

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.20856 of 2012 and
M.P.Nos.1 and 2 of 2012

Dr.Tmt.Annie D.Ambrose Alias J.Rukmani

..Petitioner

Vs

- 1.The State of Tamil Nadu
Rep by its Secretary,
Education, Science & Technology
Department, Fort St.George,
Chennai 600 009.
 - 2.The Commissioner of Collegiate Education,
College Road, Chennai-6.
 - 3.Tamil Nadu Public Service Commission,
Rep by its Secretary,
Chennai 600 002.
 - 4.Manonmaniam Sundaranar University,
Rep by its Registrar,
Tirunelveli.
 - 5.The Principal Accountant General (A&E)
O/o The Accountant General,
Teynampet, Chennai 600 018.
- .. 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 relating to the 1st respondent's order made in G.O.Ms.No.53, Higher Education (F1) Department, dated 12.04.2012, to quash the same and consequently direct the respondents to revise and refix the pay, pay benefits, pension and pensionary benefits by taking into account the services rendered by the petitioner between 1995 and upto 30.06.2010, as services for all purposes and to also include the said period of service as qualifying services for pension etc., forthwith.

For Petitioner : Mr.L.Chandrakumar
For Respondents : Ms.P.Kavitha,
Government Advocate for RR1 and 2
: Ms.C.N.G.Niraimathi for R3
: Mr.Nambi Arooran for
M/s.Ajmal Associates for R4

O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Ms.P.Kavitha, learned Government Advocate appearing for the first and second respondents, Ms.C.N.G.Niraimathi, learned counsel appearing for the third respondent and Mr.Nambi Arooran, learned counsel appearing for the fourth respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the 1st respondent's order made in G.O.Ms.No.53, Higher Education (F1) Department, dated 12.04.2012, to quash the same and consequently direct the respondents to revise and refix the pay, pay benefits, pension and pensionary benefits by taking into account the services rendered by the petitioner between 1995 and upto 30.06.2010, as services for all purposes and to also include the said period of service as qualifying services for pension etc., forthwith."

3. The case of the petitioner is as follows:-

The petitioner has obtained her basic degree in B.Sc., Zoology during 1974 of the Madurai Kamaraj University and she has thereafter obtained M.Sc., post graduate degree in Human Genetics and Anthropology from Andhra University during 1976. One of the ancillary subjects which was studied in post graduate was Zoology. Thereafter, the petitioner obtained M.Phil., degree in Zoology of the Madras University during 1978. Subsequently, she had also obtained Doctorate in Zoology.

4. The petitioner had registered her name in the employment exchange. On the basis of the sponsorship by the employment exchange, the petitioner came to be recruited as Assistant Professor, Zoology on 09.03.1981. At the time of initial appointment as Assistant Professor, all the certificates produced by the petitioner were scrutinized and subjected to verification and only upon being satisfied that the petitioner was qualified for appointment, she came to be appointed as Assistant Professor. Since her appointment in 1981, the petitioner continued in service uninterruptedly and discharged her service to the satisfaction of all concerned.

5. On 16.12.1988, the Government issued G.O.Ms.No.1840, seeking to absorb the Assistant Professors in Government Services. As per the Government Order, it was clearly provided for in paragraph No.4, which reads as under:-

"1.....
2.....
3....."

4. Order regarding relaxation of relevant rules like age and educational qualification, wherever necessary will issue separately in regard to the persons indicated in Annexure I and III."

6. The petitioner's name was also one of the names considered for absorption. Thereupon, her service came to be regularized. After being appointed in 1981 and after regularization of her service by an aforesaid Government Order, the petitioner had been placed in the proper pay scale and had been drawing annual increment as admissible to the post held by the petitioner. Subsequently, the petitioner was also promoted as Senior Grade Lecturer during 1990, on the basis of the regularization and as stated above, she had obtained Doctorate in Zoology. During that time, her post graduate degree obtained from Andhra University was subjected to verification. It was found that the M.Sc., degree in Human Genetics and Anthropology with Zoology as an ancillary subject, was not found to be equivalent to M.Sc., Zoology and non-equivalence certificate was obtained from Madras University. In the said circumstances, the Government vide G.O.Ms.No.114, dated 16.02.1995, discharged the petitioner from service as being non qualified and a consequential order was issued by the second respondent on 02.03.1995, to that effect.

