

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.21772 of 2016

V.G.Thyagarajan

.. Petitioner

Vs

1.The Principal Secretary,
Labour and Employment Department,
Fort St. George,
Chennai - 9.

2.The Director,
Tamil Nadu Institute of Labour Studies,
No.5, Kamarajar Salai,
Chennai - 5.

3.The Secretary to Government,
Higher Education Department,
Secretariat, Fort St. George,
Chennai - 9.

.. Respondents

(R3 impleaded as per order dt:20/12/2016)

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents to extend the benefit of the G.O.Ms.No.281 and G.O.Ms.No.300, dated 13.02.1981 and 08.09.2006 and further direct the second respondent to re-employ the petitioner in the second respondent's institute and permit him to continue in service till the end of the academic year 2016-2017.

For petitioner : Mr.A.E.Kalaiselvan

For Respondents : Mr.K.Venkataramani, AAG
Assist. By Mr.M.Digvijayapandian, AGP

O R D E R

By way of filing this writ petition, the petitioner seeks a direction to the respondents to extend the benefit of G.O.Ms.No.281, Higher Education (F1) Department, dated 13.02.1981, and G.O.Ms.No.300, Higher Education (F1) Department, dated 08.09.2006, and further direct the second respondent to re-employ the petitioner in the second respondent's institute and permit him to continue in service till the end of the

academic year 2016-2017.

2. Learned counsel for the petitioner submitted that the petitioner, having completed M.A., M.Phil., in Psychology, joined as Lecturer on 18.04.1991 in the second respondent institution, which is aided by the Government of Tamil Nadu and offering B.A., M.A., Degree courses in Labour Management Studies and affiliated to University of Madras. Subsequently, in the year 2009, he was promoted as Associate Professor. The salary to all the faculty members of the second respondent institution is paid as per the G.O.Ms.No.350, Higher Education (H1) Department, dated 09.09.2009.

3. Now, the only grievance of the petitioner is that as he is attaining the age of superannuation in the middle of the academic year i.e. on 30.06.2016, he is entitled for reemployment till the end of the academic year 2016-2017, having completed 25 years of unblemished service. Therefore, he made a representation dated 07.06.2016 expressing his willingness to continue his services till the end of the academic year along with age proof and physical fitness certificates and thereby requested them to extend the benefit of G.O.Ms.No.281, Higher Education (F1) Department, dated 13.02.1981, and G.O.Ms.No.300, Higher Education (F1) Department, dated 08.09.2006, which provide for automatic grant of re-employment to the teachers of aided colleges on par with the Government College Teachers.

4. It is stated by the learned counsel for the petitioner that the second respondent institution is an aided institution receiving 100% grant from the Government of Tamil Nadu and as such, the service conditions of all the employees are governed by the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules made thereunder. The relevant Government Order in G.O. Ms.No.281, Education Department, dated 13.02.1981, prescribes for re-employment or extension of service. Therefore, he prayed for a direction to the respondents to extend the services of the petitioner till the end of the academic year.

5. Inviting the attention of the Court to Rule 41 of the Tamil Nadu Institute of Labour Studies (Service Regulations and Delegation of Powers), which states applicability of the provisions contained in the General Rules for the State and Subordinate Services, Fundamental Rules, the Tamil Nadu Leave Rules, the Manual of Special Pay and Allowances and the Tamil Nadu Travelling Allowances Rules as amended from time to time, learned counsel for the petitioner contended that the respondent has no locus-standi to say that the above said Government Orders issued by the Government extending the services of the teachers, who retires in the middle of the academic year, till the end of the academic year, cannot be made applicable to the second

respondent institute. Thus, he prayed for a direction to the respondent to extend the services of the petitioner till the end of the academic year.

6. In support of his submissions, he has also relied upon a judgment of this Court in Dr.G.Kunasekaran v. the State of Tamil Nadu and another (W.P.No.15542 of 2011, dated 02.11.2011), for a proposition that a teacher who attains the superannuation in the middle of the academic year is entitled to continue his/her services till the end of the academic year. On this basis, he prayed for a direction as cited supra.

