

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.A.No.492 of 2010
and M.P No.1 of 2010

Mary Freeda ... Appellant

Vs.

1.Mrs.Thresiamma Chacko,
Lecturer (SG) in Physics,
Now at Vivekananda College,
Agastheeswaram, Kanniyakumari District.

2.The Director of Collegiate Education,
Chennai-600 006.

3.The Joint Director of Collegiate Education,
Tirunelveli Region, Tirunelveli.

4.Holy Cross College,
Nagercoil-629 004.

rep., by its Secretary. ... Respondents

Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 15.12.2009 made in W.P.No.20158 of 2001.

PRAYER IN W.P.No.20158 of 2001:

Petition Under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records pertaining to order in MU.MU.VM.39174/F4/99 dated 25.07.2001 on the file of the first respondent and quash the same and direct the respondents 1 to 3 to fix the seniority of the petitioner as per G.O.Ms.No.806 Personnel and Administrative Reforms Department, Government of Tamilnadu dated 13.07.1978 and for other incidental orders.

For Appellants : Mr.A.R.Nixon

For Respondents : Mr.R.Selvakumar for R1
Mr.N.Sakthivel, AGP for R2 & R3
Mr.S.Conscious Ilango for R4

JUDGMENT

(Judgment of the Court was made by M.M.SUNDRESH,J.)

The appellant as well as the first respondent along with one Fernando Loretta were appointed by the third respondent on 26.08.1985 based on their merit and ability. The order of appointment says that the appellant stands first, Fernando Loretta second and the first respondent third. This seniority was maintained till June 1997. It appears that in June 1997, unilaterally this seniority was changed by the erstwhile Principal at the verge of his retirement. It was not preceded by any resolution of the Management viz., the College Committee of the fourth respondent, which is the minority institution. The Appellate Authority, by the impugned order dated 25.07.2001, rejected the case of the first respondent stating the aforesaid facts. Aggrieved over the same, the respondents filed a writ petition in W.P.No.20158 of 2001 inter alia contending that the aforesaid order will have to be set aside in view of the Government Order passed in G.O.Ms.No.806 Personnel and Administrative Reforms Department dated 13.07.1978.

2. The learned single Judge was pleased to set aside the impugned order on 15.12.2009 on the sole ground that the first respondent having been senior in age is entitled to be placed above the appellant and Fernando Loretta. Challenging the same, the present writ appeal has been filed.

3. The learned counsel appearing for the appellant would submit that the aforesaid Government Order has got no application. Even the appointment order was issued by taking into consideration the merit and ability. The said order has to be taken as the one for fixing the seniority. There is no basis for reversing it in the month of July 1997, which was not authorised by College Committee as taken note of by the Appellate Authority in the order dated 25.07.2001.

4. The learned Additional Government Pleader appearing for respondents 2 and 3 and the learned counsel appearing for the fourth respondent also would concur with the submissions made by the appellant.

5. The learned counsel appearing for the first respondent would contend that the appointment order cannot be termed as a one fixing the inter se seniority. The first respondent was not aware of the seniority fixed, if any. Inasmuch as the first respondent was senior in age as against the appellant and the fourth respondent, no interference is required, in view of the Government Order passed in G.O.Ms.No.806 Personnel and Administrative Reforms Department dated 13.07.1978 and the recruitment having been made on the same date.

6. We find considerable force in the submissions of the appellant. Admittedly, the fourth respondent is a minority institution. The appointment order speaks for itself. It clearly says that merit and ability were taken into consideration. In the order of appointment the appellant was placed first as against the first respondent, who was placed as third. This seniority was in force till July 1997. Thereafter, it was changed unilaterally by the erstwhile Principal, who was on the verge of retirement. This was taken note of by the Appellate Authority. The learned single Judge did not take note of this fact. The Government Order passed in G.O.Ms.No.806 Personnel and Administrative Reforms Department dated 13.07.1978 does not have an application as it involves a case where the recruitment was made in more than one method. Further, it has got no relevancy to a private management. Therefore, looking from any perspective, there is no reason to uphold the order passed by the learned single Judge. In such view of the matter, the order passed by the learned single Judge in W.P.No.20158 of 2001 dated 15.12.2009 stands set aside and consequently, the writ appeal is allowed. No costs. M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To

1.The Director of Collegiate Education,
Chennai-600 006.

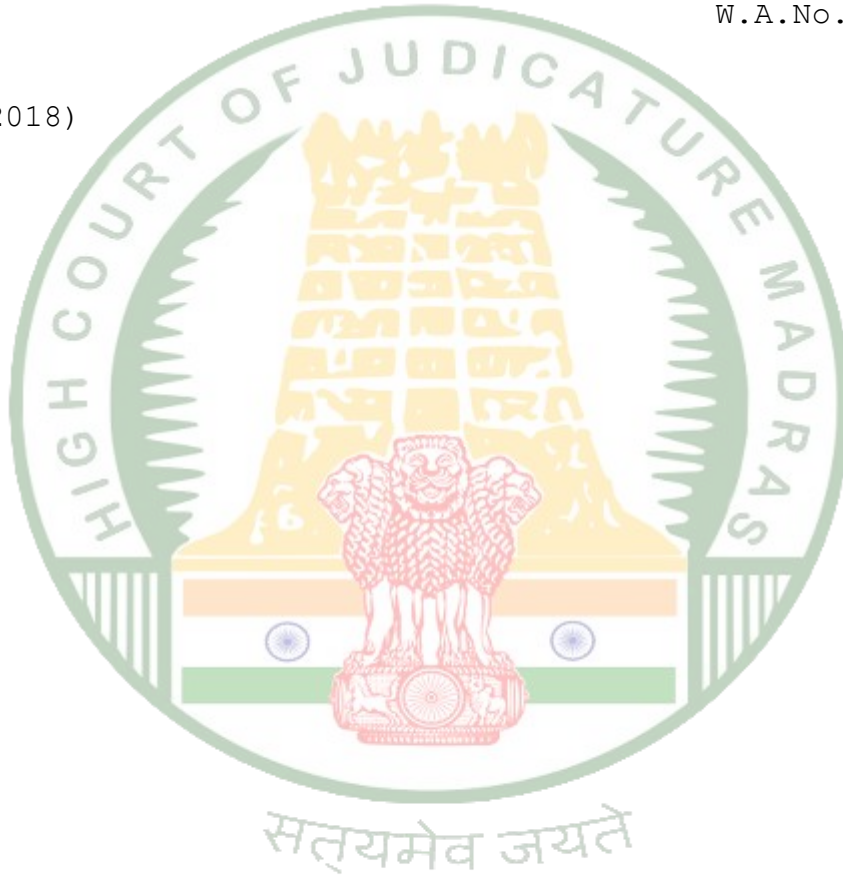
2.The Joint Director of Collegiate Education,
Tirunelveli Region, Tirunelveli.

+1cc to Mr.R.SELVAKUMAR, Advocate, S.R.No. 50270

+1cc to the Government Pleader, S.R.No. 50834

W.A.No.492 of 2010

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TR(09/08/2018)



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