

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORUM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.No.1721 of 2019
and
C.M.P.No.11545 of 2019

Dr.T. Sudha ...Petitioner/Appellant

Vs.

1.The Principal Secretary,
Higher Education Department,
Secretariat,
Chennai-600 009.

2.The Director of College Education,
Office of the Director of Collegiate Education,
Chennai - 600 006.

3.The Annamalai University
rep. by its Registrar,
Annamalai Nagar - 608 002,
Cuddalore District.

...Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 08.04.2019 passed by the Hon'ble Mr.Justice S.M. Subramaniam in W.P.No.4017 of 2018.

W.P.No.4017 of 2018:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to calling for the records relating proceeding of the 3rd respondent in university order No 1318 dated 20.02.2018 and quash the same consequently issue direction to respondents to allow the petitioner to serves as Assistant Professors based on seniority and total approved sanctioned strength in the department of Economics in the 3rd respondent University.

For Appellant : Mr.P. Ganesan
for M/s.T. Dharani

For Respondents : Mr.G. Kathirvelu,
Special Government Pleader for R1

Mr.K. Sathish Kumar for R2 and R3

JUDGMENT

(Judgment of the Court was made by P.T. ASHA, J.,)

The unsuccessful Writ Petitioner is the appellant in this Intra Court appeal before this Court. The order deputing the appellant to another College treating her as surplus Assistant Professor was the subject matter in the Writ petition.

2.The brief facts which preceedes the filing of the Writ Petition are as follows:

On 03.07.2000, the appellant was appointed as Lecturer in the 3rd respondent University in the Department of Economics. Thereafter, she was re-designated as Assistant Professor. Though she was eligible for promotion the same eluded her as the University had been taken over by the Government. After taking over, several illegalities and irregularities in the appointment of surplus staff were found out and a decision was taken to depute the surplus staff to other Universities. It was also decided to adopt the policy of "last come first go".

3.The appellant would contend that though such a policy was adopted, unfortunately, it was practically not followed and the juniors were retained and the seniors were sent on deputation. By order dated 20.02.2018, the Bharathidasan University, Thiruchirapalli, had appointed the appellant as Assistant Professor for a period of three years subject to the terms and conditions laid down in the Government Order dated 19.09.2017.

4.Challenging the said move, the appellant had filed W.P.No.4017 of 2018 on the file of this Court for issue of a Writ of Certiorarified Mandamus calling for the Order No.1318/2017, dated 20.02.2018 of the 3rd respondent, quash the same and issue directions to the respondents to allow her to serve as Assistant Professor based on seniority and total approved sanctioned strength in the Department of Economics in the 3rd respondent University.

5.The learned Single Judge by order dated 08.04.2019 was pleased to dismiss the said Writ Petition. Challenging the said

order, the appellant is before this Court.

6.Mr.P.Ganesan, learned counsel who argued on behalf of the appellant, would contend that the appellant was the seniormost amongst the Assistant Professors and the Government had failed to follow the policy of "last come first go" and on the contrary, the appellant, who was the seniormost, has been sent on deputation. He would further argue that the presence of the appellant is required since the existing faculty, of which the she was one of the members, was required by the University considering the workload.

7.Mr.G.Kathirvelu, learned Special Government Pleader appearing on behalf of respondents would submit that in view of the indiscriminate hiring that has been done by the earlier Management, there was a huge surplus of Assistant Professors and in order to accommodate them without terminating them the Government had brought about the arrangement to depute them to various Universities. The respondents would further contend that the allegation of the petitioner that the Government had not followed the policy of "last come first go" is without any basis. It is no doubt true that the petitioner is the seniormost, but however, the juniors could not be deputed for various reasons and therefore, the appellant had been sent on deputation. He would further argue that the service conditions of the appellant would not be disturbed and she would maintain her seniority.

8.In the counter affidavit filed in the Writ Petition, the 3rd respondent has given a tabulated statement to show how the policy of "last come first go" has been followed by them. The statement is extracted below:

List of Assistant Professors in Economics as per seniority

Sl. No.	ID.No .	Name	Date of Appt.	Date of Birth	Date of Retirement	Remarks
1	04592	Dr.T.SUDHA	03.07.2000	17.07.1965	31.07.2025	Petitioner

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Sl. No.	ID.No .	Name	Date of Appt.	Date of Birth	Date of Retirement	Remarks
2	05178	Dr.K. RAMU	02.04.2001	28.05.1965	31.05.2025	Deputation order issued. He will be relieved on completion of project on 30.06.2018. (Vide G.O.Ms.No.107, dated 28.04.2017)
3	05630	Dr.S.VIJAYAN	03.01.2002	15.05.1960	31.05.2020	No minimum service of 3 years for deputation.
4	09136	Dr.A.PRADHIPB ABU	02.07.2003	30.05.1959	31.05.2019	No minimum service of 3 years for deputation.
5	09512	Dr.RAJESWARI	04.12.2003	21.07.1969	31.07.2029	Show cause notice issued on qualification issues.
6	05550	Dr.R.RENGANATHAN (DEMOTED as punishment w.e.f. 30.04.2008)	10.12.2001	25.08.1959	31.08.2019	Returned from Government College
7	15186	Dr.P. SUNDARRAJ	30.01.2009	15.03.1974	31.03.2034	Deputed returned Government on Health referred to Board of Government Hospital

9.From a perusal of this tabulated statement, it is clear that the appellant is the only candidate who could be sent on deputation as the others did not have the requisite qualifications for being deputed. Therefore, the policy of "last come first go" has been followed by the respondents.

