

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.17794 of 2016

Dr.S.Gunasekaran

... Petitioner

Vs

1. Government of Tamil Nadu,
Rep. By the Principal Secretary to Government,
Department of Higher Education,
Fort St. George, Chennai - 9.
2. Director of Collegiate Education,
Directorate of Collegiate Education,
DPI Compound,
College Road, Chennai - 6.
3. Government Arts College (Autonomous),
Rep. By its Principal, Salem - 7.
4. Dr.P.Muthuswamy ... Respondents
(R4 impleaded as per Order dated
09.06.2016 in WMP.16656 of 2016)

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records from the third respondent relating to the proceedings dated 03.05.2016 bearing reference No.Na.Ka.No.0995/J/2016 and quash the same as being illegal, arbitrary, mala-fide, vindictive and without jurisdiction insofar as it ignores the petitioner's name is concerned and consequently direct the second respondent to appoint the petitioner as the Controller of Examination of the third respondent College with effect from the date the post fallen vacant together with the monetary and other service benefits with arrears together with 12% interest per annum.

For petitioner : Mr.K.Srinivasa Murthy

For R1 to R3 : Mr.T.M.Pappiah,
Special Government Pleader

For R4 : Mr.P.Ganesan
for M/s.C.S.Associates

O R D E R

The present writ petition is directed against the impugned proceedings dated 03.05.2016 passed by the third respondent / the Principal, Government Arts College (Autonomous), Salem, in and by which, the name of the fourth respondent / Dr.P.Muthuswamy was recommended for the post of Controller of Examinations.

2. Learned counsel for the petitioner submitted that the petitioner was initially appointed as Assistant Professor in Government Arts Colleges, Nanadanam, Chennai, on 05.12.1994, and thereafter, on 05.12.2006, the said post was re-designated as Associate Professor. Subsequently, from 01.06.2014, he has been continuously working as Head of the Department in Tamil with clean record of service. As per the UGC norms, works of Chairman should be allotted to the Head of the Department, therefore, it is contention of the petitioner that he being the Head of the Department, such work of the Chairman ought to have been allotted to him, however, contrary to the same, the third respondent deliberately did not assign such work to him.

3. It is further submitted that the Periyar University, to which the third respondent College is affiliated to, has been assigning the work to the petitioner. Therefore, challenging the action of the third respondent College in failing to allot the duties of Chairman of the Controller of Evaluation Board, the petitioner has filed a Writ Petition No.13223 of 2015 before this Court, whereby, this Court, by order dated 30.04.2015, directed the respondents to appoint him as the Chairman of the Examination Evaluation activities, question settings, question paper scrutiny, etc. Thereafter, the third respondent issued the consequential proceedings in compliance of the order of this Court.

4. While the matter stood as above, the third respondent, by communication dated 12.04.2016, called upon the willingness from the Associate Professors for the post of Controller of Examination, on account of retirement of one Ms.C.Manimozhi. Pursuant to the said communication, the petitioner also has handed over his willingness application on 15.04.2016 to the third respondent in person. However, his name was not included in the list prepared by the third respondent. Therefore, it is the contention of the learned counsel for the petitioner that the petitioner, having put in 21 years 4 months of unblemished service, the senior-most person among the persons who have given their willingness to the said post, therefore, the third respondent College ought to have included his name as well in the list prepared by them on 03.05.2016, hence, such

action of the third respondent in not including the name of the petitioner is illegal and arbitrary.

5. Concluding his arguments, it is submitted that when the appointment of Controller of Examination is only based on the seniority, the name of the petitioner, who being the senior-most person, ought to have been included, as he has those three years of service i.e., till May, 2019, end of the academic year, therefore, the reason assigned by the third respondent for rejecting his request to appoint him as Controller of Examination as he is having less than three years of left over service, is gain fallacious. It is further stated that since the petitioner is going to retire only on 28.02.2019, which is falling during the middle of the academic year, he would get extension till the end of the academic year i.e. till May, 2019, therefore, rejecting the request of the petitioner on the ground that he is having less three years of service is wholly misconceived.

6. Per contra, learned Special Government Pleader, by filing a detailed counter affidavit, urged this Court to dismiss the writ petition, by stating that the post of Controller of Examination has fallen vacant in the third respondent college on account of expiry of the term of the present Controller of Examination Ms.C.Manimozhi on 22.05.2016. Therefore, based on G.O.Ms.No.51, Higher Education (F) Department, dated 03.04.2012, the third respondent issued a circular dated 12.04.2016 calling upon the eligible persons who are willing for the said post, to apply for the same. As per paragraph 2(3) of the said Government Order, it is a pre-requisite qualification that a person who is going to be appointed as the Controller of Examination must have 3 years of left over service. Therefore, according to the said G.O., since the petitioner is going to retire on 28.02.2019 and that he has not fulfilled the eligibility of having three full years of left over service, he was not considered for the said post, and accordingly, the third respondent did not recommend his name in the list of eligible teachers for the said post. On the other hand, the fourth respondent has been recommended for the said post by the second respondent as he is having three years of left over service.

7. Controverting the argument of the petitioner that on account of extension of his services till the end of the academic year i.e. till May, 2019, he would get three years of left over service and therefore, he is eligible for the said post as per the G.O.Ms.No.51, Higher Education Department, dated 03.04.2012, it is submitted by the learned Special Government Pleader for the respondents that getting of re-employment is not an automatic one as it is subject to the conditions of vigilance clearance, fitness and conduct, and therefore, his assumption

that he would be extended till the end of the academic year is wholly misconceived.

