

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.3670 of 2012

A.Vicraman

...Petitioner

Vs

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Tourism and Culture Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner,
Art and Culture complex II Floor,
(Near Children Hospital, Egmore),
Chennai 600 008.
3. Mrs.S.Subbulakshmi,
Professor (Musicology),
Principal (In-charge),
Madurai Music College,
Madurai

....Respondents

Prayer: Writ 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 bearing No.5010/E.1/2006-2 dated 16.08.2011 and the consequential proceedings bearing No.5010/E.1/2006-5 dated 16.08.2011 and the proceedings bearing No/5010/E.1/2006 dated 23.08.2011 and quash the same and further direct the 2nd respondent to place the petitioner over and above the 3rd respondent in the cadre of lecturer with all consequential benefits by granting service benefits for the post of Lecturer between 30.04.1998 and 10.03.2003 for the purpose of increment, selection grade in cadre of Lecturer, retrospective promotion, revision of pay and monetary benefits from 10.03.2003 except back wages.

For Petitioner : Mr.V.Suthakar
For Respondents: Mr.D.Venkatachalam
Additional Government Pleader
for R1 and R2
Mr.M.Ravi for R3

O R D E R

Heard Mr.V.Suthakar, learned counsel for the petitioner, Mr.D.Venkatachalam, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.M.Ravi, learned counsel appearing for the third respondent.

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

"To issue a Writ of Certiorarified Mandamus to call for the records pertaining to proceedings bearing No.5010/E.1/2006-5 dated 16.08.2011 and the proceedings bearing No/5010/E.1/2006 dated 23.08.2011 and quash the same and further direct the 2nd respondent to place the petitioner over and above the 3rd respondent in the cadre of lecturer with all consequential benefits by granting service benefits for the post of Lecturer between 30.04.1998 and 10.03.2003 for the purpose of increment, selection grade in cadre of Lecturer, retrospective promotion, revision of pay and monetary benefits from 10.03.2003 except back wages."

3. The case of the petitioner is as follows:

The petitioner was initially appointed as Lecturer (Musiology) in Government Music College, Madurai with effect from 27.08.1997 on contract basis. On 30.04.1998, the petitioner came to be terminated along with two other Lecturers. Aggrieved by the termination letter dated 30.04.1998, the petitioner had filed O.A.No.8991 of 1998 before the Tamil Nadu Administrative Tribunal, challenging the same as well as appointment of certain other Lecturers in their place. On 10.03.2003, the Tribunal allowed the Original Application filed by the petitioner as well as the original applications filed by other similarly placed Lecturers and also set aside the termination order dated 30.04.1998.

4. The Tribunal further held that the petitioner was entitled to continuity of service and also to full back wages from the date of the order viz., 10.03.2003. While allowing the applications filed by the petitioner as well as the similarly placed Lecturers, the Tribunal also held that appointment of private respondents therein, on contract basis, are not valid, as they do not possess requisite qualification for the post of Lecturers.

5. The order passed by the Tribunal on 10.03.2003 had become final and in pursuant to the direction, the petitioner came to be reinstated into the service on 06.02.2004. But, he was appointed as Lecturer (Musiology) only on temporary basis

once again. Thereafter, G.O.Ms.No.145, Tamil Nadu Development - Art and Culture Department dated 18.07.2006 was issued, in and by which, the petitioner was granted salary attached to the post of Lecturer from 10.03.2003 and further directed the 2nd respondent to initiate appropriate action for regularizing his service. Subsequently, the petitioner has also made a representation to the 2nd respondent seeking for regularization of his service from the date of his initial appointment i.e., on 27.08.1997.

6. The 2nd respondent, vide proceedings dated 13.02.2009, regularized the service of the petitioner in the post of Lecturer (Musiology) from 10.03.2003 i.e the date on which the Tribunal allowed the Original Application filed by the petitioner. Since the proceedings dated 13.02.2009 of the 2nd respondent was not in fulfillment of the actual direction issued by the Tribunal, the petitioner was constrained to approach this Court by filing WP No.20479 of 2010, challenging the said proceedings, insofar it relates to treating the date of regularization as 10.03.2003 and further sought for a direction to regularize the service of the petitioner from the date of his initial appointment.

