

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.29497 of 2016 and
W.M.P.Nos.25532 and 25533 of 2016

S.Rajendiran

... Petitioner

-vs-

1.The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai-9.

2.The Director of College Education,
Directorate of College Education,
EVK.Sampath Building,
D.P.I.Campus, College Road,
Nungambakkam, Chennai-34.

3.The Registrar,
Thiruvallur University,
Serkadu, Vellore,
Vellore District.

4.The Secretary,
Jawahar Science College,
Block-14, Neyveli,
Cuddalore District-607 803.

5.The General Secretary,
Jawahar Education Society,
Block-17, Neyveli,
Cuddalore District-607 801.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records related to the orders dated 12.08.2016 passed by the 4th respondent in Lr.No.JSC/Sec..Ret.Age limit/2015-16/17, Lr.No.JSC/ Sec/Qtrs./2016-17/18 quash the same was illegal and unsustainable and further direct the 4th respondent to reinstate the petitioner as Lecturer Selection Grade in the department of Mathematics under the 4th respondent college and to pay the arrears salary for a period of 4 months

from the date of reliving the petitioner from the employment and also future salary to the petitioner every month, pending disposal of the above Writ Petition.

For Petitioner : Mr.Venkatraman, Senior Counsel
For Mr.P.Paramasiva Doss

For R1 & R2 : Mrs.P.Kavitha, Govt. Advocate

For R3 : Mr.S.T.Rajan
For R4 & R5 : Mr.N.Nithianandam

O R D E R

This Writ Petition has been filed, challenging the orders of the 4th Respondent dated 12.08.2016 made in Lr.No.JSC/Sec..Ret.Age limit/2015-16/17 and Lr.No.JSC/Sec/Qtrs./2016-17/18, by which the petitioner's request for extension of service was rejected, with further direction to vacate the quarters.

2. The case of the petitioner is that though he had attained the age (58) of superannuation on 30.04.2016, he is entitled to continue in service till completion of the age of 62 years. The 4th Respondent, without taking any steps to implement G.O.Ms.No.325 dated 18.08.2003 in favour of the petitioner, has simply issued the relieving order dated 12.08.2016, with the consequential direction to vacate the quarters. The further case of the petitioner is that when the aforesaid Government Order permits the University to extend the service of its employees, the act of the 4th Respondent in relieving the petitioner from the post at the age of 58 years, despite the direction of the 2nd Respondent dated 21.07.2016, is illegal.

3. Learned counsel for the Respondents 4 & 5 has contended that the communication dated 21.07.2016 is only a recommendation and it is not binding upon the 4th Respondent, as the request of the petitioner was asked to be considered therein. He has further contended that G.O.Ms.No.325 deals with the appointment of retired teachers and it no whether states that it is applicable to regular employees and that they should be allowed to continue their services till the age of 62 years. He has also referred to Clause 16.1.0 of the UGC Notification, which states as follows:

"16.1.0 Teachers will retire at the age of 62. However, it is open to a University or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years."

4. Thus, it is his contention that the petitioner cannot claim continuation of his service beyond the age of 58 years as a matter of right, as it is the discretion of the College for such consideration as per the notification of the UGC. Hence, it is prayed that the Writ Petition is liable to be dismissed.

5. Learned counsel for the petitioner has drawn the attention of this Court to Section 17 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (in short 'the Act') to contend that the College is governed by the provisions of the said Act, which reads as follows:

"17. Conditions of service, etc. of teachers and other persons employed in private colleges - The Government may make rules in consultation with the University regulating the number and conditions of service (including promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights as respects disciplinary matters but excluding qualifications) of the teachers and other persons employed in any private college."

6. Since the afore-stated Government Order would have been issued in consultation with the University, to which the College is affiliated, the said Government Order has to be implemented in letter and spirit by the College and the petitioner be granted continuation of service upto the age of 62 years.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. The petitioner served as Lecturer in the Department of Mathematics of the 4th Respondent College, which is governed by Section 2(8) of the Act and he was relieved from service with effect from 30.04.2016, pursuant to his crossing the age of retirement. The petitioner's request for extension of his service upto the age of 62 years was not accepted by the 4th Respondent College, on the ground that G.O.Ms.No.325 dated 18.08.2003, which was relied upon by the petitioner in support of his prayer, relates to the retired teachers. The relevant passage of the order dated 18.08.2003 reads as follows:

"2. The Under Secretary, University Grants Commission, New Delhi in his Letter No.F.3-1/97(PS) dated 9.3.2002 has stated that it has been brought to the notice of University Grants Commission that some of the Universities are appointing retired teachers to the statutory and non-statutory bodies of the University. The above matter has been examined by the University Grants Commission and decided that no retired teachers after the age of 62 years be appointed on any statutory or even non-statutory position in Universities /

Colleges. Based on the above decision of the University Grants Commission, the Syndicate of Madras University at its meeting held on 7.8.2002 has considered the age limit of the appointment of Principal and teachers in the affiliated self-financing colleges of that University and resolved as follows:

"Resolved that the Government be addressed for their considered opinion for fixing the age limit for appointment of Principals and teachers in the self-financing colleges in the light of the University Grants Commission guidelines which stipulated the age limit as 62 years for appointment of any statutory and non-statutory position in Universities / Colleges."

3. The Registrar, Madras University in his letter second read above has requested the opinion of the Government on the resolution of the Universities mentioned in para 2 above.

