

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.48988 of 2006

and

M.P.No.1 of 2006

N.Thirumavalavan

...Petitioner

Vs.

1.The State of Tamilnadu,
Represented by its Secretary,
Education (Higher) Department,
Fort St. George, Chennai-600 009.

2.The Commissioner/Directorate of
Collegiate Education,
College Road, Chennai - 600 006.

..Respondents

Prayer

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records relating to the first respondent's order made in G.O.(Ms).No.14, Higher Education (F-2) Department, dated 13.01.2005 and quash the same and consequently, to direct the respondents to appoint the petitioner as Lecturer in Co-operation forthwith and to extend both service and monetary benefits.

For Petitioner : Mr.K.C. Vinoth

For Mr.L. Chandrakumar

For Respondents: Mr.V. Kathirvelu

Special Government Pleader
(Higher Education Department)

O R D E R

Instant writ petition is for a Writ of Certiorarified Mandamus to quash the first respondent's order in G.O.(Ms). No.14, Higher Education (F-2) Department, dated 13.01.2005 rejecting the claim of the petitioner to be appointed as a Lecturer.

2. Brief facts set out in the petition are as follows:

a) The petitioner was appointed as Junior Assistant in the year 1987. Even prior to his appointment, the petitioner had a Post-Graduate Degree in Co-operation which acquired in 1996. Thereafter, he was promoted as an Assistant and he got a M.Phil., in Co-operation in the year 1999.

b) The petitioner states that as per the statutory Rules appointment to the post of Lecturer is also permissible by recruitment by transfer, provided the individual concerned has an academic record of at least 55% marks at the Master Degree. The petitioner has secured 63% in his Master Degree. He has also got M.Phil., degree. He being fully eligible aspire to the post of Lecturer, applied for the same. He had represented repeatedly as and when the vacancies arose in the post of Lecturer in Co-operation, but his representations were not considered.

c) The petitioner states that the Government was regularly appointing such persons as Lecturer. The petitioner places reliance on Government Order G.O.(Ms)No.1078, Education Department, dated 09.11.1994, by which around 14 persons, who were previously holding the posts of Junior Assistants/Assistant Section Officers and Assistants in the Secretariat Service/Ministerial service were appointed as Assistant Professors.

d) The petitioner and few others filed Original Application 5636 of 2000 before the Tamil Nadu Administrative Tribunal at Chennai. The petitioner filed O.A.No.1268 of 1997 and had the following prayer in which reads thus:

"5.To issue a direction directing the respondents to consider the name of the applicant for appointment to the post of Lecturer in Co-operation and to appoint him as Lecturer (in O.A.No.1268 of 1997)."

e) The Tribunal by its order dated 24.06.2002, directed as under :

"11.In the light of the aforesaid decisions, as well as the decisions rendered by the Tribunal also I am of the view, though I cannot issue a direction compelling the Government to amend the rules, in view of the fact that a number of persons have been already appointed as Lecturers from among the non-teaching staff, the petitioners case also should be considered

as a special case. However, I make it clear that this decision shall not be taken as a precedent to go on issuing orders whenever a non-teaching staff employed in the Collegiate education Department moves this Tribunal. Any individual like the petitioners who aspires to move the Tribunal for promotion, must aspire to move the Government through their Association for amendment to the relevant rule mentioned above.

12. With this observation, I direct that the case of the petitioners shall be considered in the light of the earlier orders granted, especially in the light of the 14 persons who were appointed from among the non-teaching staff to the post of Lecturers and whose services have been regularized by the Government as per its order dated 09.11.1994. The orders shall be issued in the case of the petitioners within a period of four months from today. As already stated, this order shall not be taken as a precedent for any others. The petitions are ordered accordingly."

f) The petitioner states that by virtue of order dated 24.06.2002, the petitioner is entitled to be appointed as a Lecturer. Since the order was not implemented by the Government of Tamil Nadu, contempt was filed by some petitioners before the Tribunal. The petitioner did not file contempt but was entitled to the benefit of the order dated 24.06.2002. The Contempt Petition was disposed of by the following order reads as follows:

"2. It is reported by both sides that the order dated 03.12.2014 in W.P.(MD) No.19577 of 2014 has been complied with by the respondent.

3. Recording the same, this Contempt Petition is closed. No costs."

g) It is pertinent to mention that the benefit was given to a person who had a post graduate degree and had done M.Phil. The petitioner was also entitled to be appointed as a lecturer, because he had the educational qualifications of Post-Graduate Degree and an M.Phil. Despite the order in the contempt petition, the government did not implement in the order for the petitioner.

3. The petitioner gave a representation for being appointed as a Lecturer. The representation has been rejected

by the impugned order dated 13.01.2005. The entire order reads as under:-

"Abstract

Tamil Nadu Collegiate Educational Service - Appointment of Lecturer - W.P.No.31464 of 2004 on the file of High Court, Chennai - filed by Thiru N.Thirumavalavan - Orders - Issued.

