

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

Reserved on	Pronounced on
16.02.2018	04.06.2018

W.P.No.17479 of 2003 and WMP.No.21836 of 2003

Dr.T.Selvaraj

.. Petitioner

Vs.

The Principal and Member Secretary,
Board of Governor,
Regional Engineering College,
Trichy - 620 015.

.. Respondent

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in proceedings of impugned order R.C.No.274/A1/2003 dated 04.05.2003 on the file of the respondent and quash the same and consequently direct the respondent to upgrade the petitioner to the post of Assistant Professor w.e.f 20.07.1988 in accordance with G.O.Ms.No.939 dated 20.05.1983 (Department of Education Science and Technology, Government of Tamil Nadu) with all consequential attendant and monetary benefits with retrospective effect.

For Petitioner : Mr.V.J.Arulraj

For Respondent : Mr.S.Dhayaleswaran

सत्यमेव जयते
O R D E R

This writ petition is filed under Article 226 of Constitution of India, by the petitioner, seeking a writ of Certiorarified Mandamus to quash the impugned order in R.C.No.274/A1/2003 dated 04.05.2003 passed by the respondent and consequently, direct the respondent to extend him the benefit under Flexible Complementing Scheme for grant of advancement to the next higher post which is otherwise known as time bound promotion, as per the G.O. Ms.No.939 dated 20.05.1983 (Department of Education Science and Technology, Government of Tamil Nadu) which was adopted by the respondent.

2. It appears that the petitioner before his joining as a Lecturer on 01.09.1982 in the respondent Engineering College, Trichy, pursuant to a regular selection, was serving as a Lecturer in Annamalai University since 20.07.1978 till 31.08.1982 in the same scale of pay. During the course of employment in the respondent College, the Government of Tamil Nadu in the Department of Education, Science and Technology came out with a G.O.No.939, dated 20.05.1983 prescribing a Scheme of Flexible Complementing of promotion in order to relieve the stagnation among the various categories of teaching staffs in various Engineering Colleges and Polytechnic colleges including the Government Aided Colleges. According to the aforesaid scheme, an Associate Lecturer, Lecturer and Assistant Professor shall be upgraded as Lecturer, Assistant Professor and Professor respectively provided they are under the purview of University Grant Commission/All India Council Technical Education revised scale of pay and have the requisite qualification for the upgraded post and must have rendered 10 years of service in the lower post. The aforesaid scheme was also made applicable to the respondent college accordingly persons who were qualified for such up-gradation for rendering 10 years of service in the lower post were upgraded. But the petitioner was ignored as he had not rendered 10 years of service in the same Institution as Lecturer, though having all other requisite qualification, counting his past service in the same lower post rendered in the Annamalai University. The petitioner's representation in this regard to count his aforesaid past service for extending the benefit of such scheme was however came to be rejected on the ground that the petitioner had not rendered 10 years of service as Lecturer in the respondent Institution to get the benefit of the said scheme and the staff of the respondent University extended the benefit of such scheme had rendered 10 years of service in the respondent Institution and qualified for the same vide impugned order in RC.No.274/A1/2003 dated 04.05.2003. The petitioner came to challenge the same in this writ petition, to be illegal and arbitrary, inter alia on the grounds that when he has been extended the benefit of the past service rendered for the purpose of salary, pension and the other benefits, there was no apparent reason not to extend the same to extend the benefit of the scheme more particularly when the resolution of the governing body dated 29.10.1991 extending the benefit of such scheme to the teaching staff does not specifically provide only to calculate the service in the lower grade post rendered in the Institution, moreso, when one Dr.Chinnadurai and Mr.P.Somaskandan, who were appointed in the year 1982 in the lower grade as per the recommendation of the Junior Staff Selection Committee, even though not completed 10 years service in the same post were extended the benefit. Therefore, the petitioner was continuously discriminated. So also the same has been challenged on the ground that the same is contrary to the clarification of the UGC made vide D.O Letter No.A-1-6/90(PS

CELL) dated 27.11.90 and Director of Collegiate Education, Madras-6 proceeding No.RC 29687/90 dated 09.04.90 and RC No.11816/E1/88 dated 24.02.1989. With the aforesaid averment the petitioner has sought for the relief as stated earlier.

