

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.25857 of 2013
and
M.P.Nos.1 and 2 of 2013

Dr.C.P.Saraswathy ... Petitioner

Vs.

1. Director of Collegiate Education,
Directorate of Collegiate Education,
DPI Compound,
College Road, Chennai - 600 006.

2. Government Arts College,
Rep. by its Principal,
Coimbatore - 641 018.

3. S.Sellathai,
Head of the Department,
Chemistry Department,
Government Arts College,
Coimbatore - 641 018.

4. S.Tamilmani,
Associate Professor of Commerce,
Government Arts College,
Coimbatore - 641 018.

5. O.B.Pramod Kumar,
Associate Professor of Economics,
Government Arts College,
Coimbatore - 641 018.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, after calling for the records from the 2nd Respondent relating to the order dated 29.05.2013 bearing reference No.Na.Ka.No.20903/Q3/2013 appointment/posting of 5th Respondent as the Controller of Examination of the 2nd Respondent College and quash the same as illegal, arbitrary, malafide and

consequently direct the Respondents 2 and 3 to appoint/post the Writ Petitioner as the Controller of Examination of the 2nd Respondent College with effect from the date the 5th Respondent was appointed as Controller of Examination, pay monetary and other benefits attached to the said post to the Petitioner as the Petitioner would have been entitled had petitioner been appointed as Controller of Examination instead of 5th Respondent apart from retaining her name in the Chemistry Department of the 2nd Respondent College, allowing her to sign the Chemistry Department attendance register, allot Chemistry main classes.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents : Mrs.M.E.Rani Selvam (for R1 and R2)
Additional Government Pleader

Mr.M.Gnanasekar (for R3)

Mr.V.Ajoy Khose (for R4)

Mr.DR.Ramasamy (for R5)

O R D E R

The petitioner has filed this writ petition seeking to issue a writ of Certiorarified Mandamus, after calling for the records from the 2nd Respondent relating to the order dated 29.05.2013 bearing reference No.Na.Ka.No.20903/Q3/2013 appointment/posting of 5th Respondent as the Controller of Examination of the 2nd Respondent College and quash the same as illegal, arbitrary, malafide and consequently direct the Respondents 2 and 3 to appoint/post the Writ Petitioner as the Controller of Examination of the 2nd Respondent College with effect from the date the 5th Respondent was appointed as Controller of Examination, pay monetary and other benefits attached to the said post to the Petitioner as the Petitioner would have been entitled had petitioner been appointed as Controller of Examination instead of 5th Respondent apart from retaining her name in the Chemistry Department of the 2nd Respondent College, allowing her to sign the Chemistry Department attendance register, allot Chemistry main classes.

2.I heard Mr.N.G.R.Prasad for M/s.Row and Reddy, learned counsel appearing for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader, appearing for the respondents 1 and 2, Mr.M.Gnanasekar, learned counsel appearing for the 3rd respondent, Mr.V.Ajoy Khose, learned counsel appearing for the 4th respondent and Mr.DR.Ramasamy, learned

counsel appearing for the 5th respondent and perused the entire records.

3.It is the case of the petitioner is that she has questioning the action of the 3rd respondent about the deleting of her name from the Attendance Register of the Chemistry Department of the 2nd respondent College not allotting the class room to the petitioner to teaching Chemistry and appointing the 5th respondent as Controller of Examination for the 2nd respondent College, even though she is not having seniority.

4.The petitioner states that the petitioner is in serial No.3, whereas the 5th respondent by namely Mr.O.B.Pramod Kumar is in serial No.215 and this petitioner was worked as an Associate Professor of Chemistry in the 2nd respondent College from the year 2005.

5.The petitioner states that she is qualified B.Sc. degree in Bio-Chemistry and also M.Sc. Degree in Bio-Chemistry obtained from Avinashilingam Home Science College, Coimbatore, in the year 1980 and 1983 respectively. Thereafter, she got her Ph.D. in Environmental Science from the Bharathiar University in the year 2007 and this petitioner put up 23 years of unblemished record of teaching experience and she got 5 more years of service at the time of filing this writ petition.

6.While the petitioner was working as Lecturer in the Bharathi Women's College, Chennai between 1990-1996 by G.O.Ms.No.470 dated 30.07.1996 she was transferred from Bharathi Women's College, Chennai and posted as Lecturer in the Chemistry Department in the Government College, Tiruppur, since then the petitioner has working in the Chemistry Department in teaching Chemistry and during that period, she got her Ph.D. in Environmental Science. As per G.O.Ms.No.81 dated 13.03.1998, issued the regularization of the candidates in which this petitioner is in serial No.3 whereas the 5th respondent is in serial No.215.

