of Distance Education. When the university has found two posts of Assistant Professors in Bio-technology as surplus, as found in G.O.Ms.No.107, Dr.A.Rajesh Singh, who was working as Assistant Professor in Bio-technology in the Department of Zoology was identified as one of the surplus teachers and the second one being the post of Bio-technology in the Zoology wing of the Directorate of Distance Education, wherein the petitioner was working, has been properly identified. Therefore, the contentions made by the petitioner that only two Assistant Professors of Bio-technology are working and they cannot be declared as surplus, when the subject of bio-technology continues to be there and the students would be put to problem, because there would be no teacher to take classes for them in the subject of bio-technology, cannot be accepted. Again distinguishing the judgment of the Apex Court in Jawaharlal Nehru University case (cited supra) that without obtaining consent from the teacher, no one could be transferred, he submitted that the said judgment cannot be made applicable in the present case. The reason is that the Jawaharlal University appointed one Assistant Professor on regular basis and confirmed him with effect from 29.8.79. While so, in 1981, the Jawaharlal Nehru University decided to transfer the centre to the Manipur University. The Governor of Manipur also made an order dated 31.3.81 providing for transfer of the members of the faculties of the centre to the Manipur University. The question was whether the transfer of centre resulted in transfer of the respondent's service to the Manipur university. When the respondent therein continued to be an employee of the Jawaharlal Nehru University and there was also a contract of service entered into between them, no law can convert that contract into

a contract between the respondent and the Manipur University without simultaneously making it either expressly or by necessary implication, subject to the respondent's consent. Having appointed the respondent therein as a teaching staff of the Jawaharlal Nehru University, it was held that while transferring the centre of the Jawaharlal University to be administered by Manipur University, the consent of the teaching staff before his transfer is a pre-requisite. But in the present case, the petitioner was found surplus, as a result he would be losing his employment. Therefore, on compassionate ground, he was deputed to the fourth respondent college. Hence, the petitioner cannot contend that he should not be transferred.

5. I also find merits in the above contentions of the learned standing counsel for the third respondent University. Admittedly, the petitioner was initially appointed as Lecturer in Bio-technology in the Zoology wing of the Directorate of Distance Education of the University on 27.7.2007. Later on, his services were confirmed as Assistant Professor in Bio-technology in the Zoology wing of the Directorate of Distance Education on 16.7.2012. He was also holding the subject of bio-technology in the Zoology wing of the Directorate of Distance Education. While so, when the University was found having surplus teachers in various disciplines and they were all appointed to the whims and fancies of the management beyond the sanctioned strength, at one point of time, they were not able to pay the monthly salary to the staff, as most of them were appointed without proper selection process and was made through back door entry. However, taking into account their future, the Government, without retrenching them, issued G.O.Ms.No.107 Higher Education (F2) Department dated 28.4.2017 directing the 208 surplus teaching staff in various disciplines of the University to be re-deployed, by appointing them for a period of three years on agreement basis, as per Section 19 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, subject to the terms and conditions annexed to the said G.O.Ms.No.107. When the petitioner was initially appointed as Lecturer in Bio-technology in the Zoology wing of the Directorate of Distance Education and the confirmation of his services was also in the Zoology wing of the Directorate of Distance Education, it is incorrect on the part of the petitioner to contend before this Court that there will be no person to teach the bio-technology subject in the third respondent University if the two Assistant Professors in Bio-technology are found surplus. Subsequently, followed by identification of 10 surplus teaching staff in various disciplines, G.O.Ms.No.14 Higher Education (F2) Department dated 23.1.2016 was issued deploying all the ten teachers on deputation. Now only 18 Assistant Professors are working in the Department of Bio-chemistry and Bio-technology. Since the

petitioner is not working in the Department of Bio-chemistry and Bio-technology, as he is working in the Zoology wing of the Directorate of Distance Education, finding that the other two teachers, namely, Dr.G.Sindhu and Dr.A.Justin Thenmozhi, are seniors to the petitioner in service, realizing their inadvertent error that Dr.G.Sindhu and Dr.A.Justin Thenmozhi were wrongly identified as Assistant Professors of bio-technology, recalling that order, the impugned orders have been rightly issued by the second and third respondents deputing the petitioner herein to the fourth respondent college. Therefore, I do not find any infirmity with the impugned orders. Accordingly, the writ petition fails and it is dismissed. Consequently, W.M.P.Nos.14999 & 15000 of 2017 are also dismissed. No costs.

