



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2018

(Reserved on 21.09.2017)

WEB COPY

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P. (MD) .No.11130 of 2017

Dr.J.Joel

... Petitioner

Vs.

- 1.The Director of Collegiate Education,
College Road,
Chennai - 6.
- 2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli - 627 002.
- 3.The Manonmaniam Sundaranar University,
Rep. By its Registrar, Abhisekapaati,
Tirunelveli - 627 012.
- 4.The Moderator,
The Church of South India,
The SYNOD Secretariat,
No.5, Whites Road, Royapettah,
Chennai - 14.
- 5.The Rt. Rev. Bishop,
CSI Diocese of Tirunelveli,
The Chairman TADA,
The Manager and the General Secretary,
TDTA Colleges, Bishopstowe,
16, North Highground Road,
Palayamkottai - 627 002.
Tirunelveli District.
- 6.The Secretary and Correspondent,
CSI Jayaraj Annapackiam College,
Nallur - 627 853,
Tirunelveli District.
- 7.S.P.D.Nelson,
The Secretary and Correspondent,
CSI Jayaraj Annapackiam College,
Nallur, Tirunelveli District,



8.The Superintendent of Police,
Tirunelveli District at Tirunelveli.

9.Dr.R.Peter Perinbaraja

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records relating to the impugned proceedings issued by the 7th respondent/Secretary and Correspondent, CSI Jayaraj Annapackiam College, Nallur, Tirunelveli District, vide his letter dated 07.06.2017 relieving the petitioner from the post of Principal, quash the same.

For Petitioner	: Mr.S.Xavier Raini
For R1 to R3 & R8	: Mr.D.Muruganantham Additional Government Pleader
For R4	: Mr.EVN.Siva
For R5	: Mr.N.Elango
For R6 & R7	: Mr.N.Dilip Kumar
For R9	: Mr.T.Madasamy

ORDER

This writ petition is directed against the impugned proceedings dated 07.06.2017 passed by the 7th respondent / the Secretary and Correspondent, CSI Jayaraj Annapackiam College, Nallur, Tirunelveli District, in and by which, the petitioner was relieved from the post of Principal with effect from 08.06.2017.

2. Learned counsel appearing for the petitioner submitted that the petitioner joined as the Principal in the 6th respondent College on 10.06.2016 under the Self-Financed Scheme. After his appointment, he took earnest efforts to improve the academic affairs of the College and he has also made arrangement for conducting the Campus Interview in the College. Whiles, in view of the rivalry in the administration of the 5th respondent Diocese, the third respondent convened SYNOD Executive Committee meeting on 30.05.2017 and thereby appointed the Administrative Committee comprising the Moderator as the Chairman to foster peace and reconciliation in the Tirunelveli CSI Diocese and further resolved to dissolve all the committees functioning in the Tirunelveli CSI Diocese. Thereafter, the Administrative committee has taken all the powers to administer the day to day affairs of the Tirunelveli CSI Diocese. Such changes have been intimated by the third respondent to the fifth respondent / the Rt.Rev.Bishop, CSI Diocese of Tirunelveli, vide his letter dated 31.05.2017. Now, the Administrative Committee headed by the Moderator is now administering the Tirunelveli CSI Diocese including all the Colleges and Schools. Therefore, the fifth respondent / Rt. Rev. Bishop has no jurisdiction to issue any order and on the contrary, the Administrative Committees headed by the



Moderator alone have the power to issue any orders viz., appointment, transfer, termination etc. Whiles, it is contended, the seventh respondent, who claims himself as the Secretary and the Correspondent of the sixth respondent College, relieved the petitioner from the post of Principal vide the impugned proceedings dated 07.06.2017, without any jurisdiction.

3. It is further submitted by the learned counsel for the petitioner that as per the UGC Regulations, 2010, the Assistant Professor, the Associate Professor and the Professor, can work in the College upto the age of seventy years. Therefore, it is contended, the retirement age criteria fixed by the third respondent University fixing at 62 years cannot stand to legal scrutiny as it is against the statutory provision of the UGC Regulations, 2010. Beside, many Principals are still working even after reaching the age of 62 years within the jurisdiction of the third respondent University and that the University also has not taken any steps to relieve them from the post as per the UGC Regulations, 2010. Therefore, the services of the petitioner also can be extended even after 62 years, he pleaded.