8. The above said submissions of the learned Special Government Pleader carries merit. Admittedly, the petitioner is going to retire from service on 28.02.2019. It is also not in dispute that on account of retirement of one Ms.C.Manimozhi i.e on 22.05.2016, the third respondent, based upon the Government Order in G.O.Ms.No.51, Higher Education (F) Department, dated 03.04.2012, issued a circular dated 12.04.2016, calling upon the eligible persons, who are willing, to apply for the said post. As per the said G.O., one has to have three years of left over service so as to be eligible for appointment to the post of Controller of Examinations. Knowing fully well that he is not having three years of left over service, the petitioner has applied for the said post on the assumption that he would get three years of left over service in view of his extension of his services till the end of the academic year i.e. till May, 2019, as his date of retirement would fall on 28.02.2019.

9. However, such assumption of the petitioner, in my view, cannot be sustained, as it is well settled law that the reemployment is not an automatic one, which is subject to fulfilling of three important conditions, namely, conduct, fitness and vigilance clearance. In a similar circumstances, the Hon'ble Division Bench of this Court in W.A.Nos.1345 to 1347 of 2014, dated 27.07.2015 [the Principal, Sir Theagaraya College Old Washermanpet, Chennai, and others v. Veerappan and others] by observing that re-employment or continuation in service after attaining the age of superannuation in the middle of the academic year till the end of the academic year is subject to the conditions stipulated in the proviso to Rule 16-A of the Code, held that it is for the appropriate authority to take a final call with regard to continuation of service, not of the college teacher concerned. For better appreciation, relevant portions of the said judgment are extracted below:-

"15. The Grant-in-Aid Code of the Tamil Nadu Education Department (for short "the Code") prescribes the conditions and procedure for grant-in-aid to schools as well as private aided colleges. Rule 16(A) which was incorporated by G.O. Ms.No.1258, Education Department dated 16th December 1971, contemplates continuance of service of the teaching staff attaining the age of superannuation in the middle of the academic year till the date of closure of the college summer vacation, subject to the conditions that their work is satisfactory, they are

physically fit to continue in service and they have put in, at least a minimum period of one year service in that particular institution. It is apt to refer to the said rule which reads as under:

16-A No grant shall be paid on behalf of the members of the teaching staff employed in aided colleges, who have completed their 60th year of age. Increments, if any, paid by the managements to the teachers employed in aided colleges after their attaining the age of 58 years shall not be taken into account for purposes of assessment of grant:

Provided, however, that grant shall be paid on behalf of any qualified teacher in an aided college, who after attaining the age of superannuation of 60 years in the middle of the academic year, is permitted to continue in service on re-employment terms till the date of closure of the college summer vacation, subject to the conditions that their work and conduct are satisfactory and they are physically fit to continue in service, that they have put in at least a minimum period of one year service in that particular institution and that they are not fresh recruits but have been employed in the institution before they attained the age of 60.

19 Considering the aforesaid Government Orders, in the light of Rule 16-A which is a part of the Code, it is manifest that re-employment of the qualified teachers in an aided college who attain the age of superannuation in the middle of the academic year, is subject to the conditions that their work and conduct are satisfactory and they are physically fit to continue in service and they have put in at least a minimum period of one year of service in that particular institution. Such conditions cannot be wished away as the same were neither deleted nor repealed in the subsequent Government Orders.

20. Thus, we have no hesitation in holding that re-employment or continuation

of service of those college teachers who attain the age of superannuation in the middle of the academic year, is subject to the aforestated conditions.

26 In another decision in Correspondent, Secretary and Managing Trustee, Salem Sowdeswari College Committee, Salem vs. M. Rajagopalan and 2 others, a Division Bench of this Court, vide order dated 27th September 2007, held as under:

"5. We are therefore of the considered opinion that unless the teacher is found unfit medically or on account of his or her conduct, he/she is entitled to continue till the end of the academic year."

27. In yet another decision in G. Annamalai vs. The Joint Director (Higher Secondary) and 3 others, a Division Bench of this Court, vide judgment dated 5th January 2007, held as under:

"8 It is well settled in law that a teacher retiring in the middle of the academic year is entitled to get re-employment till the end of the academic year on satisfying the conditions contained in the Government Orders, particularly, G.O. Ms.No.452 dated 24.03.1970, G.O. Ms.No.1712 dated 05.08.1976 and G.O. Ms.No.1653 dated 21.10.1986. In all the Government Orders, it is stated that for granting re-employment, the work of the teacher and conduct shall be satisfactory apart from physical fitness for further service."

10. In view of the above, as the petitioner has to pass three tests, namely, conduct, fitness and vigilance clearance, at the time of his superannuation i.e., on 28.02.2019, it cannot be presumed that he would clear all those tests, so as to have three years of left over service as per G.O.Ms.No.51, Higher Education (F) Department, dated 03.04.2012, in order to be eligible for being appointed to the post of Controller of Examinations. Besides, it is the own case of the petitioner that he is not having three years of left over service as on the date of his retirement i.e. 28.02.2019. Therefore, the claim of the petitioner on mere surmise and conjuncture that he would get reemployment till the end of academic year i.e. till May, 2019, and hence, his request for appointment to the said post ought to have been considered by the respondent College is totally misconceived.

11. Thus, for the reasons stated above, the writ petition fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Govt.
Government of Tamil Nadu,
Department of Higher Education,
Fort St. George, Chennai - 9.
2. The Director of Collegiate Education,
Directorate of Collegiate Education,
DPI Compound,
College Road, Chennai - 6.
3. The Principal,
Government Arts College (Autonomous).

+lcc to Mr.Row & Reddy, Advocate, S.R.No.18540
+lcc to M/s.C.S.Associates, Advocate, S.R.No.17992
+lcc to the Government Pleader, S.R.No.18300

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