HIGHER EDUCATION (F2) DEPARTMENT

G.O.(Ms) No. 14

Dated: 13-1-2005

1. Order of the Tamil Nadu Administrative Tribunal in batch cases (i.,e.O.A.Nos.4767 of 1994, 5488, 7782 of 1995, 34,35 of 1896, 1268 of 199/ and 5636 of 2000)

2.G.O.Ms.No.323, Higher Education Department, dated 14.8.2003

3. Orders of the Tamil Nadu Administrative Tribunal in C.A.No.209 of 2003 in O.A.No.5636/2000 , dated 10.11.2003.

4. Orders of the High Court. Chennai In W.P.No.31464 of 2004, dt.1.11.2004

ORDER:-

Based on the orders issued by the Tamil Nadu Administrative Tribunal in the order first read above, three persons from Tamil Nadu Collegiate Education Department Post Graduate Non-Teaching Staff Association, who were fully qualified as per University Grants Commission Regulations, were appointed regularly as Lecturers by recruitment by transfer in the Government order second read above. A contempt application filed by Tamil Nadu College Education Department Post Graduate Non- Teaching Staff Association in O.A.No.5636 of 2000 was dismissed by the Tamil Nadu Administrative Tribunal in the order third read above. Thiru N.Thirumavalavan has filed W.P.No.31464 of 2004 in the High Court praying for the Issuance of a writ of Mandamus to direct the respondents (viz., the Secretary to Government, Higher Education Dept., -Secretariat and Director of Collegiate Education. Chennai-6) to implement the order dt 24.6.2002 made in O.A.No.1268 of 1997 by the Tamil Nadu Administrative Tribunal.

2. In the background of the above, the request of Thiru N.Thirumavalavan, Assistant, Office of the Regional Joint Director of Education, Coimbatore Region, Coimbatore for appointment as a Lecturer has been examined in detail.

3. Regulation 2 of the University Grants Commission (minimum qualifications required for appointment and Career Advancement of Lecturers in Universities and Institutions affiliated to it) Regulations, 2000, as amended by University Grants Commission Regulations (1st Amendment), 2002 provides as follows:-

Qualifications for the post of Lecturer:-

"Good academic record with atleast 55% of the marks or, an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D E and F at the Master's degree level, in the relevant subject from an Indian University, or an equivalent degree from a foreign university.

Besides, fulfilling the above qualification, candidates should have cleared the eligibility test (NET) for lecturers conducted by the University Grants Commission^ CSIR, or similar test accredited by the University Grants Commission.

Note: NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D degree. However, candidates who have completed M.Phil degree by 31st December 1993, or have submitted Ph.D. thesis to the university in the concerned subject on or before 31st December 2002 are exempted from appearing in the NET examination. IN case such candidates fail to obtain Ph.D degree, they shall have to pass the NET examination. "

4. Thiru N.Thirumavalavan does not possess the qualification prescribed by University Grants Commission for the post of Lecturer and his request therefore cannot be complied with. It is accordingly rejected.

(BY ORDER OF THE GOVERNOR)

K.GNANADESIKAN SECRETARY TO GOVERNMENT."

It is this order which is challenged in the instant writ petition.

4. Admittedly, the petitioner filed O.A.No.1268 of 1997. In the said O.A., the petitioner prayed for consideration of his name for the appointment to the post of Lecturer in Co-operation. The Tribunal by order dated 24.06.2002 had passed a direction to the respondents herein to appoint such of those persons who had necessary qualification as Lecturers. The said judgment was not been an challenged by the respondents. Therefore, the respondents were duty bound to implement the order of the Tribunal. The respondents did not implement the

judgment. Contempt was filed by the petitioners in O.A.No.5636 of 2000. The contempt was disposed of by order dated 24.06.2002. The Tribunal had held that such persons who had necessary educational qualifications should be promoted as Lecturers. There is no dispute the petitioner has the necessary qualifications. He was already Post-Graduate in Co-operation which he acquired prior to joining the services as Assistant. He also got his M.Phil., Degree in the year 1999. It is also not in dispute in three persons who were petitioners in the Tribunal and who were similarly placed were appointed as lecturers. There is no reason as to how, the petitioner was different from the three persons who were appointed as Lecturers under G.O.(Ms) No.323, Higher Education (F2) Department, dated 14.08.2003. The petitioner's representation has been dismissed by the impugned order on the ground that the petitioner has not cleared the National Eligibility Test (NET) by the University Grants Commission. It is pertinent to mention here that this issue was not pleaded before the Tribunal. In any event, the respondents are duty bound to implement the order of the Tribunal which covers the petitioner. If the respondents felt that the petitioner was not qualified to be appointed as a Lecturer, they should have challenged the order of the Tribunal in the Higher Forums. After accepting the order of the Tribunal, the respondents could not have denied, the petitioner appointment to the post of Lecturer on a new ground.

