

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.28990 of 2012

P.Boobalan

.. Petitioner

Vs.

1.The Principal,
Pondicherry Engineering College,
Puducherry.

2.Union Territory of Pondicherry
rep. By Secretary to Government,
Education Department,
Chief Secretariat, Puducherry.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to to order No.PEC/ESTT(T)/CAS/2012/1538 dated 30.05.2012 passed by the first respondent and quash the same and direct the respondents to count the petitioner's past service in Government Polytechnic College, Puducherry from 06.10.1993 to 07.03.2002 for the purpose of granting benefits under the Career Advancement Scheme and all other consequential benefits including payment of arrears of pay and allowances flowing therefrom.

For Petitioner ... Ms.Y.Kavitha
for M/s.P.V.S.Giridhar Associates

For Respondents... Mr.Syed Mustafa,
Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records relating to to order No.PEC/ESTT(T)/CAS/2012/1538 dated 30.05.2012 passed by the first

respondent and quash the same and direct the respondents to count the petitioner's past service in Government Polytechnic College, Puducherry from 06.10.1993 to 07.03.2002 for the purpose of granting benefits under the Career Advancement Scheme and all other consequential benefits including payment of arrears of pay and allowances flowing therefrom.

2.The petitioner was working originally at the Government Polytechnic College under the control of the Pondicherry Institute of Post Matric Technical Education (PIPMATE). He had served in Government Polytechnic College for eight years or so. He originally joined in the said institution as a Lecturer on 06.10.1993 and promoted as Lecturer (Senior Scale) on 06.10.1999 under the Career Advancement Scheme (CAS). The petitioner left the services of the Government Polytechnic College by submitting a technical resignation to join Pondicherry Engineering College, the first respondent herein. He joined the first respondent college as Lecturer in the Department of Information and Technology on 08.03.2002 and promoted as Lecturer (Senior Scale) on 08.03.2007. The petitioner has a B.Tech degree in first class and also obtained his post graduate degree in M.Tech in first class. He is currently pursuing his Ph.D. Programme.

3.The petitioner while being appointed in the first respondent college as Lecturer in 2002 was given the pay scale last drawn by him in the Government Polytechnic College which means that his services in the Government Polytechnic College was taken into consideration while appointing him as Lecturer.

4.The first respondent has issued a circular on 05.01.2012 calling for applications for promotion/re-designation as per the All India Council for Technical Education (for short 'AICTE') Career Advancement Scheme and the petitioner had responded to the circular by submitting an application for promotion to the post of Associate Professor. The petitioner was under the bonafide impression that the services rendered by him in the Government Polytechnic College to be taken into consideration for the purpose of considering his candidature for Career Advancement Scheme (for short 'CAS'). While so, the representation made by the petitioner was rejected by proceedings dated 30.05.2012 passed by the first respondent stating that the services rendered in the lower level institution will not be considered for promotion under the CAS at higher level institution.

5.Aggrrieved by the rejection, the petitioner is before this Court. According to the petitioner, his qualification prescribed for the post of Lecturer in the higher grade in Government Polytechnic College and the first respondent institution are

identical and both involve teaching of the technical subjects in Computer Science/Information Technology. In fact as per Clause 8 of the University Grants Commission Guidelines (for short 'UGC'), which is the competent body to stipulate qualification for the higher education, has provided that past service outside the institution to be counted subject to three criteria as specified viz.,

(i) same qualification;

(ii) same hierarchy of grade/scale of pay; and

(iii) appointment in accordance with prescribed selection procedure.

6. According to the petitioner, the duties discharged by him and the qualification prescribed for the post, the promotional avenues and the pay scales are all one and the same in both the Government Polytechnic College and the first respondent engineering college. These facts have not been disputed by the respondents in the counter affidavit. That being the case, there is no justification for the respondents to deny the services rendered by the petitioner in Government Polytechnic College particularly in view of the fact that when the pay scale came to be fixed at the time of appointment of the petitioner in the first respondent college, his last drawn pay was protected by taking into consideration the services rendered in the Government Polytechnic College.

