

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2017

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE M.SUNDAR

W.A.No.1377 of 2009

The Lakshmipuram College of
Arts and Science,
rep. by its Secretary G.Rmachandran Pillai,
Neyyoor (Post),
Kanyakumari District.

... Appellant

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Education Department,
Fort St. George, Madras-9.
2. The Commissioner of Collegiate Education,
College Road, Madras-6.
3. The Joint Director of Collegiate Education,
Tirunelveli,
Tirunelveli District.
4. Professor M.Selvan (Retired)

... Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 18.09.2008 made in W.P.No.18609 of 1999 on the file of this Court.

W.P.No.18609 of 1999 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Letter No.8465/E2/98-4, dated 11.09.1998 and in letter No.15643/E2/99-3, dated 14.09.1999 and quash the same and to direct the first Respondent to provide grant to the petitioner college for the payment of salary and allowances to the 4th respondent for his service rendered from 01.06.1995 to 31.01.1997.

For Appellant : Mr.A.Sivaji
For Respondents : Mr.T.N.Rajagopalan
Special Government Pleader
for R1 to R3

Mr.A.U.Ilango for R4

JUDGMENT

(Judgment of the Court was made by The Hon'ble Chief Justice)

We have heard the learned counsel for parties.

2. The undisputed position which emerges is that while an agreement between the appellant and respondent No.4 provided for retirement age of 60 years, subsequently G.O.Ms. No.281, Education Department, dated 13.2.1981 was issued by the Government, fixing the retirement age of teachers of Aided Colleges at 58 years. Thus, for the assessment of grant, the age was only 58 years.

3. In the present case, respondent No.4 on attaining the age of 58 years, moved the Court assailing the order issued by the appellant relieving him at 58 years, by filing W.P.No.1647 of 1995. On 03.02.1995, an interim injunction was granted. W.P.No.1647 of 1995 was not disposed of and was pending for more than two years, with the result that respondent No.4 attained the age of 60 years, whereafter, the writ petition was disposed of, leaving the parties to work out their remedies.

4. The appellant filed the writ petition seeking Government aid for the period respondent No.4 worked with them beyond 58 years upto 60 years, which was being denied by the Government, in view of the aforesaid Government Order.

5. The learned Single Judge dismissed the writ petition as per the impugned order dated 18.09.2008 predicated on the reasoning that the responsibility is not of the State Government and if the College permits the teacher to continue till 60 years, it must bear the financial effects of the same.

6. On hearing the learned counsel for parties, we are, however, of the view that the continuation of respondent No.4 was not a voluntary act of the appellant, but is the result of the interim order granted by the Court. The inability to dispose of the writ petition within two years, has resulted in a piquant situation, where as the consequence of the interim order, the appellant has paid the amount to respondent No.4 for having worked for them and thereafter, no final view was taken

in that writ petition. In such situation, we are, of the view that the State Government cannot wash its hand on this issue, as it is a settled proposition of law that none should suffer as a consequence of the orders of the Court.

7. We are, of the view that solution in the present case would be that the amount paid to respondent No.4 towards the period of working from 58 to 60 years may be shared by the appellant and the State Government equally and the amount accordingly be remitted by the State Government within a period of four weeks of the receipt of the copy of this judgment.

8. At this stage, it is pointed out to us, in fact, even the appellant has not paid to respondent No.4, with the result respondent No.4 worked for two extra years without being paid a penny! He is about 80 years old. The amount be thus remitted directly to the account of respondent No.4 in a equal share by the appellant and the State Government within a period of four weeks from today, whereafter, it will carry the interest of 10% per annum.

9. The appeal is allowed to the limited extent aforesaid, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Education Department,
Fort St. George, Madras-9.
2. The Commissioner of Collegiate Education,
College Road, Madras-6.
3. The Joint Director of Collegiate Education,
Tirunelveli,
Tirunelveli District.

+1cc to Mr.A.U.Ilango, Advocate, S.R.No.3315
+1cc to Mr.A.Sivaji, Advocate, S.R.No.2953
+1cc to the Government Pleader, S.R.No.3276

W.A.No.1377 of 2009

RSK(CO)
CA(27/01/2017)