

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.23571 of 2013

and

M.P.Nos.2 of 2013 and 1 of 2014

Dr. (Mrs)Nausheen Dawood .. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai - 600 006.
- 3.The Joint Director of Collegiate Education,
Chennai Region, Chennai - 600 015.
- 4.The University of Madras,
Rep. by its Registrar,
University Centenary Buildings,
Chepauk, Chennai - 600 005.
- 5.The Principal Accountant General
(Civil Audit), Tamil Nadu & Puducherry,
Lekha Pariksha Bhavan,
No.361, Anna Salai, Teynampet, Chennai - 600 012.
- 6.The Correspondent,
Justice Basheer Ahmed Sayeed
College for Women (Autonomous),
No.56, K.B. Dasan Road,
Teynampet, Chennai - 600 018. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to call for the records relating to the impugned order issued by the second respondent namely the Director of Collegiate Education in

Na.Ka.No.53070/G1/2010 dated 16.07.2013 seeking to revert the petitioner retrospectively from the post of Principal to the post of Lecturer and to recover a sum of Rs.17,00,549/- from her and quash the same.

For Petitioner .. Mr.Isaac Mohanlal

For Respondents .. Mr.T.M.Pappiah, (R1 to R3)
Spl. Govt. Pleader
Mr.R.Gopinathan for R4
Mr.V.Vijay Shankar for R5
Mr.B.Senthilnathan for R6

ORDER

Writ petition has been filed seeking for issuance of a Certiorari to call for the records relating to the impugned order issued by the second respondent namely, the Director of Collegiate Education in Na.Ka.No.53070/G1/2010 dated 16.07.2013 seeking to revert the petitioner retrospectively from the post of Principal to the post of Lecturer and to recover a sum of Rs.17,00,549/- from her and quash the same.

2.The petitioner was originally appointed as Lecturer in the Department of Zoology in the sixth respondent's college on 12.06.1996. Thereafter, she came to be appointed as Principal of College with effect from 2009 and continued in that post till she attained the age of superannuation on 31.03.2014 and retired from service on conclusion of the academic year 2013-2014.

3.While working as Principal of the sixth respondent College, it appears that on the basis of the objections from the fifth respondent, impugned order came to be issued on 16.07.2013, reverting the petitioner to the post of Lecturer on the ground that she had not worked as Lecturer for 15 years and therefore, not eligible for appointment as Principal. As per the impugned order dated 16.07.2013, the petitioner did not complete 15 years of service as lecturer, as there was shortage of 3 years 8 months and 11 days, yet she was appointed as Principal. The said impugned order came to be challenged before this Court and the petitioner had obtained an interim order of stay and continued as Principal and retired from service on 31.03.2014.

4.The learned Senior Counsel appearing for the petitioner, at the outset would contend that the impugned order passed by the second respondent is per se invalid and cannot be countenanced in law, since as per the Private Colleges

Regulation Act 1976, the calculation of experience for the teaching staff was squarely within the domain of the University concerned. In the instant case, the fourth respondent, Madras University has already granted provisional approval at the time of appointment of Principal and as per the provisions, subsequently granted regular approval for the said appointment. The learned Senior Counsel also brought to the attention of this Court the communication dated 29.03.2010, wherein, while addressing the communication to the sixth respondent, the fourth respondent University has granted provisional approval by taking into account the research period undergone by the writ petitioner for a period of 3 years 8 months and 11 days. The provisional approval granted under the said communication has subsequently been regulated by another communication issued subsequently by the University of Madras addressed to the sixth respondent College on 09.02.2012. In the said communication dated 09.02.2012, the following resolution was passed by the fourth respondent University, which is extracted below:

'RESOLVED that the approval of qualification for the appointment of Dr.Nousheen Dawood as Principal(by promotion) at Justice Basheer Ahmed Sayeed College for Women (Autonomous), Chennai with effect from 01.06.2009 be accorded as per rules now in force.'

In communicating the above decision of the Syndicate, I am to inform you that the approval of qualification is accorded to Dr.(Mrs.) Nousheen Dawood to hold the post of Principal (By promotion) with effect from 01.06.2009 in your college as per the rules now in force.'

5.In the said circumstances, the learned Senior Counsel appearing for the petitioner would submit that the appointment of the petitioner was very much in order and the impugned order passed by the second respondent is therefore liable to be interfered with. The learned Senior Counsel also brought to this Court's attention that in the impugned order, the second respondent has also directed recovery of Rs.17,00,549/- being the excess amount paid to the petitioner, when she was posted to the post of Principal. In any event, the impugned order has been stayed and no amount has been recovered from the petitioner.

6.Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance on behalf of the respondents 1 to 3 and Mr. V.Vijay Shankar, learned counsel appearing for the fifth respondent made his submissions based on the counter affidavit filed by him.

7.After hearing the arguments putforth by the learned counsel appearing for the respective parties, this Court of the

firm view that there is considerable force in the submissions made by the learned Senior Counsel appearing for the petitioner that the competent authority, namely the University of Madras, the fourth respondent herein has granted approval for appointment of the petitioner as Principal of the sixth respondent College and such approval admittedly remained intact.

8. In the said circumstances, this Court does not appreciate how the second respondent can pass an order stating the petitioner was not eligible for the post of Principal, particularly, on the basis of the objections from the Audit authorities and such action on the part of the second respondent prima facie appears to be arbitrary, unjust and unreasonable.

9. As rightly contended by the learned Senior Counsel appearing for the petitioner, as per the provisions of Section 15 of the Private Colleges Regulation Act 1976, it was only the University of Madras, the fourth respondent herein, which was competent to provide the requisite qualification for the post of Principal and such qualification cannot be questioned by the second respondent under any circumstances. The learned Senior Counsel appearing for the petitioner has also brought to the attention of this Court that the appointment is within the frame work of the provisions of UGC Regulations as stood then, which provide for inclusion of research period as part of the experience in teaching. Therefore, in all fours, the petitioner's appointment is valid and cannot be legally assailed.

10. In the light of the above discussions, the impugned order dated 16.07.2013 passed by the second respondent is quashed and the writ petition is allowed. It is stated by the learned Senior Counsel appearing for the petitioner that in view of the pendency of the writ petition, the retirement benefits which are otherwise due to the petitioner, has not been settled in full. Since the writ petition is allowed, there shall be a direction to the second respondent to disburse all the retiral benefits which are otherwise due to the petitioner, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai - 600 006.
- 3.The Joint Director of Collegiate Education,
Chennai Region, Chennai - 600 015.
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- 5.The Principal Accountant General
(Civil Audit), Tamil Nadu & Puducherry,
Lekha Pariksha Bhavan,
No.361, Anna Salai,
Teynampet, Chennai - 600 012.

+1cc to Mr.P.Godson Swaminathan, Advocate, S.R.No.62730
+1cc to Mr.P.Gopinath, Advocate, S.R.No.63087
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.63277
+1cc to Mr.B.Senthil Nathan, Advocate, S.R.No.62333
+1cc to the Government Pleader, S.R.No.63379

W.P.No.23571 of 2013

GN(04/10/2017)

सत्यमेव जयते

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