6. Although Mr.N.G.R.Prasad, learned counsel for the petitioner requested this Court to treat the period of absence of the petitioner as period of duty, as he was pursuing the remedy before this Court, I am not inclined to accept the said request, as this would set a wrong precedent to others who refused to obey the order of re-deployment.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government
Higher Education Department
Secretariat
Chennai 600 009

2. The Director of Collegiate Education
DPI Campus
College Road
Chennai-600 006

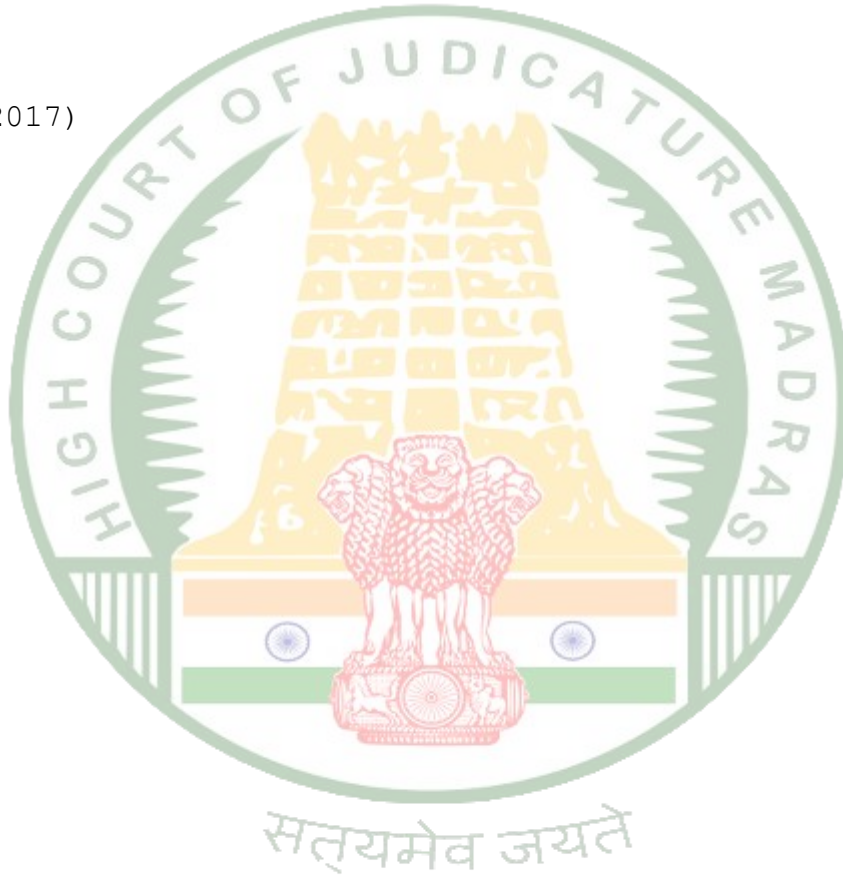
3. The Registrar
Annamalai University
Annamalai Nagar - 608 002
Cuddalore District.

4. The Principal
Rajah Sarfoji Government
College (Autonomous)
Near New Bus Stand
Trichy Main Road New Housing Unit
Thanjavur- 613 005.

+1cc to M/s.Isaac Chambers, Advocate SR.No.44808
+1cc to M/s.Row & Reddy, Advocate SR.No.44910

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BR(CO)
GN(17/07/2017)



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