7. Per contra, learned Additional Advocate General appearing for the respondents submitted that the prayer of the petitioner is liable to be rejected, since the G.O.Ms.No.281, dated 13.02.1981, and G.O.Ms.No.300, dated 08.09.2006, as cited by the learned counsel for the petitioner, cannot be made applicable to the second respondent institution, for, the said institution is an academic-cum-training institution, not a Government or Government aided college. Moreover, it is a society registered under the Tamil Nadu Societies Registration Act, 1975 and functioning as a Society from 01.04.1988, therefore, a separate governing body regulates the functioning of the Society comprising the Hon'ble Minister for Labour as Chairman, the Principal Secretary to Government, Labour and Employment Department as Vice Chairman and other Members. This institute has separate Rules and Regulations and Bye-laws framed and approved by the Governing Committee so constituted.

8. Again, by contending that G.O.Ms.No.281, Education Department, dated 13.02.1981, is not applicable to the case of the petitioner, learned Additional Advocate General submitted that the staffs and the faculty members are governed by the Service Regulations of the second respondent institution, therefore, the said institution cannot come under the purview of the Higher Education Department or Collegiate Education, whereas it is functioning under the control of the Labour and Employment Department, Government of Tamil nadu, hence, para 4 of the said G.O. giving the benefit of re-employment is restricted to only to the academic year 1980-81 as a special case. Moreover, G.O.Ms.No.300, Higher Education (F1) Department, dated 08.09.2006, is applicable only to the teachers working in the Government and Government Aided Colleges, whose retirement age is 58, therefore, the petitioner, who is working under the second respondent institution, cannot claim the said benefit, as the retirement age of the faculty members working in the second respondent is 60. Thus, on this basis, learned Additional Advocate General prayed for a dismissal of the writ petition.

9. Heard the learned counsel appearing on either side and perused the materials available before this Court.

10. Given the facts and circumstances of the case, the only question which has to be decided is whether the petitioner is entitled to have the services till the end of the academic year?

It is not in dispute that in the year 2009, the petitioner was promoted to the post of Associate Professor from the post of Lecturer by the second respondent. It is also not in dispute that the second respondent institute is affiliated to the University of Madras and conducting the examinations for the UG and PG degree courses i.e., B.A., and M.A., in Labour Management. Whiles, on the verge of his retirement, which was on 30.06.2016, the petitioner made a representation dated 07.06.2016 to extend his services till the end of the academic year on the basis of G.O.Ms.No.281, Education Department, dated 13.02.1981 and G.O.Ms.No.300, Education Department, dated 08.09.2006, by enclosing physical fitness certificate for further services.

11. The second respondent in their counter affidavit has not stated anything about the medical fitness of the petitioner nor the character and conduct of him. However, the only stand is that the above said Government Orders cannot be made applicable to the petitioner, who is working under the second respondent institution, for, the said institution is registered under the Tamil Nadu Societies Registration Act, 1975, and it is not a Government or Government Aided College. In this regard, it is relevant to refer to the Rule 41 of the Tamil Nadu Institute of Labour Studies (Service Regulations and Delegation of Powers), which is extracted below:

"41. Pay, Allowances, Leave, Leave Salary, Pension and other Conditions of Service:

The provisions of the General Rules for the State and Subordinate Services, Fundamental Rules, the Tamil Nadu Leave Rules, the Manual of Special Pay and Allowances and the Tamil Nadu Travelling Allowances Rules as amended from time to time in so far as they may be applicable and except to the extent expressly provided in these and other regulations, shall apply to the employees in the Institute."

A mere reading of the above said Rule says that the provisions contained in the General Rules for the State and Subordinate Services, Fundamental Rules, the Tamil Nadu Leave Rules, the Manual of Special Pay and Allowances and the Tamil Nadu Travelling Allowances Rules as amended from time to time, are applicable to the employees working under the second respondent institute. Therefore, it goes without saying that the above

said Government Orders giving extension of services till the end of the academic year are applicable to the case of the petitioner as well, inasmuch as the sole purpose of issuing the said Government Orders is only not to disturb the academic atmosphere and studies of the students. In my view, if a teacher is found fit for continuance in service till he/she attains the age of retirement in the middle of the academic year, there is no reason to decline continuation of his service till the end of the academic year.