3. The claim of the petitioner that he is entitled to the benefit of the Flexible Complementing Scheme adopted by the respondent, on completion of 10 years of service as a Lecturer, counting his past service in Annamalai University has been, disputed by the respondent in the counter affidavit filed. According to the respondent, since the petitioner had not render 10 years of service in the respondent Institution as a Lecturer by the time the scheme was withdrawn and all the persons extended with the benefit of the scheme had already rendered 10 years of service, some of them though not as Lecturer but as other equivalent staff carrying the same scale of pay, the petitioner's claim in this regard to extend him the benefit counting his past service in the Annamalai University, a Private University therefore, without any substance, more so in view of the new career advancement scheme adopted by the respondent to relieve the employee from stagnation in the same post due to non-availability of promotional avenues. Therefore, the writ petition filed by the petitioner is devoid of merit, according to the averment of the respondents.

4. It is submitted by the learned counsel appearing for the petitioner that since the benefit of Flexible Complementing Scheme which was though withdrawn in 1989, has been granted to some of the lecturers who are qualifying for the same, even though, the scheme was withdrawn, there was no apparent reason in not extending such benefit to the petitioner counting his past service rendered in Annamalai University in view of Government Order, being clarified by the University Grant Commission to the Government of Tamil Nadu for counting such service vide its D.O Letter No.A-1-6/90(PS CELL) dated 27.11.90, which has been adopted by the Director of Collegiate Education, Madras-6 vide proceeding No.RC 29687/Ye.2/90-6 dated 24.01.1991 forwarded to all the colleges for information and suitable action i.e., to extend the service benefits of time bound advanced scale of pay. Reliance has been placed in this regard on a decision of the Apex court reported in WP.No.26428 of 2009 of this Court in the case of [Mrs.Shanthi Pughazenthi Vs.Union of India and others] decided on 15.11.2011, wherein, the Apex Court taking into consideration the fact the petitioner therein had rendered service as upper Division Clerk in the UGC before his transfer from there to the Department of Accountant General, though the past service rendered therein UGC were not considered for seniority but the same was counted towards other benefit i.e., up-gradation and etc.

5. Per contra, the learned counsel appearing for respondent submits that since the petitioner has not rendered service in the Respondent College in the same teaching post for 10 years or rendered service in another Government Institution before being appointed in the Respondent Institution uninterruptedly, he could not be given the benefit of Flexible Complementing Scheme which has already been withdrawn in view of the non-approval of the same by the Government of India. The same is more so when Annamalai University wherein the petitioner was serving is neither a Government Institution nor an Government Aided Institution, as decided by this Court, so also the law laid down in the case of State of Punjab and others vrs. Darshan Singh and others, reported in 2001 (9) SCC 321 wherein the Apex Court have held that past service rendered in a private colleges cannot be counted to grant selection grade. Furthermore, the Flexible Complementing Scheme floated having in the meanwhile withdrawn before completion of 10 years by the present petitioner, the petitioner has also no case.

6. To appreciate the contention of the learned counsel for the respondent, it would be appropriate to have a look in the Flexible complementing scheme introduced in 1983 which reads as follows :-

"This scheme of Flexible Complementing provides for advancement to the next higher posts. This scheme will be implemented among the specified teaching staff members in the Technical Education Department with effect from 01.04.1993 subject to the following conditions:-

a) Only a staff member who was brought under the purview of the University Grants Commission / All India Council for Technical Education revised scales of pay rules and who satisfies the following conditions will be eligible for the benefit of this scheme.

i. He should have completed 10 years of satisfactory service in the lower post. Such service may either by substantive or officiating but it should be the qualifying service which counts for normal promotions. Period spent on study leave or on deputation for higher studies leading to masters degree, Ph.D etc either at Government cost or at the cost of the individual will also be taken into account for computing 10 years service.

ii. He should possess all the qualifications prescribed for the higher post to which he is to be upgraded.

b) For the purpose of this time bound promotion, the total sanctioned strength of both the lower and higher category strength. For example, if there are 100 posts of Associate Lecturers and 20 posts of Lecturers, (totally 120 posts) and because of this scheme of time bound advancement if 50 Associate Lecturers are promoted as Lecturers the number of post of Associate Lectureres will be reduced from 100 to 50 and that the number of posts of Lecturers will be increased from 20 to 70, thus retaining the total sanctioned strength of the posts as 120 as unchanged. The Director of Technical Education is authorised to implement this scheme in respect of all the categories of officers referred to above.

c) In order to avoid ambiguity, the posts thus created in the higher category specially for time bound advancement, are to be called as Special Temporary posts. These post shall be adjusted against regular vacancies in the higher category as and when they occur. No vacancy shall be deemed to have arisen in the lower post by virtue of an incumbent being upgraded to the next higher post.