7.When the petitioner was working in the year 2005 as an Associate Professor in the Chemistry Department, the 3rd respondent Smt.S.Sellathai was the Head of the Department of the Chemistry and she was doing her Ph.D. at that time. She wanted to purchase FT-IR SPECTROPHOTOMETER instrument to take ratings for her Ph.D. and she wanted Rs.4.2 lakhs from the UGC grant meant for purchase of Laboratory equipment to the College Lab for purchasing the above FT-IR SPECTROPHOTOMETER instrument costing at the rate of Rs.8,00,000/- and the balance amount of Rs.3.2 lakhs from the Personal Contact Programme Fund maintained by the Department. For this purpose, the 3rd respondent on 28.11.2011 wanted all the teaching staff in the Chemistry

Department to consent to buying the said FT-IR SPECTROPHOTOMETER instrument. Since the U.G.C. grant amount and also the other Personal Contact Programme Fund were meant to be used for the general benefit of the students studying in the said Department and not for the benefit of the single individual. Therefore, this petitioner has refused to sign, but the 3rd respondent forced the petitioner to sign and the petitioner struck off his signature. Thereafter, the petitioner made a complaint to the 2nd respondent Principal about the 3rd respondent ill treating the petitioner after the incident. That is why the difference of opinion between the petitioner and the 3rd respondent started. Unfortunately, the 2nd respondent joined with the 3rd respondent and purchase the FT-IR SPECTROPHOTOMETER instrument, which is not in accordance with the UGC grant and the PCP fund programme.

8. It is also the case of the petitioner is that from 01.03.2013, the 3rd respondent has removed the petitioner name from serial No.2 in the attendance register and put in serial No.16 and strangely from 16.04.2013 she removed the petitioner's name from the attendance register of the Chemistry Department itself on the ground that the petitioner only a Graduate and Post Graduate in Bio-Chemistry and therefore this writ petitioner has not qualified to be part of the Chemistry Department. This was complaint by the petitioner on 23.04.2013, the 1st respondent Director about the illegal action of the 3rd respondent and stated that when the petitioner's name was correctly found in the Chemistry Department from 1996 to 2005 in the Government College, Tiruppur and from 2005 in the 2nd respondent College and at the distance of time, the 3rd respondent cannot remove the petitioner's name in the Chemistry Department attendance register. The 1st respondent by his letter dated 15.04.2013 directing the 2nd respondent stating that the issue of the Bio-Chemistry qualified teacher teaching in Chemistry Department has been referred to the Government and directed the 2nd respondent to allow the petitioner to continue in the same Chemistry Department, but the 2nd respondent has not carried out the directions of the Director which is totally illegal.

9. The petitioner had applied for the post of Controller of Examination in the 2nd respondent College which is an Autonomous College on 19.04.2013. This carries an extra remuneration of about Rs.1,500/- per month. Since the post of Controller of Examination is always filled on seniority basis as per the Government Order 51, dated 03.04.2012 and the petitioner should being the senior most among the applicants, the petitioner should have got it, but unfortunately it was given to the 5th respondent, who was way down in the seniority list in serial No.215, which is illegal.

10. There was a complaint on 04.02.2013 by the 3rd respondent to the Principal stating that the petitioner's husband had come to the College in the morning and threatened the 3rd respondent by assaulting her, but the writ petitioner denied the said allegations and also given explanation, since the petitioner's husband has brought her breakfast, but the 3rd respondent created and given the false complaint. The petitioner has not co-operate with her in diverting the funds meant for the students benefits to buy FT-IR SPECTROPHOTOMETER instrument for her Ph.D. purpose. Though the petitioner is working for more than 23 years in the Government College in the Chemistry Department and though she was only a Graduate and Post Graduate in Bio-Chemistry and this petitioner, who is the senior most person in the seniority list stands in the serial No.3, but she was not given the post of Controller of Examination by allotting to the 5th respondent, who is in serial No.215 was given for the personal motive of the 3rd respondent.

11. None of the respondents have filed their counter, but the respective learned counsels appearing for the respondents were put forth their case before this Court, since the writ petitioner has filed this writ petition in the year 2013, even after lapse of four years, none of them filed counter. But I heard the arguments of the respective counsels for the respondents and perused the records.