7. Challenging the order passed by the Government, the petitioner approached the then Tamil Nadu Administrative Tribunal in O.A.No.1439 of 1995, wherein, an interim order was obtained by the petitioner to continue her in service. Thereupon, on abolition of the Tribunal, the application was transferred and renumbered as W.P.No.27580 of 2005. Before she attained the age of superannuation, the original application filed by the petitioner which was renumbered as W.P.No.27580 of 2005, came up for hearing on 27.06.2008. This Court after hearing the parties, disposed of the writ petition by observing as follows:-

"Having regard to the fact that the Directorate of Collegiate Education, Chennai, has appointed the petitioner through Employment Exchange and considering the fact that the petitioner has served in various colleges without any blemish for over 26 years from the date of appointment, acquired a Doctorate degree in the field of Zoology and that there was no complaint from any quarters about her capability to take classes, it is open to the respondents to take appropriate decision in the matter of continuing the petitioner in service. Equity has to be balanced, but at the same time, the Court is not a position to tilt its decision in favour of the petitioner, in view of the statutory rules governing appointment."

The learned Judge of this Court has observed that even that equity was in favour of the petitioner, however, that consideration alone cannot tilt the balance in the teeth of the statutory rules governing the appointment.

8. Aggrieved by the said order, the petitioner preferred a writ appeal in W.A.No.964 of 2008. In the meanwhile, as stated above, the petitioner continued her service, in view of the interim orders obtained by her in the pending proceedings before this Court. The writ appeal filed by the petitioner came to be disposed of by an order dated 29.07.2009, wherein, the Hon'ble Division Bench of this Court has observed that no interference was called for, in regard to the observation made by the learned single Judge and gave liberty to the petitioner to submit her representation to the first respondent and to the University for consideration of her claim. The learned Division Bench has observed in paragraph No.9 of the judgment which is reproduced below:-

"9. Though in a different context the Hon'ble Supreme Court observed that as a one time exercise, the Government may consider the regularization of those who have served for more than a decade, it is different for us to interfere with the observation of the learned single Judge. However, we leave it to be appellant to make a representation to the first respondent through the sixth respondent either for modification of the order or such other relief that she may think is suitable for her. The newly impleaded sixth respondent and the second respondent shall consider and pass orders on the same within a period of two months from the date of the representation made by the appellant. Until a decision is taken, the college may permit the appellant to continue to teach the students."

9. In pursuance of the observation made by the Hon'ble Division Bench, the petitioner had taken up the cause with the Government as well as the University. Without considering the legitimate request of the petitioner in proper perspective, the Government had passed G.O.Ms.No.53, Higher Education (F1) Department, dated 12.04.2012, rejecting the claim on the ground that her post graduate qualification in Human Genetics and Anthropology was not equivalent to M.Sc., Zoology and therefore, her initial appointment was not valid. The order would also state that the Tamil Nadu Public Service Commission, the third respondent herein has not accorded approval for regularisation of the petitioner and her claim could not be considered favourably. The said Government Order is put to challenge in the present writ petition.

10. The learned counsel for the petitioner would at the outset submit that from 09.03.1981, till the petitioner attained the age of superannuation on 30.06.2010, she continued in service and discharged her duties as Assistant

Professor, Lecturer, Senior Lecturer etc. and in fact, the learned single Judge of this Court while disposing of the writ petition filed by the petitioner in W.P.No.27580 of 2005, has observed that there was no complaint from any quarters about the capability of the petitioner and equity is the role to play in the case, in view of the peculiar facts and circumstances. In fact, the Hon'ble Division Bench of this Court has also considered the peculiar facts and circumstances of the case and has directed the petitioner to submit an application to the Government to consider her request. However, it appears that the Government without appreciating the long service rendered by the petitioner without any blemish or complaint, had simply rejected the same without due application of mind and proper examination of her request.

11. The learned counsel for the petitioner would further submit that at the time when the petitioner was appointed in service in 1981, her qualifications were taken into consideration by the authority concerned, since she was sponsored by the employment exchange. In fact, at the time she came to be appointed in 1981, the petitioner had M.Phil., qualification in Zoology from Madras University which she had obtained in 1978 itself. Once the petitioner has obtained M.Phil., qualification in Zoology, which was considered to be more than equal to the M.Sc., Zoology, the petitioner was granted appointment as Assistant Professor on 09.03.1981. Further, the petitioner's services were also regularized by G.O.Ms.No.1840, dated 16.12.1988 and in fact, in the said Government Order as extracted supra, it provided for grant of relaxation of age and educational qualification.