5. The respondents in their counter affidavit have stated that, as per the orders of Tamil Nadu Administrative Tribunal, three non-teaching staff members who possessed the qualifications as prescribed by the UGC norms were appointed as lecturers vide G.O.(Ms).No.323, Higher Education Department, dated 14.08.2003. The petitioner did not possessed the required qualification as per UGC norms. This is wrong and shows non-application of mind on the part of the respondents. It is submitted that the petitioner had obtained PG qualification before joining the service and has acquired M.Phil., qualification during the year 1999. The respondents here also stated that since the petitioner has completed his M.Phil., Degree during the year 1999 i.e., not within the stipulated date prescribed by UGC (i.e. December, 1993), the claim of the petitioner was rejected by the first respondent i.e., Government in view of the order vide G.O.(Ms).No.14 Higher Education (F2) Department, dated 13.01.2005. This reason of the respondent is also unsustainable since, it had not been raised in the Tribunal and has also not been stated in the impugned order.

6. The learned counsel for the respondent, placed reliance on the Tamil Nadu Services Manual, Volume II, Section 8B of the Manual deals with the Tamil Nadu Collegiate Educational Service. The class, category and method of recruitment of Assistant Professor of any Arts Colleges:

Class and category	Method of Recruitment
(1)	(2)
Class VII 1.Assistant Professors of Arts Colleges	(i) Direct recruitment, or (ii)Recruitment by transfer from among Tutors and Demonstrators in the Tamil Nadu Educational Subordinate Service, or (iii) Recruitment by transfer from the category of Headmaster in the Tamil Nadu Educational Subordinate Service, or (iv) Transfer from category 2 of the class, or (v) Recruitment by transfer from any other service, if no qualified and suitable candidates are available for appointment by methods (i) to (iv) above.
2.Assistant Professors of Training Colleges	(i) Direct recruitment, or (ii)Recruitment by transfer from among Tutors and Demonstrators in the Tamil Nadu Educational Subordinate Service, or (iii) Recruitment by transfer from the category of Headmaster in the Tamil Nadu Educational Subordinate Service, or (iv) Transfer from category 1 of the class, or (v) Recruitment by transfer from any other service, if no qualified and suitable candidates are available for appointment by methods (i) to (iv) above.

7. The learned counsel for the respondent would argue that the recruitment by transfer from any other service is adopted only if no qualified or suitable candidates are available for appointment by methods (i) to (iv). It is to be stated that this is not the reason for rejecting the representation of the

petitioner. This was not even argued in the Tribunal. As stated earlier the judgment of the Tribunal binds the respondent and they have to implement the order of the Tribunal. If the respondents had any grievance against the order of tribunal, they could have challenged the order in the Court.

8. It is pertinent to mention to reproduce the G.O.(Ms). No.323, Higher Education Department, dated 14.08.2003, by which three persons like the petitioner had filed in OA in the Tamil Nadu Administrative Tribunal at Chennai-104, and to whom the order dated 24.06.2002 applied, like the petitioner. They were given the post of Lecturer. The said G.O.(Ms).No.323, Higher Education (F2) Department, dated 14.08.2003 reads as follows:

A B S T R A C T

Tamil Nadu Collegiate Educational Service - Appointment of non-teaching staff in the constituent colleges as Lecturers by Recruitment by Transfer based on the Direction of the Tamil Nadu Administrative Tribunal - Orders issued.

Higher Education (F2) Department
G.O.Ms.No.323 Dated:14.08.2003
Read:-

i) Order of the Tamil Nadu Administrative Tribunal
in

O.A.No.5636 of 2000, Dated 24.06.2002.

ii) From the Director of Collegiate Education,
letter Rc.No.49879/05/2001, dated
07.12.2002 and 12.03.2003.

ORDER:

1. Certain Non-Teaching staffs of Collegiate Education Department have filed O.A.No.5636 of 2000 in the Tamil Nadu Administrative Tribunal seeking direction to appoint them as Lecturers in Government Arts Colleges by quashing the orders issued in letter Ms.No.650, Higher Education Department, dated 28.12.1998 and to fix a percentage to the qualified non-teaching staff of Collegiate Education Department for the post of the qualified applicants.

2. The Tribunal in its order first read above has directed as follows:-

"The case of the petitioners shall be considered in the light of the earlier orders granted, especially in the light of the 14 persons who were appointed from among the non-teaching staff to the post of lecturers and whose services have been regularized by the Government".

3. In the reference second read above the Director of

Collegiate Education has stated that the following three persons, are fully qualified to be appointed as Lecturers as they fulfill the University Grants Commission norms in to.

