

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.07.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.30292 of 2013

DR.A.ANNADURAI

.. PETITIONER

VERSUS

- 1 THE GOVERNMENT OF TAMILNADU
REP.BY SECRETARY HIGHER EDUCATION DEPARTMENT
FORT ST. GEORGE CHENNAI-9
- 2 ALL INDIA COUNCIL OF TECHNICAL
INSTITUTION REP.BY MEMBER SECRETARY INDIRA
GANDHI SPORT COMPLEX I.P.ESTATE NEW DELHI-2
- 3 DIRETORATE OF TECHNICAL
EDUCATION REP.BY COMMISSIONER SARDAR PATEL
ROAD GUINDY CHENNAI-25
- 4 PSG COLLEGE TECHNOLOGY
REP.BY PRINCIPAL PEELAMEDU,
COIMBATORE 641 004 .. RESPONDENTS

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to impugned letter No.7633/194/2012 dated 01.07.2013 passed by the 3rd respondent and quash the same as being illegal arbitrary and unconstitutional and consequently direct the 3rd and 4th respondents to grant all the service benefits to the petitioner by including the temporary services put by the petitioner from 25.07.1994 to 01.05.1997 which was left uncounted for the sanction of career advance benefits to the petitioner. Further, to direct the 3rd and 4th respondents to sanction lecturer (Senior Grade) from 02.07.1999 Lecturer (Selection Grade) from 25.07.2004 and Associate Professor from 25.07.2007 on the basis of the Government Orders of T.N.AICTE as well as UGC Guidelines mentioned supra along with all service benefits including seniority and monetary benefits with interest at 12% and award costs.

For petitioner : Mr.P.Tamilavel

For respondents: Mr.M.Pappiah, Spl.G.P.for R 1&3
Mr.A.Genesenan for R2

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Certiorari and Mandamus, to call for the records pertaining to impugned letter No.7633/194/2012 dated 01.07.2013 passed by the 3rd respondent and quash the same as being illegal arbitrary and unconstitutional and consequently direct the 3rd and 4th respondents to grant all the service benefits to the petitioner by including the temporary services put by the petitioner from 25.07.1994 to 01.05.1997 which was left uncounted for the sanction of career advance benefits to the petitioner. Further, to direct the 3rd and 4th respondents to sanction lecturer (Senior Grade) from 02.07.1999 Lecturer (Selection Grade) from 25.07.2004 and Associate Professor from 25.07.2007 on the basis of the Government Orders of T.N.AICTE as well as UGC Guidelines mentioned supra along with all service benefits including seniority and monetary benefits with interest at 12% and award costs.

2. The petitioner was originally appointed as Lecturer (OG) on 25.07.1994 and subsequently, he was regularized on 2.5.1997. According to the petitioner, the period between 25.7.1994 and 2.5.1997 had been treated as a temporary service and the same was not taken into account for the purpose of his career advancement.

3. The learned counsel appearing for the petitioner would draw the attention of this Court to various documents in support of the claim of the petitioner, saying that his temporary service was not taken for counting the period of service for computation of career advancement and fixation of pay and that the same is bad both in law and on facts. Particularly, the learned counsel would draw the attention of this Court to the G.O.Ms.No.1080 Education (J1) Department, dated 19.8.1989, in which, it is clearly mentioned in para 5 that the qualifications prescribed by the AICTE for the teachers will be adopted for recruitment made on or after January 1986 and in respect of teachers already in position as on 1st January 1986, but who do not have the required qualifications will be allowed to continue in the post they are in position on that date. Learned counsel also drew attention of this Court to the G.O.Ms.No.413, dated 18.09.2000 in which it is clearly mentioned that for the purpose of career advancement, any break in service has to be condoned subject to certain conditions enumerated therein. According to the learned counsel for the petitioner, so called temporary service is actually a regular service rendered by the petitioner since he was fully qualified and eligible for appointment as Lecturer in terms of the regulations that were in force. According to the learned counsel for the petitioner, there is nothing in the Rules or G.O. or Regulations which provide for

temporary service like the one provided for temporary service as claimed by the 3rd respondent.

4. Upon notice, the respondents filed counter. The only valid point which was raised in the counter is that the G.O.Ms.No.1080 dated 19.08.1989 came into effect only from 2.5.1997 onwards after incorporating the contents of the said G.O. in the Special Rules for Tamil Nadu Technical Education Service, the benefit was extended to the petitioner.

5. On this aspect, the learned counsel appearing for the petitioner would strongly contend that when the G.O. was brought in 1989 itself, any belated action on the part of the administration in incorporating the contents of the G.O., the Rule cannot negate the relief of the petitioner for counting the qualifying service for the purpose of promotion including career advancement. There is considerable force in the contention put forth by the learned counsel for the petitioner.

6. Be that as it may, the learned counsel would also rely upon the order passed by this Court in W.P.No.3012 of 2008, dated 01.08.2013. In the said decision, the learned Judge of this Court, has clearly held in paragraph 14, which is extracted herein below:

"14. Further, it is settled law that all the services rendered, whether it is temporary or regular in the same institution or even in other Colleges, are eligible to be counted for promotion, therefore, there is no justification in refusing to count the services rendered by the petitioner from 05.08.1989 to 01.04.1995 for the purpose of promotion to the post of Reader under Career Advancement Scheme, especially, when two years of temporary service of Dr.Mrs.Nazeem Akthar rendered in Voluntary Agency State Resource Centre for Non Formal Education also was taken into consideration for promotion."

7. The learned Special Government Pleader appearing for the respondents 1 and 3 would oppose the grant of the relief to the petitioner on the ground that on the date when the petitioner was appointed, the Rules were not amended and hence, he was not entitled to count his service from the date of his initial appointment.

8. Upon consideration of rival submissions, pleadings and materials placed on record, this Court is of the firm view that there is merit and substance in the contention of the learned counsel for the petitioner that the word 'temporary service' does not exist anywhere in the Rules or in the Regulations or in any Government Orders. It is also not denied that the petitioner was qualified and eligible for appointment as Lecturer in 1993. The only point that put forth resisting the claim of the petitioner is that the Special Rules came to be amended only in 1997. But this Court has not lost the sight of the fact that G.O.Ms.No.1080, dated 19.08.1989 which came into force with effect from 2.5.1997 governing the claim of the petitioner herein, which fact cannot also be disputed. In such

view of the matter, this Court has no hesitation to allow the Writ Petition.

Accordingly, the Writ Petition is allowed and the impugned order 1.7.2013 passed by the 3rd respondent is hereby quashed. The respondents are directed to grant the benefits to the petitioner to which, he is entitled to, consequent to the quashing of the impugned order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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TO

- 1.The Secretary to the Government,
Higher Education Department, Fort.St.George, chennai-9
- 2.The Member Secretary,
All Indian Council of Technical Institution,
Indira Gandhi Sport complex, I.P.Estate,
Chennai-25.
- 3.The Commissioner, Director of Technical Education,
chennai-25.

+1cc to Mr.P.Tamilavel, Advocate SR.No.47861
+1cc to Mr.A,Jenasenan, Advocate SR.No.48618
+1cc to Government Pleader SR.No.48073

W.P.NO.30292 OF 2013

GN(08/08/2017)

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