7. Upon notice, Mr. Syed Musthafa, learned Government Pleader has entered appearance on behalf of the respondents and filed counter affidavit. In the counter affidavit, it is stated that the UGC and AICTE guidelines are not mandatory and therefore they need not be followed strictly and it is for the college to prescribe the qualification towards Career Advancement Scheme. According to him, the services rendered by the petitioner in the lower level Government Polytechnic College cannot be considered as valid service for the purpose of providing the benefit of career advancement scheme to the petitioner.

8. Learned counsel appearing for the petitioner would submit that the objections raised by the learned Government Pleader appearing for the respondents have no merit and substance particularly the objection that the guidelines of the AICTE and UGC are not mandatory and in fact the same submission was the subject matter of consideration before this Court in W.P.No.10049 of 2004. This Court by order dated 26.11.2009 overruled the said objections. The operative portion of the order passed by this Court in the said writ petition at para 15

is extracted below:

"15.The Courts have recognised the importance of All India Councils for higher education namely medical council in the medical field and technical council for technical education. These councils are expert bodies and they are alone competent to give guidelines in the respective fields. When such is the position, the stand taken in the counter affidavit filed by the first respondent that AICTE regulations are not mandatory in respect of service condition and that the State has no jurisdiction on service matters are all without any substance and such contention should not be allowed to be raised by the institution, which will go against the intention of the legislature/parliament and it has to be discouraged and condemned."

9.In an identical situation, this Court has directed the first respondent herein to count the services of S.Palanivel, who is the petitioner in the said writ petition who had rendered similar service in another institution in Andhra Pradesh and the said decision has also been implemented by the respondents. Moreover, it is also submitted by the learned counsel for the petitioner that in similar circumstances, other lecturers Ms.S.Chandramathy and Mr.S.Kothandaraman, whose past services had also been counted. That being the case, she would submit that the denial of past service rendered by the petitioner herein is per se discriminatory, arbitrary and unreasonable unjust and violative of Articles 14 and 16 of the Constitution of India. She would further submit that since the qualification, method of recruitment, discharge of duties and promotion to higher grades are one and the same as between Government Polytechnic College and the first respondent college and both the institutions are governed by AICTE and UGC guidelines there could not be any discriminatory treatment between the lecturer working in Government Polytechnic College and in the first respondent college. In the circumstances, the impugned order rejecting the claim of the petitioner dated 30.05.2012 cannot be countenanced both in law and on facts. The averments made in the affidavit filed in support of the writ petition are practically not controverted meaning that there is full justification in the claim of the petitioner. The petitioner is therefore entitled to the relief prayed for in the writ petition.

10.This Court has given its anxious consideration to the rival submissions of the learned counsels appearing for the parties and perused the materials and pleadings placed on record. This Court finds that there is considerable force in the contention put forth by the learned counsel for the petitioner that in view of the admitted position that there exists a parity between the post of lecturer of the Government Polytechnic

College and the first respondent college, in all matters of service conditions, qualifications, promotional avenues etc., there cannot be any discrimination in treating them differently for the purpose of providing them career advancement. Moreover, in similar circumstances, this Court has directed counting of past service in respect of similarly placed lecturers and the said decision having been implemented, it is not open to the respondents to deny the same benefit of the petitioner herein. As rightly contended by the learned counsel for the petitioner, the non-consideration of the petitioner's earlier service rendered in Government Polytechnic College is without any justification and the same is unreasonable, arbitrary and unjust and therefore, the said rejection by the first respondent conveyed by the communication dated 30.05.2012 has to be held as invalid in law.

11. For all the above stated reasons, this Court has no hesitation in allowing the writ petition by setting aside the impugned order of rejection dated 30.05.2012. The first respondent is directed to take into account the past service rendered by the petitioner in Government Polytechnic College for the purpose of grant of benefits under Career Advancement Scheme and grant him other consequential benefits, if he is otherwise qualified. The direction shall be complied with by the first respondent within a period of two months from the date of receipt of a copy of this order.

12. The writ petition stands allowed on the above terms. No costs.

sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

1. The Principal,
Pondicherry Engineering College,
Puducherry.

2. The Secretary to Government,
Union Territory of Pondicherry,
Education Department,
Chief Secretariat, Puducherry.

+1 CC M/S.Y.KAVITHA Advocate SR.No.70183

NM (CO)

EGR 30/10/2017

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