d) Every year, the Director of Technical Education, shall prepare a panel of persons sufficiently in advance eligible for such advancement in respect of Government Technical Institutions and upgrade eligible persons. He shall also keep a register showing the number of authorised permanent posts, temporary post and special temporary posts created under this scheme and shall take care to see that the combined total number of these posts does not exceed the total sanctioned strength; and that a special temporary post is abolished as and when its holder is promoted in a regular manner. With regard to private Technical Institution, the Governing council of each institution in which there is a Government nominee, shall follow these instructions before they upgrade the teaching personnel to the higher posts. In respect of Regional Engineering College, Trichy, the Principal of the College shall follow these instructions and upgrade eligible persons with the approval of the Board of Governors of the College.

e) At the discretion of the Director of Technical Education, the services of the persons holding special temporary posts can be utilised suitably.

f) The teaching personnel who are upgraded under this scheme shall not be entitled to pay fixation

under F.R.22B. However, when they are subsequently promoted in a regular manner, their pay can be fixed at their option either (i) working out their notional pay in the lower post till regular promotion and then applying F.R. 22B on the same or (ii) continuing to draw the pay they were drawing in the higher post under this scheme.

g) This scheme shall not be a bar to regular promotion of employees to the higher grades as and when vacancies arise in the normal course under the existing rules and

h) Teaching personnel who are working in the posts of Tutors and Demonstrators in Engineering Colleges and Instructors and equivalent cadre posts in Polytechnic and special diploma Institutions will not come under this scheme as they have already been given similar benefits in G.O.Ms.No.124/Edn/dated 23.01.1980 and 721 Education/dated 28.04.1981."

7. So also, the letter of UGC, vide its 1 D.O Letter No.A-1-6/90(PS CELL) dated 27.11.90, which has been adopted by the Director of Collegiate Education, Madras-6 vide proceeding No.RC 29687/Ye.2/90-6 dated 24.01.1991, which reads as thus:

"Copy of D.O.letter NO.F.1-6/90(PS CELL) dated 27.10.90 from the deputy Secretary, University Grants Commission, New delhi to the Secretary to Government, Education department, Madras-9.

Kindly refer to Para 3 of this officer letter of even number dated 29th January, 1990 containing the decision of the Commission regarding counting the experience of a person, before appointment as a Lecturer in the University/College, rendered in equivalent grade in other Universities/Colleges and the National laboratories or R & D Organizations(CSIR/ICAR/DRDO/UGC, etc.) and UGC Research Scientist, as qualifying service for placement in the senior scale/selection grade.

The Commission in consultation with Ministry of Human Resource Development(Department of Education) reconsidered the matter at its meeting held on 11th October, 1990 and resolved revised guidelines as follows for counting of previous service for purposes of senior scale/selection grade under the career advancement scheme for Lecturers,

1.Previous service without any break as a

Lecturer or equivalent in a University, College, National Laboratory or other scientific organisations (CSIR, ICAR, DRDO, UGC, etc) and as a UGC Research Scientist should be counted for placement of Lecturers in Senior Scale/Selection Grade provided that:

a) the post was in an equivalent grade/scale of pay as the post of a Lecturers,

b) the qualifications for the post were not lower than the qualifications prescribed by UGC for the post of Lecturer,

c) the Lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as Lecturers,

d) the post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government,

e) the appointment was not adhoc or in a leave vacancy of less than one year duration.

2. No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government) if the above criteria are satisfied,

You are requested to bring the above decision to the notice of the colleges under your jurisdiction also.

Kindly acknowledge the receipt of the letter

\\true copy\\

-----PROCEEDINGS OF THE DIRECTOR OF
COLLEGIATE EDUCATION:MADRAS

RcNo.29687/Ye.2/90-6

Dated:24.01.1991

Copy of,

Letter NO.114030/H1/90-1 dated 27.12.99 from the Joint Secretary to Government, Education Department, Fort St. George, Madras,9 addressed to the Director of Collegiate Education, Madras-600 006.

Sub: University Grants Commission-Counting of Past Service of teachers-Further instructions-

Issued by UGC Communicated-Regarding.

Ref: From the Deputy Secretary, University Grants Commission, Letter No.F.1-690(PS Cell) dated 27.11.90.

