

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.5958 of 2010

A.Sambandam

.. Petitioner

Vs.

1. The Director,
Tamil Nadu Institute of Labour Studies,
No.5, Kamarajar Salai,
Chennai-5.

2. The Secretary to Government,
Labour and Employment Department,
State of Tamil Nadu, Fort St.George,
Chennai-9.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records in respect of the impugned retirement order vide No.E/427/10 dated 31.03.2010 issued by the 1st respondent and to quash the same and to direct the respondents to treat the petitioner as if he served as a Librarian par with faculty, in the 1st respondent Institute till he attains the age of 60 years and to pay all attended benefits for that period.

For Petitioner : Mr.K.Koteswara Rao
for M/s.H.Mohammed Farook

For Respondent : Mr.J.Ramesh, AGP (for R1 & R2)

O R D E R

The instant writ petition is for a Writ of Certiorarified Mandamus, calling for the records in respect of an order vide No.E/427/10 dated 31.03.2010, passed by the Director, Tamil Nadu Institute of Labour Studies, Chennai, retiring the petitioner and further direct the respondents to treat the petitioner as if he served as a Librarian which is a part of the faculty in the respondent institution.

2. The petitioner was appointed in the Tamil Nadu Institute of Labour Studies, Chennai. He has been working as Librarian from the date of his appointment i.e., from

25.07.1996. The petitioner states that in the service rule of the Tamil Nadu Institute of Labour Studies, a faculty member retires from service on attaining the age of 60 years. The petitioner states that a Librarian is a faculty member and therefore he could be retired only on attaining the age of 60 years. The petitioner states that the Tamil Nadu Institute of Labour Studies, is taking steps to retire the petitioner at the age of 58 years itself. The petitioner therefore filed an instant writ petition for a Writ of Mandamus, directing the respondent to permit the petitioner to retire from service in the first respondent institution.

3. Since the petitioner did not get any stay and the petitioner was retired on 31.03.2010, the petitioner filed an application for amending the writ petition which was allowed by an order dated 29.10.2010. The amended prayer reads as under:-

"To issue a Writ of Certiorarified Mandamus or any other appropriate writ in the nature of Writ, direction or order calling for the records in respect of the impugned retirement order vide No.E/427/10 dated 31.03.2010 issued by the 1st respondent and to quash the same and to direct the respondents to treat the petitioner as if he served as a Librarian par with faculty, in the 1st respondent Institute till he attains the age of 60 years and to pay all attended benefits for that period."

4. On notice, the respondent filed a counter affidavit. The counter affidavit states that the Tamil Nadu Institute of Labour Studies is a Society registered under the Tamil Nadu Societies Registration Act, 1975. The respondent states that the rules UGC and University of Madras are not applicable to the institute with respect to the service conditions for non-teaching staff. A Librarian is a non-teaching staff and he is not a faculty. The respondents therefore state that the petitioner to be retired on the age of 58 years and has not eligible to be in service till the age of 60 years.

5. Heard the counsel for the parties.

6. The short issue which arises in this writ petition is as to whether the petitioner is a faculty who is entitled to be in the service of the institution till the age of 60 years or not. The Tamil Nadu Institute of Labour Studies, Chennai, is a Society, registered under the Tamil Nadu Societies Registration Act, 1975. It have its own service regulations. Rule 2(xiv) defines faculty, which reads as under:-

"Faculty: means the member of the faculty engaged in teaching in the institute."

7. Rule 15 deals with the retirement and Rule 15.2 provides that the faculty member shall retire from service on attaining the age of 60 (Sixty) years. Rule 15.2 also provides a faculty member and a member belonging to the basic service shall retire at the age of 60 years. Rule 15.1, 15.2, 15.3 reads as under:-

"15.1. An employee of the institute other than faculty members and members belonging to basic service shall retire from service on attaining the age of 58 (Fifty eight) years.

15.2. A faculty member shall retire from service on attaining the age of 60 (Sixty) years.

15.3. A member of the basic service shall retire from service on attaining the age of 60 (Sixty) years.

Provided that an employee including a faculty member and a member belonging to the basic service who has attained the age of 58/60 years in a month may be retired from service on the last day of the month in which he attained the age of 58/60."

8. A perusal of the aforesaid rules would show that the faculty members and members belonging to the basic service shall retire at the age of 60 years, all other employees would retire at the age of 58 years. The learned counsel for the petitioner also states that there is a class called as library and therefore librarian is incharge of that class and therefore he should be included in the definition of faculty. 2.XIV of the service regulation of Tamil Nadu Institute of Labour Studies, defines that the faculty means the member of the faculty engaged in teaching in the institute.