12. During the course of arguments, the learned counsel Mr.N.G.R.Prasad, appearing for the petitioner has produced the judgment passed by this Court in W.P.No.13436 of 2014, dated 04.03.2015, the learned Judge of this Court has allowed the writ petition, since the respondents in the said writ petition without following the seniority in that writ petition of Dr.K.Palanivelu and the respondents have violating the G.O.Ms.No.51 Higher Education dated 03.04.2012 has passed the impugned order and hence the learned Judge has passed the following orders:

"16. In fact, the order in question does not say that the petitioner would be having only less than three years and that was the reason for rejecting the candidature. When it is made out that the second respondent has appointed the fifth respondent by following the Government order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 the petitioner is correct in his claim that he should have been considered on account of his seniority. When a decision to follow the Government Order is taken, necessarily senior most member of the faculty should be considered at the first instance. It is only in case he is found unsuitable, the candidature of another in seniority should be considered. However, the second

respondent failed to consider the seniority of the petitioner by making appointment. I am therefore of the view that the petitioner is perfectly correct in his contention that the second respondent violated the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012 while appointing the fifth respondent.

17.The second respondent has taken up a further contention that the fourth respondent has assessed the comparative merits of candidates. The fourth respondent has simply stated the experience of each and every candidate and finally recommended the case of fifth respondent. However while making such recommendation, especially the criteria regarding seniority was not followed by the fourth respondent. The appointment of the fifth respondent was therefore made in utter violation of the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012. Therefore I am of the view that the matter requires fresh consideration by the second respondent.

18.In the result, the impugned order is set aside. The second respondent is directed to consider the question of appointment in the light of the Government Order in G.O.Ms.No.51, Higher Education (F1) Department dated 3 April 2012. In case there are detailed guidelines prescribed by UGC in the matter of appointment to the post of Controller of Examination, it is open to the second respondent to refer those guidelines also. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order."

13.It is my absolute view that when the petitioner was in serial No.3 and the 5th respondent Mr.O.B.Pramod Kumar, who was in serial No.215, how the respondents 1 to 3 has appointed the 5th respondent as Controller of Examination, since it is settled proposition of law that the senior most person to be appointed as Controller of Examination.

14.Admittedly, in this case, the petitioner has put up 23 years of unblemished record of service and she is in serial No.3 and the respondents 1 to 3 might to have appoint the petitioner as Controller of Examination, but ignoring all the Government Orders and seniority by violating the principles of natural justice, the respondents 1 to 3 making the appointment of the 5th respondent as Controller of Examination, which act is totally illegal and against the law and natural justice. Therefore, the petitioner has make out the case before this Hon'ble Court.

15. Though the 5th respondent appointment was totally illegal and the appointment order dated 29.05.2013 bearing reference No.Na.Ka.No.20903/Q3/2013 is liable to be set aside. Pursuant to the order dated 29.05.2013, the 5th respondent was appointed and she is continue as the Controller of Examination of the 2nd respondent College. Therefore, this Court thought fit not to set aside the order. But unless the impugned order is set aside, the petitioner should not be appointed as the Controller of Examination. Therefore, the 5th respondent was appointed on 29.05.2013 and continuing till date. The impugned order is set aside, but the 5th respondent is entitled the appointment and respective salary from 29.05.2013 till this date and the respondents 1 to 3 are directed to appoint the petitioner as Controller of Examination immediately and pay all the service and monetary benefits from the date of her appointment.

16. In the result:

(a) this writ petition is allowed and the impugned order Na.Ka.No.20903/Q3/2013 dated 29.05.2013 is set aside;

(b) the respondents 1 to 3 are directed to continue the service of the 5th respondent from 29.05.2013 till date and the 5th respondent is entitled all the service and monetary benefits for the period of service rendered by her;

(c) the respondents 1 to 3 are directed to appoint the petitioner immediately as Controller of Examination in the 2nd respondent College and pay all the service benefits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

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सत्यमेव जयते
Sub Assistant Registrar

vs

To

1. The Director of Collegiate Education,
Directorate of Collegiate Education,
DPI Compound,
College Road, Chennai - 600 006.

2.The Principal,
Government Arts College,
Coimbatore - 641 018.

+1cc to Ms.Row & Reddy, Advocate, S.R.No.58378
+1cc to Mr.T.Ramasamy, Advocate, S.R.No.58458
+1cc to Mr.*, Advocate, S.R.No.58459
+1cc to the Government Pleader, S.R.No.58520

W.P.No.25857 of 2013
and
M.P.Nos.1 and 2 of 2013

RRK(13/12/2017)



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