12. The Government ought to have taken a follow up action for getting qualification relaxation in respect of the petitioner even assuming that her post graduate in M.Sc., Human Genetics and Anthropology, was not considered to be equal to M.Sc., Zoology. It was entirely the fault of the Government for not providing due relaxation in respect of the petitioner's post graduate qualification, assuming that only the post graduate qualification was considered for the subject appointment and not the higher qualification M.Phil., in Zoology obtained by the petitioner and such inaction on the part of the Government cannot result in negation of valuable right of the petitioner who has rendered unblemished record of service without any complaint for nearly three decades. Such inaction on the part of the Government on one side not getting the proper relaxation at the appropriate time and rejection of the petitioner's request mechanically with pedantic approach without due consideration of equity does not serve the cause of educational administration, in view of the admitted fact that the petitioner's services were utilised for nearly three decades by the University. The Government ought to have regularised the services of the petitioner as a special case, particularly, when the services of the petitioner were

utilised all through till she attained the age of superannuation.

13. Upon notice, learned counsel appearing for the respondents entered appearance and filed a detailed counter affidavit. According to the Government, the petitioner was not qualified in terms of the post graduate degree and the second respondent University has clearly given a non equivalent certificate and since the appointment was governed by the statutory regulations, her case could not be considered favourably for regularization. The petitioner having continued to work as Assistant Professor/Lecturer etc., by the interim orders of the Tribunal as well as by this Court, cannot take advantage of her employment on such basis and claim all service and pensionary benefits. Once the appointment was found to be not in order in terms of the statutory regulations, as a corollary to that the Government had initiated action to discharge her from service. Such action on the part of the Government cannot be faulted. Since the petitioner was admittedly not qualified in terms of her post graduate qualification, her request for regularization was rightly rejected by the Government vide impugned order after getting opinion of the third respondent Commission.

14. The learned counsel appearing for the third respondent would submit that the Commission has submitted its advice on the basis of action initiated by the Government and the Commission will only go by the ultimate orders passed by the Government in this regard.

15. This Court has given its anxious consideration to the facts and circumstances of the case and perused the materials and pleadings placed on record. No doubt that the appointment as Assistant Professor is governed by the statutory regulations as held by the learned Judge of this Court in the earlier order passed in W.P.No.27580 of 2005, dated 27.06.2008. Nevertheless, the fact remains that the petitioner had continued to work and her services were fully utilised by the University right from the date of her appointment in 1981 till she attained the age of superannuation on 30.06.2010 and her services have been considered to be worthy and did not suffer from any shortcoming, notwithstanding her post graduate qualification obtained in the subject of Human Genetics and Anthropology.

16. In the earlier proceedings before this Court, a crucial fact was lost sight of viz., that the petitioner had basic degree in B.Sc., Zoology and Zoology as taught as one of the ancillary subjects in the post graduate course. Moreover, the petitioner had obtained M.Phil., degree in Zoology and subsequently, obtained Doctorate in Zoology. These facts are not in dispute at all. Once the petitioner obtains higher degree viz., in the same subject in which she was considered

for appointment, this Court does not see what is the justification for the Government to consider her qualification as non-equivalent to M.Sc., Zoology.

17. The Government while considering the claim of the petitioner, has misdirected itself in comparing only the post graduate degree obtained by the petitioner without considering the M.Phil., degree obtained by the petitioner in Zoology. In fact, this M.Phil., degree probably was taken into consideration at the time when the petitioner was appointed in 1981. Such being the case, the Government has clearly fell into error in adopting an approach that the post graduate obtained by her was not equivalent to M.Sc., Zoology. Such narrow approach by the Government without considering the higher qualifications obtained by the petitioner in the same subject, did not subserve good administration, particularly, in view of the fact that the petitioner was appointed and continued in service for nearly three decades as Assistant Professor/Lecturer without any complaint against the petitioner in regard to her capacity and capability to work as Lecturer.

18. As rightly contended by the learned counsel for the petitioner that at the time when the petitioner originally came to be regularised vide G.O.Ms.No.1840 dated 16.12.1988, the Government itself has provided for grant of relaxation in age and educational qualification, if need arises. Once such contingency stipulated in the order, it was a fit case that the Government ought to have taken follow up action in getting the necessary relaxation in favour of the petitioner. After all, in this case, the petitioner was qualified both as under graduate as well as M.Phil., in Zoology subject and subsequently, obtained her Doctorate in Zoology and only in post graduate, she had studied a different subject and yet, the post graduate course had Zoology as one of the ancillary subjects. While that being the case, there cannot be any better case for obtaining relaxation in favour of the petitioner in the interest of students as well as the University Administration. The failure on the part of the Government in this aspect cannot be appreciated by this Court and ultimately, such failure has resulted in complete negation of valuable right of the petitioner for receiving her service benefits including pension etc., for the service rendered by her for nearly three decades.