4. Again, by inviting the attention of this Court to Clause 8(f)(i) in Appendix (1) of the UGC Regulations, it is submitted that the Central Government have already authorized the Central Universities vide its letter dated 30.03.2007 to enhance the age of superannuation of the Vice-Chancellors of Central Universities from 65 years to 70 years in order to meet the situation arising out of shortage of teachers in Universities and other teaching institutions. Thus, it is contended, relieving the petitioner from the said post superseding the statutory provision of the UGC Regulation, 2010, is not sustainable.

5. Learned counsel appearing for the respondents 6 and 7 submitted that while the writ petitioner was working in the third respondent University, he has attained the age of superannuation on 27.05.2017 on reaching the age of 62 years and thereafter, he was allowed to continue till the end of the academic year i.e. 31.05.2017. Subsequent to this, the present impugned order was passed relieving him from the said post, therefore, it is contended, the question of issuing any prior notice or affording an opportunity of hearing does not arise and hence, the allegation of violation of the principles of natural justice raised by the writ petitioner is totally misconceived.

6. Arguing further, learned counsel for the respondents 6 and 7 submitted that it is an admitted fact that the petitioner has been working in a self-financing stream in a private college, therefore, he is not entitled to maintain the writ petition in respect of his grievances relating to his employment in such a private self-financing college. Moreover, there is an order passed in CRP.(MD).Nos.408 and 479 of 2017, dated 24.03.2017, holding that



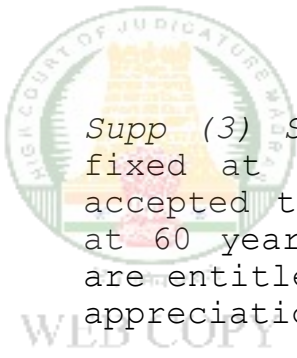
after the completion of fourth phase election as per the bye-law, the term of elected office bearers shall commence from the date of first meeting for 4 years. Whiles, the seventh respondent took charge of the office as the Secretary and Correspondent of the College only on 01.07.2017 and since then he has been holding the said post and discharging the affairs and administration of the College. Thus, it is contended, so long as he continues in the said post, he is entitled to effect the appointment, transfer, termination, etc., therefore, the impugned order passed by the seventh respondent relieving the petitioner from the said post cannot be questioned by the petitioner. On this basis, he prayed for dismissal of the writ petition.

7. Learned counsel for the 9th respondent, by filing a counter affidavit, submitted that the ninth respondent was appointed as Principal of CSI Jayaraj Annapackiam college, Navallur, Tirunelveli District and the said College affiliated to the third respondent University is a self-financed Arts and Science College run by Tirunelveli Diocesan Trust Association, Palayamkottai, Tirunelveli District.

8. It is further stated that the new elected office bearers inspected the respective educational institutions and thereafter, the said office bearers written a letter dated 29.12.2014 to the Registrar of Manomaniam Sundaranar University questioning the age of the petitioner as the retirement age of the Principal of the self-financed College is restricted to 62 years instead of 65 years. Therefore, on receipt of such communication, the 7th respondent passed the impugned proceedings relieving the petitioner from the said post. Besides, it is submitted, the writ petitioner was also involved in an offence under Sections 403, 406, 409 r/w Section 109 IPC and thereby a case has been registered against him in Crime No.126 of 2007 and thereafter, he was remanded on 20.03.2007 and committed to judicial custody till 03.04.2007. Hence, it is contended, the petitioner was relived from the said post only as per the instruction of the third respondent University as he attained the maximum age of 62 years. Therefore, the writ petition filed by the petitioner challenging the impugned proceedings reliving him from the said post is liable to be dismissed.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. The crux of the issue is whether the Principal working in the State University is entitled to continue in service beyond the age of 62 years fixed by the State Government since the UGC has given its recommendation to fix the age of superannuation at 70 years. The said issue is no longer res-integra.