I am directed to enclose a copy of the reference cited containing the revised guidelines of the University Grants Commission for counting the past services for placement of Lecturers in the senior/Selection Grades, for information and suitable action.

Yours faithfully,

Sd/-XXX

For Joint Secretary to Government

To

The Principals of all Concernment Arts Colleges

The Regional deputy Directors of Collegiate Education of all Regions

Copy to director of Teacher Education Training and Research, Madras-6

Copy to EI, EII & Ye.II Sections

/true copy/forwarded / by order/

Superintendent

8. From the contentions raised, it appears that the petitioner had been denied the benefit of the scheme quoted supra on the ground that he had not rendered service in the respondent University for the required number of years till withdrawal of the scheme. However, petitioner's case is that when his past service rendered in Annamalai University has been counted towards other benefit, there was no apparent reasons to grant him the benefit more particularly, in view of the clarification of the UGC vide letter quoted supra and also adoption of the same by the Government of Tamil Nadu for the purpose of granting higher scale of pay on account of stagnation more particularly, when in the case of in WP.No.26428 of 2009 of this Court in the case of [Mrs.Shanthi Pughazenthi Vs.Union of India and others) decided on 15.11.2011. But the Apex Court in the case of State of Punjab and others Vs. Darshan Singh and others, reported in 2001 (9) SCC 321 have held that such service rendered in Private Educational Institution cannot be granted towards upgradation/selection grade of pay after their service were taken by the Government. Needless to say that the

petitioner was qualified to get the benefit of such flexible complementing scheme in all respects except the length of service required in the respondent institution by the time the scheme was withdrawn. Sofar as the contention of the petitioner to extend him the benefit in view of the ratio of Mrs. Shanthi Pughazenthi is concerned. I am of the view that the same is no assistance to the petitioner inasmuch as the petitioner's case is not a transfer of service from one department to the another department under the same Government with continuity of service forgoing his seniority in the newly posted department but a new recruitment. However, considering the fact the petitioner's service is also guided by the UGC guideline and the UGC in similar circumstances has clarified to the Government of Tamilnadu that the past service rendered even in the private institution be counted for grant of advancement scale of pay to relieve stagnation to an employee in the same scale of pay as seen from the letter NO D.O Letter No.A-1-6/90(PS CELL) of the UGC which has been adopted by the Government of Tamil Nadu as seen from the letter of the Director of Collegiate Education (quoted supra), there was no apparent reason not to count such past service of the petitioner to which he had rendered in Annamalai University though a, private University then as seen from the decision of this Court reported in 2016-5-L.W-80 rendered in the case of M.Aamira Fathima & Others Vs. The Annamalai University, and others. Sofaras the decision of the Dharsan Singh (cited supra) is concerned, no doubt therein such past services in the private institution after taking over the service of the petitioners therein by the Government, was not considered for the purpose of grant of advancement scale of pay/selection grade but nothing being there indicating the fact that in spite of such adoption of the UGC guidelines quoted supra by the State of Punjab, the same was refused to the petitioners therein, this Court is of the view that the contention raised by the respondent to justify the action taken in rejecting the prayer of the petitioner to extend the benefit of such flexible complementing scheme which was in vogue on the day he completed 10 years counting his past service rendered as a Lecturer in Annamalai University, appears to be untenable to this Court. So far as the other contention that since scheme has already been abolished and the persons who were granted the benefit of such scheme for objection of the Government of India in floating such scheme were kept on hold but for the filing of the Writ petition challenging the inaction to extend the benefit, they were extended such benefit as a one time measure and as such the petitioner cannot take advantage of the same, appears to this Court to be fallacious and also untenable inasmuch as the same results in discrimination to the petitioner and violative of Article 14 of the Constitution of India as the petitioner is similarly situated with the persons who were granted such benefit.

9. So for the foregoing reasons, the writ petition filed by the petitioner deserves to be allowed and accordingly, the same stands allowed with the quashment of the impugned order of rejection of such prayer and with a direction to the respondent to extend the benefit such flexible complementing scheme counting his past service in the Annamalai University as Lecturer, on the date he qualifies for the same and all other consequential benefits within three months of receipt/production of the copy of this order, which ever is earlier. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rka/dn

To

The Principal and Member Secretary,
Board of Governor,
Regional Engineering College,
Trichy - 620 015.

+lcc to Mr.V.J.Arulraj, Advocate, sr.no.34576

W.P.No.17479 of 2003

nr 12/06/2018

सत्यमेव जयते

WEB COPY