9. The learned counsel for the petitioner states that the Government of Tamil Nadu has issued G.O.Ms.No.300, Higher Education (F1) Department, dated 08.09.2006, wherein, the Government indicated that the teaching staff would include Librarian and Physical Director in the Government aided college. The learned counsel for the petitioner also placed reliance on the notification of election of members to the Academic Council Member by the teacher of University of Madras, wherein, the Librarians are included in the definition of teachers. In the said notification dated 16.11.2011, teachers and librarians have been defined as under:-

"Teachers" means, such Professors, Assistant Professors, Readers, Lecturers, Librarians, Director and other teachers of Physical Education and others like persons as may be declared to be teachers.

"Librarians" of colleges shall be graduates who hold a diploma or degree of a recognized University in Library Science, and shall be placed in charge of the library. Only one such person who is in charge

of the library will be recognized as "Librarian" of a college."

It is submitted in the said notification, librarians were allowed to vote and contest in the elections for Academic Council Member.

10. On the other hand, the learned counsel for the respondent would state that the librarian does not have any teaching assignment. Librarian only maintains the library, where books are lent and students sit on read. He would say therefore librarian can never be included in the definition faculty which would only a member engaged in teaching in any institute.

11. Oxford Dictionary defines "Teach" as under:-

"1 give information to (a class or pupil) so as to help them to learn something. 2 show (someone) how to do something. 3 make (someone) realize, understand, or be less likely to do something"

A teacher is defined as a person who teaches. Cambridge Dictionary defines Teacher as some one whose job is to teach in a School or Colleges and a person who instructs or trains others. The librarian as stated in the counter affidavit has no teaching assignment, he only maintains the library. He has to record all the books kept in the library. He would know what books are more required to meet the requirement of the student in the institution.

12. The Tamil Nadu Institute of Labour Studies, Chennai, offers graduate courses and postgraduate courses in Labour Management, the courses are :-

"Masters Degree Courses

Master of Labour Management (MLM)

Tamil Nadu Institute Of Labour Studies, Chennai offers 2 Years Full Time Masters Degree in OMD Master of Labour Management

View Details Duration: 2 Years Learning Mode: Full Time Course Level: Masters Degree

Bachelors Degree Courses

Bachelor of Arts (BA Labour Management)

Tamil Nadu Institute Of Labour Studies, Chennai offers 3 Years Full Time Bachelors Degree in B A Labour Management

View Details Duration: 3 Years Learning Mode: Full Time Course Level: Bachelors Degree"

The petitioner is a postgraduate of MA (History) and Bachelor degree in Library Information Science. The regulations of the institute provides that the librarian must have the qualification for the post of librarian is " A degree in Science/Arts/Commerce and a degree in Library Information Science". A perusal of the aforesaid qualifications would show that the petitioner does not have any knowledge in the courses that are offered in the institution. He therefore cannot teach any subject.

13. The fact that there is a library period in the time table of the institution does not mean in that said period, the librarian imparts any education or teaches any subject pertaining to the courses that are offered by the institution. The librarian therefore cannot come within a definition of faculty as he is not engaged in teaching.

14. The reliance on G.O.Ms.No.300, Higher Education (F1) Department, dated 08.09.2006, by the counsel for the petitioner is of no consequences. The said G.O is for the Government of Tamil Nadu and cannot be extended to the Tamil Nadu Institute of Labour Studies. The reliance on the notification dated 16.11.2011, pertaining to the election which has to be conducted by the Principals of affiliated colleges to elect one member each to the Academic Council is also no consequence, because this notification is meant only for the purpose of conducting elections. The fact that librarians were included in the definition of teachers does not so in the present case, because teaching faculty has not been defined. We cannot therefore rely on the said notification which meant for the purpose of election to the Academic Council.

15. It is not the case that the petitioner put up to basic service. The claim of the petitioner is that he is faculty. The petitioner has not been able to establish that he is a faculty as defined under Rule (xv) of the Tamil Nadu Institute of Labour Studies. Writ Petition is dismissed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pkn.
To

1. The Director,
Tamil Nadu Institute of Labour Studies,
No.5, Kamarajar Salai,
Chennai-5.

2. The Secretary to Government,
Labour and Employment Department,
State of Tamil Nadu, Fort St.George,
Chennai-9.

+1cc to Mr.H.Mohamed Farook, Advocate SR.88137
+1cc to the Government Pleader SR.88709

W.P.No.5958 of 2010

PM(CO)
CB(27/11/2019)



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