7. On 07.09.2010, this Court was pleased to allow the writ petition and further directed the respondents 1 and 2 to regularize the service of the petitioner with effect from 30.04.1998 and further held that the petitioner was not entitled to salary from 01.05.1998 to 10.03.2003. However, the service from 01.05.1998 to 10.03.2003 shall be counted for other service benefits as per the original order passed by the Tribunal. Since the said order of this Court was not implemented by the authorities concerned, the petitioner was once again constrained to approach this Court by way of filing Cont.P.No.1004 of 2011 and on 06.09.2011, the contempt petition came to be closed, since the 2nd respondent passed an order vide proceedings dated 16.08.2011 regularizing the service of the petitioner with effect from 30.04.1998 in the cadre of Lecturer.

8. According to the petitioner, the order of granting full benefit to him is to regularize the service from 30.04.1998 with all consequential benefits conferred on the petitioner with effect from 30.04.1998. On the other hand, the 2nd respondent had passed an order by treating the period from 30.04.1998 to 10.03.2003 as leave on Loss of pay.

9. According to the learned counsel appearing for the petitioner, the said action on the part of the 2nd respondent is clearly contrary to the specific direction issued by the Tribunal as well as the order of this Court in the earlier proceedings as cited supra. According to the learned counsel, both Tribunal as well as this Court have clearly held that the

petitioner is entitled for all service benefits from 30.04.1998 except back wages. That being the case, the action on the part of the official respondent in restricting the consequential service benefits from 10.03.2003, cannot be countenanced both in law and on facts.

10. According to the learned counsel for the petitioner, by treating the period as leave on loss of pay from 30.04.1998 till 10.03.2003, the petitioner was put on probation only from 10.03.2003 and declared the same only on 09.03.2005 and the increment had been granted only from 2005 onwards. The said action on the part of the 1st and 2nd respondents is clearly an attempt to circumvent the specific direction issued by the Tribunal as well as this Court. The denial of benefits to the petitioner from 30.04.1998, were communicated to the petitioner, vide two proceedings of the 2nd respondent dated 16.08.2011 and 23.08.2011. The above said proceedings are put to challenge in the present writ petition.

11. While matter stood thus, vide another proceedings of the 2nd respondent dated 23.08.2011, the service of the 3rd respondent who is also working as a professor (Musiology), was regularized on par with the petitioner from 30.04.1998 and also granted seniority above the petitioner. The above said proceedings are under challenge in the present writ petition.

12. The learned counsel appearing for the petitioner would submit that as far as the proceedings dated 23.08.2011 is concerned, under the guise of implementing the orders passed by this Court in the earlier proceedings as referred supra, the service of the 3rd respondent had been regularized from 30.04.1998 on par with the petitioner and the third respondent is placed above the petitioner, only with the clear motive of thwarting the attempt made by the petitioner to get the directions passed by the Tribunal as well as this Court, implemented in its letter and spirit.

13. The learned counsel appearing for the petitioner has drawn the attention of this Court to the proceedings of the 2nd respondent dated 07.02.2005, in and by which, the 3rd respondent was appointed as Lecturer (Musiology) only with effect from 06.07.1998 along with few others. According to the learned counsel appearing for the petitioner that without any legal basis, the 2nd respondent advanced the date of regularization of the 3rd respondent on 30.04.1998 and denied the service benefit as admissible to the petitioner in view of the directions passed by the Tribunal as well as this Court. Therefore, the learned counsel appearing for the petitioner submits that though the said proceedings of the 2nd respondent is purported to be in pursuance of the impugned order of this Court in respect of petitioner's claim, however denied the benefit to the petitioner

in all aspects.

14. Upon notice, learned Additional Government Pleader appearing for the respondents 1 and 2, entered appearance and filed a detailed counter affidavit. According to the learned Additional Government Pleader, the 3rd respondent has to be granted regularization w.e.f 30.04.1998, since, she came to be appointed much earlier to the petitioner on contractual basis and also the fact that the 3rd respondent, being senior to the petitioner, she was granted regularization antedate on 30.04.1998 and also granted higher seniority above the petitioner and therefore, the petitioner cannot have any grievance as against the seniority granted to the 3rd respondent vis-a-vis the petitioner.

15. Although this Court initially expressed some reservation as to how the issue with regard to seniority of the petitioner can be clubbed along with other issues, the learned counsel for the petitioner would impress upon this Court with the impugned proceedings dated 23.08.2011 is purported to be in consequence of implementation of this Court direction in respect of the petitioner's claim. Therefore, the petitioner was constrained to challenge the said proceedings also and made the 3rd respondent as a party in the present writ petition.

