

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.2377 and 2378 and 2669 of 2018
and
W.M.P.Nos.3298 to3300 of 2018 and
2890 and 2891 of 2018

Dr.M.Chinniah

...Petitioner in all W.Ps

Vs.

1. The Government of TamilNadu,
Rep. by the Principal Secretary to Government,
Higher Education (F1) Department,
Secretariat, Chennai - 600 009.
2. Director of Collegiate Education,
Directorate of Collegiate Education,
DPI Compound, College Road,
Chennai - 600 006.
3. Dr. J. Manjula,
Director of Collegiate Education,
E.V.K.Sampath Maligai (9th Floor),
College Road, Nungambakkam,
Chennai - 600 006.

...Respondents in all W.Ps

Prayer in W.P.No.2377 of 2018: The writ petition is filed under Article 226 of the Constitution of India, to issue a writ of declaration, declaring the action of the respondents 1 and 2 in continuing the 3rd respondent as the Director of Collegiate Education beyond 30.11.2017(date of her superannuation).

Prayer in 2378 of 2018: The writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to appoint the petitioner as Director of Collegiate Education forthwith together with all service, monetary and other benefits from 01.02.2018.

Prayer in W.P.No.2669 of 2018: The writ petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, after calling for the records from the 1st respondent relating to G.O.(MS.) No. 344, Higher Education (F1) Department dated 30.11.2017, and quash the same as illegal arbitrary, malafide, without jurisdiction and consequently direct the 1st respondent to appoint the petitioner as the Director of Collegiate Education, TamilNadu forthwith together with all service, monetary and other benefits from 01.02.2018.

(In all W.P's)

For Petitioner : Mr.K.Srinivasa Murthy

For Respondent-1 & 2 : Mr.V. Kadhirvelu
Special Government Pleader.

For Respondent-3 : No appearance

C O M M O N O R D E R

The relief sought for in these writ petitions are for a declaration, declaring the action of the first and second respondents in continuing the 3rd respondent, as a Director of Collegiate Education, beyond 30.11.2017 and calling for the records from the 1st respondent relating to G.O.(MS.) No. 344, Higher Education (F1) Department dated 30.11.2017, and quash the same as illegal arbitrary, malafide, without jurisdiction and consequently direct the 1st respondent to appoint the petitioner as the Director of Collegiate Education, TamilNadu forthwith together with all service, monetary and other benefits from 01.02.2018.

2. Though it is represented by the learned counsels appearing on behalf of the parties, that the period of extension had already expired and the 3rd respondent was relieved from services, the learned counsel for the writ petitioner states that such a practice of granting an extension without considering the public interest is to be declared as unconstitutional and in violation of the spirit of this rules.

3. Undoubtedly, the Government is vested with the power to grant extension of service in the interest of public. However, such power cannot be exercised in a routine manner and the genuine public interest must be considered while granting an order of extension. Extension of services can never be claimed as a matter of right and such extension cannot be granted in an arbitrary manner, against the public interest.

4. This Court is of the considered opinion that grant of such extension will affect the appointments/promotional prospects of all other eligible candidates, who are waiting in the queue for promotions or appointments. Thus, extension of service granted without establishing the public interest will certainly infringe the rights of all other eligible candidates who are aspiring to secure promotions in accordance with the rules in force. Extension is an exception. Rule is to be followed. Thus, the authority, who is competent, while granting extension must state reasons for establishing public interest. In the absence of any such reasons for grant of extensions, such extension ought to be declared as unconstitutional and against public interest.

5. The authority, who is competent for granting such extensions, in a mechanical manner, such extensions can never be appreciated. In view of the fact that it causes infringement of rights to others. Thus, the element of public interest is of paramount importance for the purpose of granting extension of service to the servants, who have attained the age of superannuation in accordance with the rules.

6. The Hon'ble Division Bench of this Court in the case of D. Arumugam Vs. Government of Tamil Nadu, Public Works Department, reported in (2009) 1 MLJ 604 and the relevant paragraph 2 is extracted hereunder:

2. In order to appreciate the controversy in the matter, this Court thinks that Rule 56(1) of the Fundamental Rules of the Tamil Nadu Government should be set out and it is accordingly set out hereinbelow:

"56(1) Retirement on superannuation-(1) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government Servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as

well as basic servants shall retire on attaining the age of sixty years:

Provided further that on and from the 01.01.1993, a District Judge, Chief Judicial Magistrate, Subordinate Judge or District Munsif Cum Judicial Magistrate who in the opinion of the High Court, Madras has potential for [G.O.Ms.No. 365 Personnel and Administrative Reforms (FR.IV) Department, dated 04.10.1996 with effect from 1.1.1993.

Explanation I- When a Government Servant is required to retire, revert or cease to be on leave on attaining a specific age, the day on which he attains that age is reckoned as a non-working day and the Government Servant shall retire, revert or cease to be on leave, with effect on and from that day.

Explanation II - The grant under Rule 86 or corresponding other rules of leave extending beyond the date on which a Government Servant must retire or beyond the date upto which a Government Servant has been permitted to remain in service shall not be treated as sanctioning an extension of service for the purpose of pensionary or Contributory Provident Fund benefits or retention of lien. The Government Servant shall, for purpose of pensionary benefits be deemed to have retired from service on the date of retirement or on the expiry of the extension of service, if any, and shall become eligible to all pensionary benefits from the date of retirement or from the day following the date of termination of extension of service, as the case may be.

(b) Omitted.

(c) Notwithstanding anything contained in clause (a), a Government Servant who is under suspension,

(i) On a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct allegations of criminal misconduct, is pending or

(iii) against whom a complaint of criminal offence is under investigation or Trial.

7. In this view of the matter, the respondents are directed not to grant extension in a routine manner without recording the reasons of public interest in future.

8. The reasons stated in the order impugned in these writ petitions are, that the third respondent rendered good services is unacceptable. This apart many number of Government servants are rendering excellent services. This, being the factum, the reason stated in the impugned order is unacceptable.

9. However, considering the fact that the third respondent already been relieved from service, no further orders are required with regard to the prayer as such sought for in these writ petition. Accordingly, these writ petitions stand disposed of. However, no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

1. The Principal Secretary to Government,
The Government of TamilNadu,
Higher Education (F1) Department,
Secretariat, Chennai - 600 009.

2. Director of Collegiate Education,
Directorate of Collegiate Education,
DPI Compound, College Road,
Chennai - 600 006.

+1cc to the Government Pleader Sr.36345
+1cc to M/S.Row & Reddy, Advocate Sr.36513

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srg 01/07/2019