



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.29639 of 2017 and
W.M.P. Nos.31930 & 31931 of 2017

M.Lakshmanan

... Petitioner

Vs

1.Government of Tamil Nadu
rep. by its Secretary
Higher Education Department
Fort St. George,
Chennai 600 009.

2.Bharathidhasan University
rep. by its Registrar,
Palkalaiperur,
Tiruchy 620 024.

3.The Director of Collegiate Education,
College Road,
Chennai 600 006.

... Respondents

R2 amended as per order dated 16.03.2018
by TRJ in W.M.P. Nos.7625 & 7626
of 2018 in W.P. No.29639 of 2017

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus after calling for the concerned records from the 1st and 2nd respondents, quash the G.O. Ms.No.270, Higher Education (H1) Department dated 19.09.2017 issued by the first respondent in so far as directing the second respondent University to appoint the surplus staff of Annamalai University as Assistant Professor and the order of the second respondent dated 02.11.2017 bearing Ref.No.3080/H2/2016 as illegal, arbitrary and contrary to law and consequently direct the second respondent to absorb the service of the petitioner in the post of Assistant Professor in History and further direct the 1st and 3rd respondent to relieve the service of the petitioner to enable him to join the 2nd respondent.

For Petitioner	: Mr.Balan Haridas
For Respondents	: Mr.V.Kadhirvelu, Special Government Pleader for R1 & R3



Mr.V.Govardhanan
for M/s.Row & Reddy
Standing Counsel for R2

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ORDER

The petitioner has come to this Court challenging the impugned G.O. Ms. No.270, Higher Education (H1) Department dated 19.09.2017 issued by the first respondent directing the second respondent University to appoint the surplus staff of Annamalai University as Assistant Professor and the order of the second respondent dated 02.11.2017 bearing Ref.No.3080/H2/2016 as illegal, arbitrary and contrary to law and seeking a direction to the second respondent to absorb his service in the post of Assistant Professor in History and to further direct the 1st and 3rd respondents to relieve his service so as to enable him to join the 2nd respondent.

2.Learned counsel appearing for the petitioner would submit that the Bharathidasan University, the second respondent herein issued an Advertisement inviting applications to the post of Lecturer in History Department. Hence, the petitioner participated in the selection process and was selected to the post of Lecturer and also joined the second respondent University on 19.01.2000. Learned counsel appearing for the petitioner, pointing out the terms and conditions made in the appointment order dated 20.12.1999, would submit that the Syndicate of the Bharathidasan University issued the appointment order stating that the appointment of the petitioner will be on probation for a period of two years and the question of further continuance or confirmation will be considered on satisfactory completion of the probation period. When the petitioner was curiously and keenly waiting for an order of confirmation, the Bharathidasan University, the second respondent herein, by an order dated 11.06.2002 reverted the petitioner back to his parent department without even giving any notice whatsoever. In view thereof, the petitioner was constrained to approach this Court challenging the correctness of the order of reversion passed by the second respondent by way of W.P. No.22015 of 2002. This Court, by an order dated 03.11.2010, considering the submissions made by both sides, came to the conclusion that the petitioner will have to be permitted to make a representation to the second respondent for confirmation and continuation of his job with the second respondent and therefore, without going into the merits of the case, directed the petitioner to make a representation before the second respondent. Accordingly, the petitioner has also made a representation and accepting the request of the petitioner made in the representation, the second respondent in its Proceedings dated 21.10.2011, permitted the petitioner to join in the Department of History, Bharathidasan University as an Associate/Assistant Professor. When the petitioner was informed to join in the Department of History as an Assistant



Professor with pay protection in the pay band of Rs.15600-39100+6000, he was unable to join the second respondent in the department of History for the simple reason that the first respondent has not relieved the petitioner. When there has been a series of correspondence requesting the first respondent to relieve the petitioner so as to enable him to join the department of History in the second respondent University, there was no response from the first respondent. Therefore, till the date of his superannuation in the first respondent as a Lecturer, the first respondent forgot to consider the request of the petitioner to relieve him from service and therefore, the fault is on the part of the first respondent by not relieving the petitioner. When he was selected by the second respondent and a reasoned order has also been issued on 21.10.2011 granting permission to join the department of History as an Assistant Professor with pay protection, the first respondent cannot keep quiet. Concluding his argument, learned counsel appearing for the petitioner would submit that although in the service of the first respondent, the petitioner reached the age of superannuation, a direction be issued to the first respondent to relieve the petitioner so that he can join the service of the second respondent.