4. The Government have examined the request of the Registrar, Madras University in detail and decided to implement the University Grants Commission guidelines. Accordingly, the Government direct that no retired teachers after the age of 62 years be appointed in any statutory or even non-statutory position in Universities / Colleges."

9. A cursory glance at G.O.Ms.No.325 dated 18.08.2003 (extracted supra) makes it very clear that a clarification was issued regarding appointment of the retired teachers beyond 62 years and it cannot be interpreted in such a way, as could be portrayed by the petitioner that there is no bar for the College in allowing him to continue beyond 58 years of age, in the absence of specific mention therein.

10. I find force in the contention raised by the learned counsel for the Respondents 4 & 5 on the reasoning that the petitioner cannot demand such extension as a matter of right and it is at the discretion of the Respondent in allowing the petitioner to continue beyond the permissible age, namely, 58 upto 62. Section 17 of the Act will not be helpful to the petitioner, as the Government has taken a decision with regard to the service conditions, etc., of the teachers and other persons employed in any private college and not with regard to the superannuated employee. This Court, in the case of Syed Akin Khalandar vs. The Director of Collegiate Education, Madras and others, reported in 1997 WLR 338, had held that as per Section

17 of the Act, change or alteration of the service conditions could be done only after consulting the University. In the case on hand, since the College was not inclined to extend the retirement age of the petitioner, the question of consultation with the University does not arise at all. Likewise, the communication dated 21.07.2016 was mere a recommendation for consideration of the case of the petitioner and not otherwise.

11. For the foregoing discussions, this Court is of the view that there is no justification on the part of the petitioner in demanding continuation of his service beyond 58 years and therefore, the impugned order dated 12.08.2016, relieving him from service with effect from the date of actual retirement, is perfectly valid and does not warrant any interference by this Court. Accordingly, the Writ Petition is dismissed. However, this order does not preclude the Respondents 4 and 5 in reappointing the petitioner into service before he attains the age of 62.

12. Insofar as the 2nd impugned order dated 12.08.2016 is concerned, it is clarified that in case the service of the petitioner is allowed to be continued beyond 58 years, the petitioner is entitled to stay in the Quarters till he crosses the age of 62, otherwise, he has to vacate the quarters and hand over the vacant possession to the Respondents 4 and 5 within a period of three months from the date of receipt of a copy of this order, if already not vacated. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai-9.

2. The Director of College Education,
Directorate of College Education,
EVK.Sampath Building,
D.P.I.Campus, College Road,
Nungambakkam, Chennai-34.

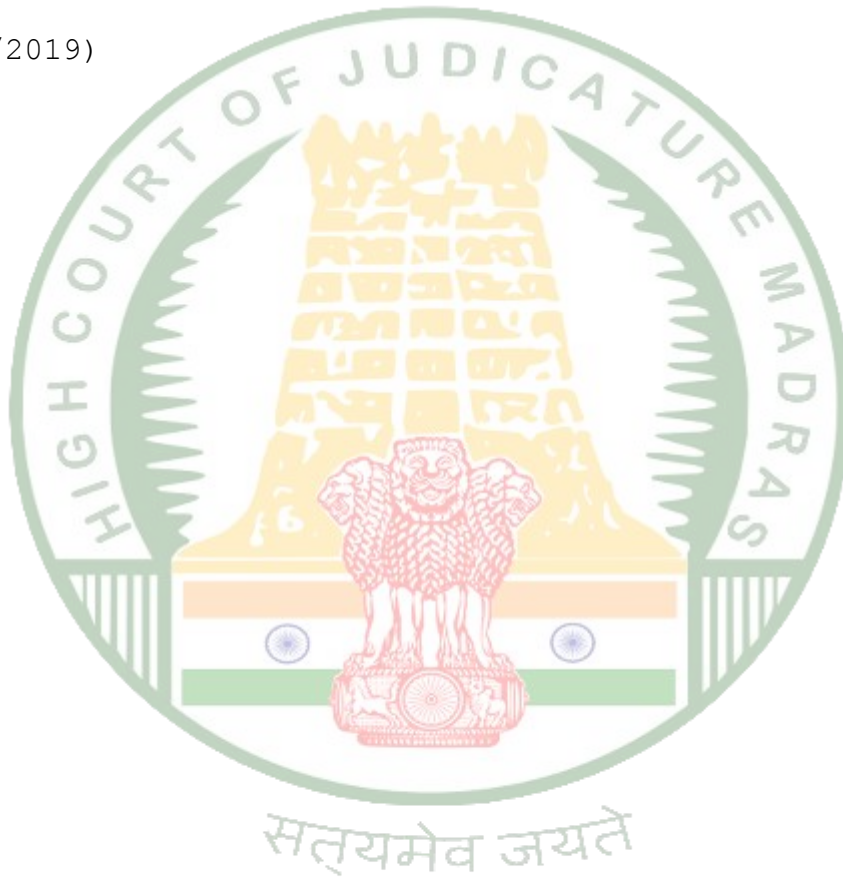
3. The Registrar,
Thiruvallur University,
Serkadu, Vellore,
Vellore District.

+1cc to Mr.P.Paramasiva Doss, Advocate SR.No.63943

+1cc to Mr.N.Nithianandam, Advocate SR.No.63991

W.P.No.29497 of 2016

SJ(CO)
GMY(05/09/2019)



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