Supp (3) SCC 191) held that as long as the superannuation remains fixed at 55 years and as long as the State Government has not accepted the UGC's recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years. For better appreciation, paragraph No.5 thereof is extracted below:-

"5. We may further point out that the teachers in Universities are governed in respect of their conditions of service and the age of retirement by the separate statutes made by the Universities concerned. On the other hand, the teachers in private colleges or affiliated colleges are governed in respect of their conditions of service by regulations or rules framed by the Government (separate state (sic set) of statutes). In these circumstances, the two classes of Universities teachers and teachers in private colleges cannot be regarded as similar for purposes of conditions of service as to bring the case under Article 14 of the Constitution."

12. Following the above said judgment, the Hon'ble Apex Court in *B.Bharat Kumar and others v. Osmania University and others* (2007) 11 SCC 58 held that it is not for the Supreme Court to formulate a policy as to what the age of retirement should be, as it is for the respective State Government to take such a policy decision. Paragraph No.19 thereof is extracted below:-

"19. Learned counsel also argued, to a great extent, the desirability of the age of superannuation being raised to 60 or 62, as the case may be. We again reiterate that it is not for this Court to formulate a policy as to what the age of retirement should be as by doing so we would be trailing into the dangerous area of the wisdom of the legislation. If the State Government in its discretion, which is permissible to it under the scheme, decides to restrict the age and not increase it to 60, or as the case may be, 62, it was perfectly justified in doing so."

13. In the case on hand, the petitioner has reached the age of 62 years on 27.05.2017, which is the age of superannuation for the post of Principal in Self-Financing Colleges as could be seen from the proceedings dated 29.12.2014 of the third respondent University. Relevant portion of the said proceedings is extracted below:-

" With reference to the above, I am, by direction to inform that the retirement age of Principal appointed in Self-Financing Colleges is restricted to 62 instead of 65."



In view of the above, the third respondent University, on inspection, having found that the petitioner has reached the age of 62 years on 27.05.2017, advised the fifth respondent College which is a Self-Financing College, to remove the petitioner from the services, therefore, only after this intimation, the seventh respondent / the Secretary and the Correspondent of the said College relieved the petitioner from the said post with effect from 08.06.2017.

14. Thus, in view of the aforesaid well settled principles of the Hon'ble Apex Court, the question of entertaining the prayer of the petitioner to continue him even after the age of 62 years does not arise, as it is for the third respondent University / State Government to take such a call. Therefore, this Court, by agreeing with the stand taken by the third respondent University, is not inclined to entertain the writ petition.

15. One of the contentions of the learned counsel for the petitioner is that the seventh respondent has no jurisdiction to effect the appointment, transfer, termination, etc. It may be mentioned that this Court has already passed an order in CRP.(MD). Nos.408 and 479 of 2017, dated 24.03.2017, holding that after the completion of fourth phase election as per the bye-law, the term of elected office bearers shall commence from the date of first meeting for 4 years. Subsequent to this order, the seventh respondent herein has been continuing in the post of Secretary and Correspondent of the said College from 01.07.2017 and since then, he has been discharging the affairs and administration of the said College, therefore, the above said contention of the petitioner that the seventh respondent has no jurisdiction to pass the impugned proceedings also cannot be sustained.

16. In fine, for the reasons stated, the writ petition fails and it is dismissed as devoid of any merit. No Costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Director of Collegiate Education, College Road, Chennai - 6.
- 2.The Joint Director of Collegiate Education,
Tirunelveli Region, Tirunelveli - 627 002.
- 3.The Registrar, The Manonmaniam Sundaranar University,
Tirunelveli - 627 012.
- 4.The Superintendent of Police,
Tirunelveli District at Tirunelveli.

+One cc to Mr.N.Dilipkumar, Advocate, SR.No.41581

+One cc to Mr.S.Xavier Rajini, Advocate, SR.No.41328

+One cc to Mr.T.M.Madasamy, Advocate, SR.No.41866

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