3.Learned counsel appearing for the second respondent would submit that the second respondent cannot be found fault with for the non-joining of the petitioner in the second respondent University. When this Court by order dated 03.11.2010 permitted the petitioner to make his representation to the second respondent for confirmation and continuation of his job with the second respondent, the petitioner made a representation on 17.01.2011. Immediately the Syndicate of the second respondent also issued the Proceedings on 21.10.2011 based on the Resolution No.2011.178 dated 14.09.2011 and the representation of the petitioner was also considered in detail by the Syndicate of the University and finally, the second respondent granted permission to the petitioner to join the department of History as an Assistant Professor. Therefore, the second respondent has rightly granted permission in favour of the petitioner to join the department of History as an Assistant Professor, but, only the petitioner has failed to honour the order passed by the second respondent. Now the petitioner has reached the age of superannuation and retired from service and therefore, the break up in the service does not permit the petitioner to join.

4.Learned Special Government Pleader appearing for respondents 1 and 3 would submit that when this Court passed an order way back on 03.11.2010 giving liberty to the petitioner to make a representation to the second respondent, the second respondent University also by its order dated 21.10.2011 granted permission to the petitioner to join in the Department of History as an Assistant Professor, but, the petitioner alone was not active in pursuing the matter.



5. But this Court is unable to agree with the submissions made by the learned counsel for the respondents. The reason being that when the petitioner was permitted by the second respondent University to join the department of History by its order dated 21.10.2011, the petitioner has sent various communications requesting the first respondent to relieve him from service. The order dated 19.12.2014 issued by the Registrar, Bharathidasan University also shows that the petitioner was permitted to join in the department of History of the University and his appointment was treated as permanent. The representation dated 25.04.2017 made by the petitioner to the Principal Secretary, Higher Education, Government of Tamil Nadu, Chennai also shows that if the first respondent accepts the request of the petitioner to be relieved enabling him to join the second respondent, he would re-gain the service benefits. But, for the reasons best known to the first respondent, without passing any order either rejecting or accepting the request of the petitioner, the first respondent remained only a silent spectator. Since the non grant of permission or non grant of relieving order on the part of the first respondent is unjustified, this Court cannot find fault on the part of the petitioner or on the part of the second respondent.

6. For the reasons mentioned above, this Court is of the view that the petitioner shall be deemed to have been relieved from the service of the first respondent and the second respondent can permit the petitioner to join the department of History.

7. It is made clear that since the petitioner served as Lecturer in the Department of History in the Presidency College till he reached the age of superannuation namely, on 31.05.2018, the second respondent University shall treat the petitioner to have joined in the department of History with effect from the first working day of the academic year 2018-19 only for the purpose of pension and other benefits and not for salary.

8. Learned counsel appearing for the petitioner would fairly submit that although the petitioner is not entitled to get salary for the period he has not worked in the University, the petitioner would be entitled to the Employee's contribution towards General Provident Fund for the said period.

9. Needless to mention that the petitioner is entitled to get salary only from the date of joining and he is entitled to the Employee's contribution towards General Provident Fund. Accordingly, the writ petition stands disposed of. Consequently, miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar



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To

1. Government of Tamil Nadu
rep. by its Secretary
Higher Education Department
Fort St. George,
Chennai 600 009.

2. Bharathidhasan University
rep. by its Registrar,
Palkalaiperur,
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3. The Director of Collegiate Education,
College Road,
Chennai 600 006.

+1cc to Mr. Row and reddy , Advocate SR.No. 94811

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A.SK(26/12/2019)