

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.864 of 2017

P.Chandramurthy

... Appellant/Petitioner

Vs.

1. The Secretary to Government
Higher Education Department
Fort St. George, Chennai - 9.
2. The Commissioner of Technical Education
Guindy, Chennai - 25.
3. The Principal
Natchimuthu Polytechnic
Pollachi - 642 003
Coimbatore District.

... Respondents

Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 01.02.2017 made in W.P. No. 5474 of 2011 filed for issuance of Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 3rd respondent in proceeding A4/96/2010 dated 6.12.2010 and quash the same and consequently, direct the respondents to regularize the services of the petitioner in the post of Lecturer with effect from 01.09.1997 and award the senior scale with effect from 01.09.1997 and grant consequential monetary benefits, arrears of pay and all other service benefits.

For Appellant : Mr.K.Srinivasa Murthy

For Respondents : Mr.C.Munusamy [For R1 & R2]
Special Government Pleader (Education)
No appearance [R3 - served]

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

This intra court appeal is directed against the order dated 01.02.2017 in W.P. No. 5474 of 2011 dismissing the writ petition filed by the appellant for regularising his services in the post of Lecturer from 01.09.1997 with the senior scale of pay and to pay him all the monetary benefits.

2.The appellant was initially appointed in the post of Lecturer on 01.09.1997 in Nachimuthu Polytechnic, which is a Government aided institution. The appointment was made pursuant to the proceeding of the Director of Technical Education dated 08.08.1997. The Director of Technical Education approved his appointment by order dated 05.10.1999. As per the proceedings No.43180/C3/1999, the Directorate regularised the service of the appellant after two years of his appointment. The regularisation was given taking into account the two years of service from 01.09.1997. The appellant submitted a representation to the Education Department claiming retrospective regularisation from the date of his initial appointment. The request was rejected by order dated 06.12.2010, resulting in filing the writ petition.

3.We have heard the learned counsel for the appellant and the learned Special Government Pleader on behalf of the respondents.

4.There is no dispute that the appellant was appointed by Nachimuthu Polytechnic-the third respondent, in the post of Lecturer in Mathematics on temporary basis by order dated 01.09.1997. The appointment order indicates that the services of the appellant would be regularised after completion of two years of service with the approval of the Directorate of Technical Education.

5.The third respondent submitted a proposal for approval of appointment in the post of Lecturer in Mathematics. The Directorate of Technical Education approved the appointment by proceedings dated 05.10.1999. The services of the appellant was regularized after two years from the date of his appointment taking into account the fact that in the certificate issued by the previous employer there is no specific statement to the effect that he worked as Teaching Assistant in Mathematics.

6.The Special Rules for the Tamil Nadu Technical Education Subordinate service for the post of Associate Professor (Non-Engineering) (Maths) in Polytechnic Colleges prescribes that the candidates should possess teaching experience for a period not less than two years in the subject concerned in a college or

Polytechnic. Since the experience should be in the subject concerned the appellant must demonstrate that he worked as a Teacher in Mathematics.

7.The certificate dated 11.09.1996 issued by Thiru.Ramakrishna Nallammai Polytechnic, Dharapuram indicates that the appellant who is an M.Sc. in Mathematics had worked as Teaching Assistant in the said Institution for a period from 01.06.1993 to 31.07.1995. There is no clear statement indicating that he worked as Teaching Assistant in Mathematics, which made the Directorate of Technical Education to consider him for regularization with effect from 1999.

8.The learned Single Judge primarily rejected the prayer only on the ground of delay and laches. The learned Single Judge observed that there was no challenge to the proceedings of the Director of Technical Education dated 05.10.1999 regularising the appointment of the appellant. The service certificate issued by the former employer clearly shows that the appellant worked as a Teaching Assistant and he was holding the degree in M.Sc. Mathematics. The fact that the branch is not specifically mentioned in the service certificate cannot be taken as a reason to reject the claim for regularization from the date of initial appointment. We are of the view that the first respondent was not correct in denying the benefit of two years service. We are therefore of the view that the appellant must succeed.

9.We direct the respondents 1 and 2 to approve the appointment of the appellant in the post of Lecturer in Mathematics with effect from the date of his initial appointment dated 01.09.1997, and grant him all consequential benefits. Since the appellant has filed the writ petition only after a period of 10 years, we are of the view that he should forgo the monetary benefit for the period in question. We make it clear that the appointment of the appellant would be regularised from 01.09.1997 for all practical purposes, including fixation of scale of pay. However, he would not be given differential pay for the period from 01.09.1997 to 05.10.1999.

10.The intra court appeal is allowed to the extent indicated above. No costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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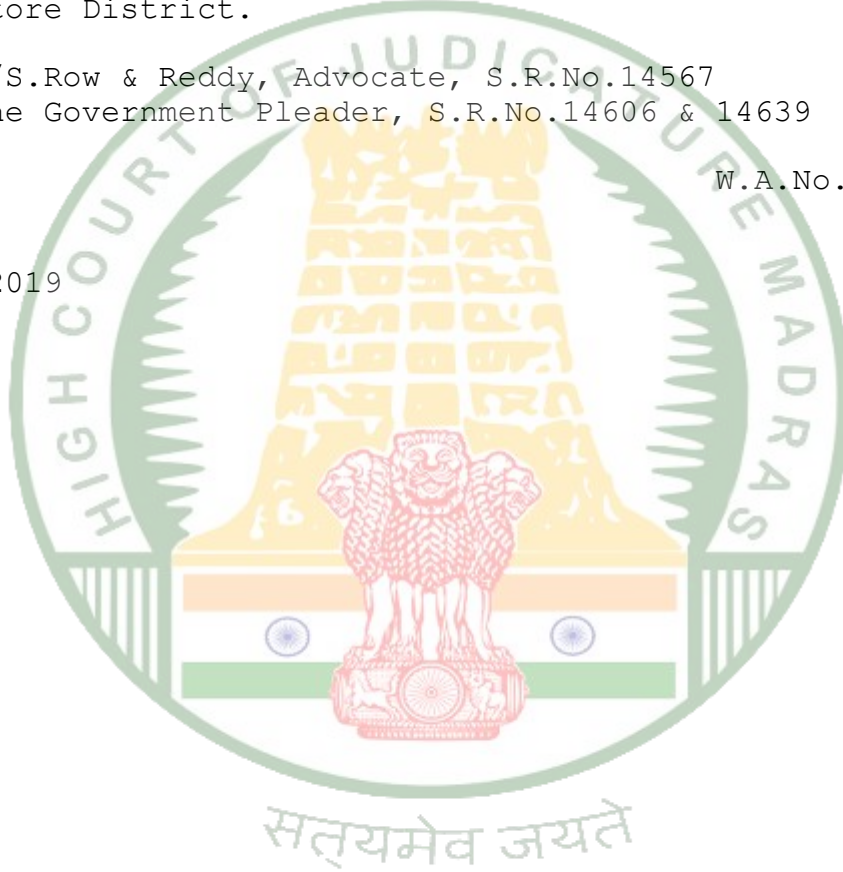
To

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2. The Commissioner of Technical Education
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+1cc to M/S.Row & Reddy, Advocate, S.R.No.14567
+1cc to the Government Pleader, S.R.No.14606 & 14639

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RV(CO)
CS/06/05/2019



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