16. The learned counsel appearing for the 3rd respondent would submit that the 3rd respondent was initially appointed earlier to the petitioner on contractual basis and however, came to be appointed on a regular basis only on 06.07.1998. Once the petitioner's service came to be regularized from 30.04.1998, the 3rd respondent was also entitled for regularization and therefore, the administration had decided to grant the regularization with effect from 30.04.1998 with due seniority.

17. According to him once, two candidates are appointed on the same day, their seniority has to be fixed on the basis of the age factor. At this point, the learned counsel appearing for the petitioner, strongly objected and stating that the date of regularization of the petitioner was only on 06.07.2009 and all of a sudden, without any basis and contrary to rules, the said date has been antedated earlier. It was done deliberately to deny the benefit of seniority to the petitioner pursuant to the directions passed by the Tribunal as well as this Court. The petitioner on the other hand had obtained direction from the learned Tribunal as well as from this Court to the effect that he was entitled to service benefits from 30.04.1998 and such being the case, the seniority is also included as one of the consequential service benefits and therefore, he is entitled to be placed in the seniority above the 3rd respondent.

18. This Court has given its anxious consideration to the rival submissions of the counsel and also perused the materials and pleadings placed on record.

19. As regards the 1st portion of relief is concerned, this Court has no hesitation in allowing the writ petition that the Tribunal as well as this Court have clearly held that the petitioner was entitled to all service benefits except backwages between the period 30.04.1998 and 10.03.2003. In the face of clear direction, the denial of service benefits to the petitioner and treating the period as leave on loss of pay and placing the petitioner on probation from 10.03.2003 and granting increment from 2005, cannot be acceptable in law and the same is also contrary to the directions passed by this Court as well as the Tribunal.

20. Therefore, this Court is of the considered view that the said action on the part of the 2nd respondent is clearly illegal, arbitrary and unreasonable and therefore, denial of such benefits to the petitioner vide impugned proceedings No.5010/E.1/2006-2 dated 16.08.2011 and consequential proceeding No.5010/E1/2006-5 dated 16.08.2011, are set aside. As against the seniority issue is concerned, this Court has to see whether the seniority granted to the 3rd respondent vide impugned order dated 23.08.1011 is sustainable in the teeth of facts and circumstances as explained above.

21. As rightly pointed out by the learned counsel appearing for the petitioner, the manner in which the 2nd respondent passed the proceedings dated 23.08.2011 by antedating the regularization of the 3rd respondent from 30.04.1998 from the original date i.e on 06.07.1998, cannot be valid, particularly the proceedings are purported to have been issued pursuant to the direction passed in the earlier round of litigation, at the instance of the petitioner herein. As rightly pointed out by the learned counsel appearing for the petitioner, the 3rd respondent was originally appointed on 06.07.1998 and that being the case, it is not known as to what basis the date of regularization of the third respondent has been advanced to 30.04.1998 and fixing her seniority above the petitioner. The contention raised in this regard by the learned counsel appearing for the petitioner has some force and the only reason which could be inferred for advancement of the regularization of the 3rd respondent is to deny the retrospective benefits which were otherwise admissible to the petitioner on the basis of directions obtained him from the Tribunal as well from this Court. Therefore, the 2nd respondent proceedings dated 23.08.2011 by granting regularization for the purpose of seniority of the 3rd respondent above the petitioner cannot be valid and the same is liable to be quashed.

22. In view of the above, this Court allows this writ petition and therefore, the impugned order dated 23.08.2011 is also quashed and the petitioner is entitled to all service benefits as directed by this Court in the earlier proceedings including the seniority from 30.04.1998 except back wages. The directions of this Court shall be complied with by the respondents 1 and 2 within a period of eight weeks from the date of receipt of copy of this order. No costs.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Tourism and Culture Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner,
Art and Culture complex II Floor,
(Near Children Hospital, Egmore),
Chennai 600 008.

+1 CC to Mr.V. Suthakar, Advocate sr 4315.

+1 Cc to Mr.M. Ravi, Advocate sr 4540.

सत्यमेव जयते

W.P.No.3670 of 2012

SP(03/04/2018)

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