10.A letter dated 26.06.2019 sent by the Professor and Head of the Department of Economics of the 3rd respondent University has been pressed into service by the appellant. In the said letter, it has been stated as follows:

"It may also be kindly noted that the faculty strength in the Department is well within what has been sanctioned by the State Government and this academic year four teachers will be retiring in 2019 and two teachers retiring in 2020. I humbly submit that to sustain our programmes with the same commitment as we are doing at present the Department requires the services of all the existing faculty members. Any reduction in faculty strength will be detrimental for the welfare of students. Therefore, on behalf of the teachers and students in the Department, I once again appeal to the authorities to kindly retain the current faculty members in the on campus Department. A copy of the list of teachers with date of retirement is enclosed for your reference."

11.From the above communication, it appears that the Department would be short of four teachers in 2019 and two teachers in 2020, whereby the Department would have a lean faculty strength.

12.The learned Judge was right in rejecting the Writ Petition by stating that it is for the University to decide upon the deputation or otherwise of its work force and the Courts cannot substitute its view in such matters. That apart, the service conditions of the appellant has not in any manner been affected on account of this deputation. Therefore, we do not find any infirmity in the order passed by the learned Judge. However, in view of the communication dated 26.06.2019, it is open to the appellant to make such an application.

13.The Intra Court appeal is dismissed with the above observation. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

mps

To

1.The Principal Secretary,
Higher Education Department,
Secretariat,
Chennai-600 009.

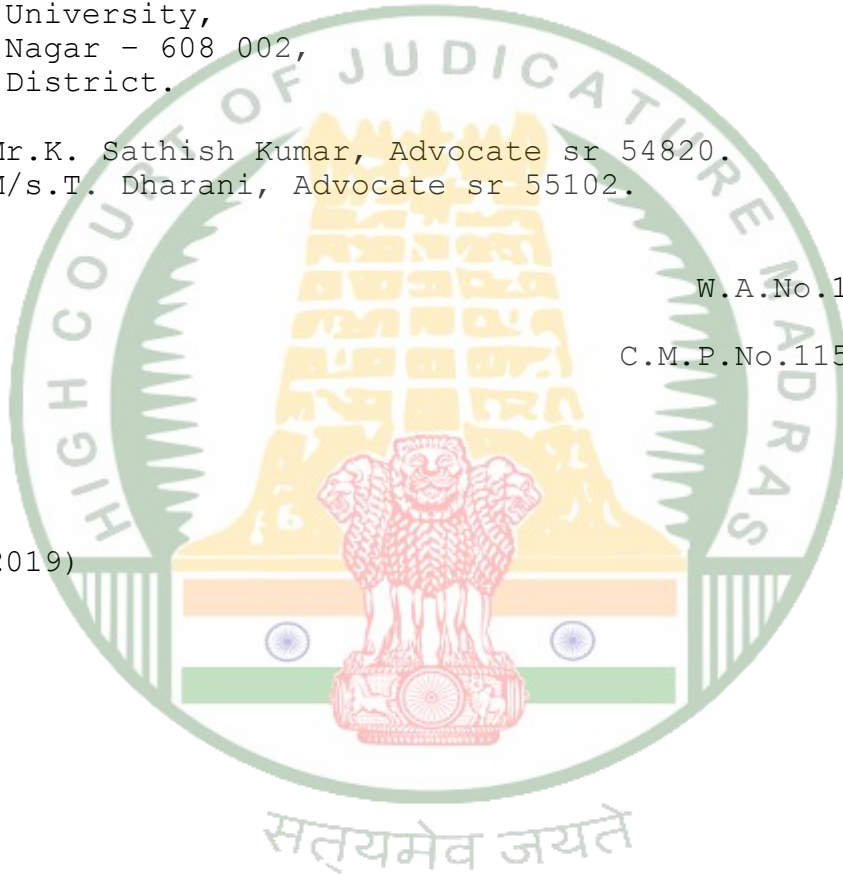
2.The Director of College Education,
Office of the Director of Collegiate Education,
Chennai - 600 006.

3.The Registrar,
Annamalai University,
Annamalai Nagar - 608 002,
Cuddalore District.

+1 CC to Mr.K. Sathish Kumar, Advocate sr 54820.
+1 CC to M/s.T. Dharani, Advocate sr 55102.

W.A.No.1721 of 2019
and
C.M.P.No.11545 of 2019

SJ(CO)
SP(26/08/2019)



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