12. Another contention of the learned Additional Advocate General is that the petitioner, having reached the age of superannuation on 30.06.2016, cannot be allowed to say that he can continue till the end of the academic year i.e. till 31.05.2017. Such contention, in my view, cannot be sustained in view of the judgment of this Court in Dr.G.Kunasekaran v. the State of Tamil Nadu and another (W.P.No.15542 of 2011, dated 02.11.2011), wherein this Court, by taking note of the date of retirement of the petitioner therein i.e. on 26.06.2011, extended the services till 31.05.2012 i.e., the end of the academic year. For better appreciation, relevant portion of the said judgment is extracted below:

"7.....
Therefore, the petitioner, who attained superannuation in the middle of the academic year [the academic year starts on 01.06.2011 as per definition 2(i) of the Statutes of the Periyar University], is entitled to continue in service till 31.05.2012 i.e., the end of the academic year."

13. In the case on hand also, the petitioner herein attained the superannuation on 30.06.2016, therefore, taking note of the fact that the academic year starts only on 01.06.2016, I have no hesitation to extend the services of the petitioner till 31.05.2017, which is the end of the academic year. Now, he retired from service, therefore, this Court hereby directs the second respondent institute to permit the petitioner to receive the benefits of re-employment or extension, as if he continued his services till the end of the academic year 2016-2017. With this direction, the writ petition is disposed of. No Costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Principal Secretary,
Labour and Employment Department,
Fort St. George,
Chennai - 9.

2.The Director,
Tamil Nadu Institute of Labour Studies,
No.5, Kamarajar Salai,
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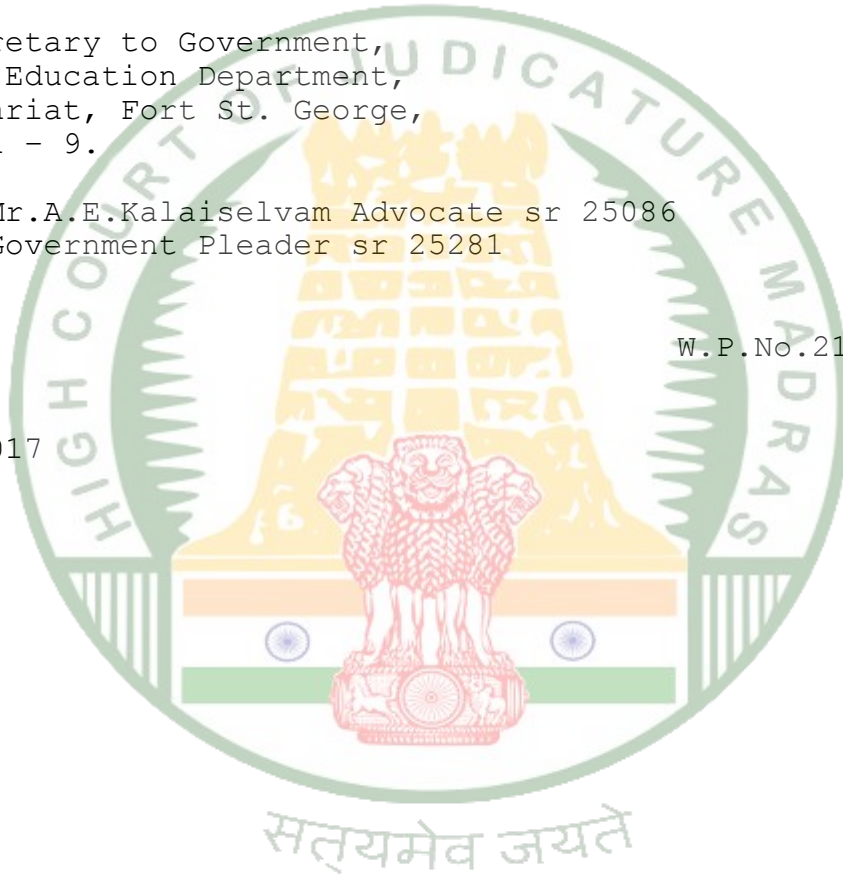
3.The Secretary to Government,
Higher Education Department,
Secretariat, Fort St. George,
Chennai - 9.

+1 cc to Mr.A.E.Kalaiselvam Advocate sr 25086

+1 cc to Government Pleader sr 25281

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