

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2017

CORAM

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

W.P.No.16831 of 2004
and
WP.MP.No.19924 of 2004

Dr.R.S.Rangarajan

.. Petitioner

Vs.

1. The Government of Tamil Nadu
rep. By its Secretary
Department of Education
Chennai - 9.

2. The Director of Collegiate Education
Chennai - 6.

3. The Joint Director of Collegiate Education
Madurai Region
Madurai - 625 020.

4. The Secretary
Madura College
Madurai - 11.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to proceedings O.M.No.993/B1/04, dated 2.3.2004 issued by the third respondent, to quash the same and to direct the third respondent to release the pay for the period from 5.12.2003 to 8.1.2004.

For Petitioner

: Mr.R.Subramanian

For Respondents

: Mrs.K.Bhuvaneswari
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records pertaining to proceedings in O.M.No.993/B1/04, dated 02.03.2004 issued by the third respondent, to quash the same and to direct the third respondent to release the pay for the period from 05.12.2003 to 08.01.2004.

2. The facts in a nutshell are as under: The petitioner, who was working as Reader and Head of the Department of Economics in the fourth respondent College, attained age of superannuation during September, 2003 and even thereafter, his services were extended till the end of the academic year.

3. It is alleged that the first respondent issued G.O.Ms.No.325, dated 29.11.2002 ordering that teachers have to retire on the date of their superannuation and their services will not be extended till the end of the academic year. The said government order is stated to have been challenged by Madurai Kamaraj, Manonmaniam Sundaranar Univeristy Teachers' Association in W.P.No.46001 of 2002 and an order of interim stay of the said government order was granted by this Court. Despite grant of interim order, the re-employment of the petitioner is alleged to have been withdrawn by the respondent authorities.

4. Thereafter, finally, the first respondent issued a letter dated 15.01.2004 to the effect that teachers attaining superannuation during the academic year 2003-2004 shall be re-employed up to 31.05.2004. The petitioner, thereafter, joined duty on 09.01.2004. The petitioner claimed sanction of emoluments for the broken period of service, i.e., from 05.12.2003 to 08.01.2004, however, the third respondent rejected the claim stating that the issue is pending before the Court.

5. In such backdrop, the present writ petition is filed for the relief stated supra.

6. I heard Mr.R.Subramanian, learned counsel appearing for the petitioner and Mr.K.Bhuvaneshwari, learned Government Advocate appearing for the respondents and perused the entire material available on records.

7. The learned counsel appearing on behalf of the petitioner contended that inasmuch as interim order was granted by this Court and the respondent authorities have no jurisdiction to withdraw the re-employment, the third respondent erred in holding that emoluments cannot be paid when lis is pending

before this Court.

8. The learned Government Advocate reiterated the reasons that weighed with the respondent authorities in passing the impugned order and prayed for dismissal of the writ petition.

9. The right of the petitioner to continue in service till the end of academic year as his date of retirement fell in the middle of the academic year cannot be disputed. In fact the said right flows from the orders of the Government issued in G.O.Ms.No.249 dated 09.02.1959, G.O.Ms.No.452 dated 24.03.1970, G.O.Ms.No.2529 dated 18.11.1981 and G.O.Ms.No.1643 dated 27.10.1988.

10. In the above said Government Orders, the Government directed the Education Department to re-employ the teaching staff till the end of the academic year, if their date of retirement falls in the middle of the academic year. Continuity of such service was ensured only for the benefit of the students, so that they can have the benefit of teaching from the same staff till the end of that particular academic year. The reason for issuing the said Government Orders are that 'the Government of India in the Ministry of Education have suggested that school teachers, who reach the age of superannuation during the middle of the school year should be allowed to continue till the date of closure of the school for the summer vacation in order to ensure continuity of staff.'

11. The Courts have time and again upheld the right of a teacher to continue in service till the end of the academic year in case his/her date of retirement falls in the middle of the academic year.

12. In the case on hand, admittedly, an order of interim stay of the government order proposing to withdraw such re-employment has been granted by this Court and the same was admittedly in vogue during the re-employment period of the petitioner. That apart, it is not in dispute that the petitioner was re-employed. Therefore, the non-payment of pay for the period in dispute owing to withdrawal of re-employment for the period in dispute cannot be countenanced. For the foregoing reasons, the impugned order does not hold water.

13. In the result:

(a) the writ petition is allowed and the impugned order in proceedings O.M.No.993/B1/04 dated 02.03.2004 passed by the third respondent is set aside;

(b) the third respondent is directed to release the pay of the petitioner for the period from 05.12.2003 to 08.01.2004;

(c) Such order shall be passed by the third respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

vs

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Department of Education,
Chennai - 9.
2. The Director of Collegiate Education,
Chennai - 6.
3. The Joint Director of Collegiate Education,
Madurai Region,
Madurai - 625 020.
4. The Secretary,
Madura College,
Madurai - 11.

+lcc to Mr.R.Subramanian, Advocate Sr.No.53090

+lcc to Government Pleader Sr.No.53274

sm:12.7.2018

सत्यमेव जयते

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and

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