19. Moreover, even on the basis of equity, the authorities having utilised the service of the petitioner for nearly three decades and there were no complaints against the capability of the petitioner to teach the Zoology subject and several hundreds of students in the subject had been benefited by the teaching of the petitioner, cannot abandon the petitioner high and dry in the end of her service career on the ground that her post graduate qualification was not equivalent to M.Sc., Zoology. Such insensitive, wooden

approach by the Government is rather deplorable and cannot be countenanced both in law and on facts. There is no iota of justification on the part of the Government for not having granted due relaxation of her educational qualification even assuming that she was not qualified in terms of the statutory regulation. For all the above said reasons, this Court is of the considered view that the petitioner is deemed to have qualified in all respects, since her basic degree was in Zoology and her post graduate degree had Zoology as one of the ancillary subjects and her M.Phil., degree was in Zoology and she had obtained Doctorate in Zoology. Therefore, this Court does not see any kind of justification for not treating the petitioner as a Lecturer in Zoology and denying her valuable rights to receive all the service benefits including pension for the service rendered by the petitioner for nearly three decades.

20. The approach of the Government in this regard is indifferent and discloses official apathy and callousness in not applying their mind in proper perspective. In view of the peculiar facts and circumstances of the case, where the petitioner's services were academically utilised effectively for nearly three decades by the University, the action of the Government in rejecting the claim of the petitioner dutifully on the basis of the statutory regulations does suffer from miscarriage of justice in the facts and circumstances of the case. Quite often this Court is confronted with situations where justice and law do not come to terms and such situations may impose judicial dilemma on the institution. However, such dicey situation is to be surmounted by this institution by ultimately adopting a justice oriented approach in order to reach out and uphold the fundamental rights of the citizen. In this case, the Government has simply taken refuge under the pretext of upholding statutory regulations by betraying the cause of justice. Every rule has an exception and this is the case where exception ought to prevail over rule. But, unfortunately the Government's action in rejecting the claim of the petitioner without providing the required relaxation is disconcerting and a sad reflection of supine indifference exhibited by the Government, not willing to unshackle its bureaucratic, rigidity and numbness. In such circumstances, this Court in order to render justice has to reach out to uphold the right of the petitioner to have her pay scales properly fixed during her career spanning nearly three decades and payment of her retirement and other pensionary benefits as given to other regularly placed Assistant Professors or Lecturers on retirement from service on attaining the age of superannuation. Any other approach by this Court would only defeat the very ends of justice which the Court solemnly seeks to achieve as part of its judicial commitment and purpose.

21. For the above said reasons, the G.O.Ms.No.53, Higher Education (F1) Department, dated 12.04.2012, is set aside as this Court declares that the petitioner is deemed to have

qualified in all respects for being appointed as Assistant Professor/ Lecturer in the Department of Zoology on the basis of her higher qualification. Any contra stipulation by the statutory regulation has to be read down, as an exception to the rule and that the petitioner is fully qualified for holding the post and she having discharged her service to the satisfaction of all concerned and retired from service on attaining the age of superannuation on 30.06.2010. This Court further directs that the petitioner is entitled to all retirement and pensionary benefits including arrears of pay if any due and payable. The Government shall issue appropriate orders regularizing the service of the petitioner on the basis of the above declaration by this Court and grant her all service benefits as indicated above. The Government shall pass orders in complying with the directions of this Court, within a period of ten weeks from the date of receipt of a copy of this order.

22. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The Secretary,
Education, Science & Technology
Department, Fort St.George,
Chennai 600 009.
 - 2.The Commissioner of Collegiate Education,
College Road, Chennai-6.
 - 3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 002.
 - 4.The Registrar,
Manonmaniam Sundaranar University,
Tirunelveli.
 - 5.The Principal Accountant General (A&E)
O/o The Accountant General,
Teynampet, Chennai 600 018.
- + 1 cc to M/s. S. Ajmal Associates Sr.18942
+ 1 cc to Government Pleader Sr.19215
+ 1 cc to Mr. S. Balaji, Advocate Sr.18637
+ 1 cc to Mr. L. Chandrakumar, Advocate Sr.19498

W.P.No.20856 of 2012

KK(CO)

EU(19/04/2018)

<https://hcservices.ecourts.gov.in/hcservices/>