Sl.No	Name and Designation	Subject in which to be appointed
01.	Dr.S.Ignaci Clement, Steno-Typist, Office of the Director of Collegiate Education, Chennai - 6.	History
02.	A.Palanivel, Assistant Government Arts College, Salem-7.	Commerce
03.	R.Vendan, Laboratory Assistant, Government Arts College, (Mon), Namakkal.	Education

As such, he has recommended that they might be appointed as Lecturers by recruitment by transfer in the subject mentioned against their names.

4. The Government have examined the matter carefully and have decided to comply with the direction of the Tamil Nadu Administrative Tribunal dated 24.06.2002 in O.A.No.5636 of 2000. Accordingly, the Government directs that Dr.S.Ignaci Clement, now working as Steno-Typist, Office of the Director of Collegiate Education, Chennai - 6, Thiru.A.Palanivel, Assistant, Government Arts College - 7 and Thiru.R.Vendan, Laboratory Assistant, Government Arts College, Salem - 7 and Thiru.R.Vendan, Laboratory Assistant, Government Arts College (Men), Namakkal, be appointed regularly as lecturer in History, Commerce and Education respectively by recruitment by transfer provided they are otherwise qualified to hold the post.

The Director of Collegiate Education is requested to give suitable posting order to the individual in this regard.

(BY ORDER OF THE GOVERNOR)

9. It is not the case of the respondent that the petitioner is differently placed. There is no reason as to why that the petitioner should not be given the same benefit which has to be given to the said three persons in G.O.Ms.No.323, Higher Education (F2) Department, dated 14.08.2003. The arguments which have been raised by the learned Special Government Pleader cannot be accepted.

10. Accordingly, the Writ Petition is allowed and the respondents are directed to give the same benefits which has been given to the three persons, mentioned in G.O.Ms.No.323, Higher Education (F2) Department, dated 14.08.2003 to the

petitioner herein within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msm/pkn
To

1.The Secretary,
State of Tamilnadu,
Education (Higher) Department,
Fort St. George, Chennai-600 009.

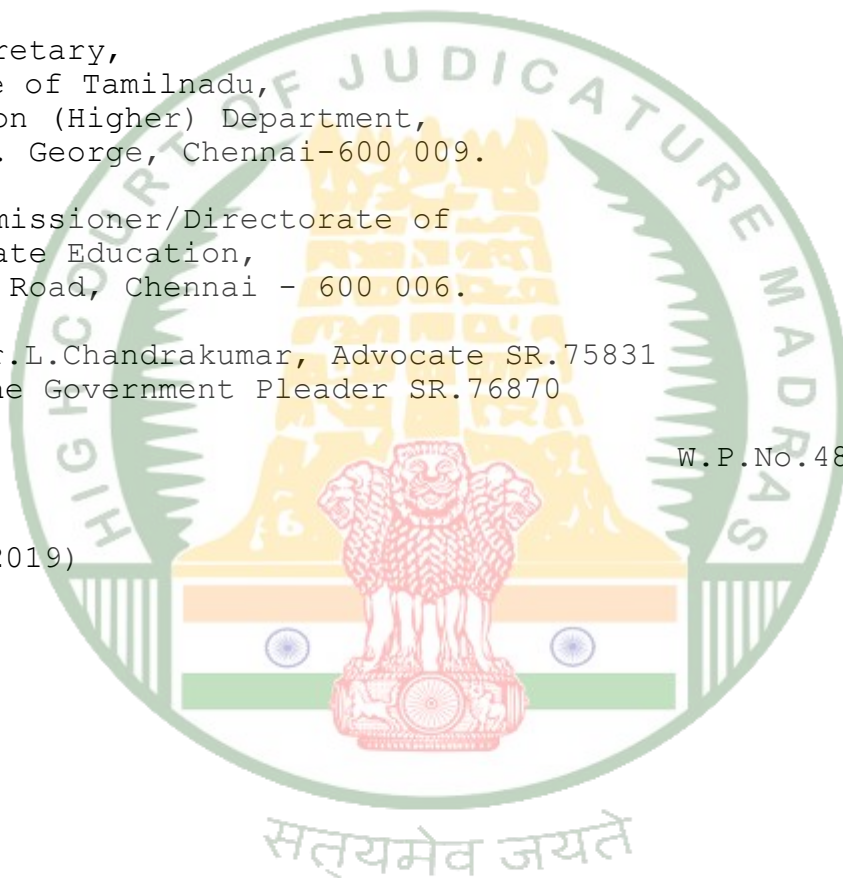
2.The Commissioner/Directorate of
Collegiate Education,
College Road, Chennai - 600 006.

+1cc to Mr.L.Chandrakumar, Advocate SR.75831

+1cc to the Government Pleader SR.76870

W.P.No.48988 of 2006

SJ(CO)
CB(23/10/2019)



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