

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2019

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.33988 of 2018
& WMP Nos.39466 to 39468 of 2018

Dr. S.Palanivel

... Petitioner

Vs.

The Principal, Pondicherry Engineering College,
Pondicherry 605 014

... Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records from the records pertaining to the impugned Memorandum dated 12.10.2018 in Ref. PEC/Estt (T)/E.1/Rotation-HOD/2018 No.2326, quash the same in so far as it is in violation to the order dated 26.11.2009 passed in W.P.No.10049 of 2004 and the consequential order, dated 11.01.2011 passed in Contempt Petition No.1648 of 2010 and consequently to direct the respondent to re-fix the seniority of the petitioner, as per the orders passed by this Court, in the above said writ petition and Contempt Petition.

For Petitioner : Mr. N.Muralikumaran
For Respondent : Mrs. N.Mala.

ORDER

The petitioner has filed this writ petition seeking a writ of

certiorarified mandamus to quash the impugned memorandum, dated 12.10.2018, i.e., seniority list 2018, in so far as it is in violation of order dated 26.11.2009 passed in W.P.No.10049 of 2004 and the consequential order, dated 11.01.2011 passed in the Contempt Petition and for consequential re-fixing of seniority in terms of the orders passed in W.P.No.10049 of 2004, dated 26.11.2009 and the consequential order, dated 11.01.2011, passed in Contempt Petition No.1648 of 2010.

2. The petitioner started his career as Lecturer in Civil Engineering from 05.08.1993 till 18.03.1997 at Regional Engineering College (presently National Institute of Technology (NIT)), Warangal. Thereafter, from 19.03.1997 the petitioner worked as Scientist Grade IV, in CSIR Chennai till 25.11.1999. Thereafter, the petitioner joined the first respondent / Institution, as Lecturer, on 26.11.1999. The petitioner demanded that his overall service (including past service) has to be considered as per the guidelines laid by UGC under Career Advancement Scheme. As the representation given by the petitioner was not considered, he was constrained to file W.P.No.45552 of 2002 and this Court was pleased to direct the first respondent to consider the representation of the petitioner dated 19.12.2002. The petitioner's request was declined by the first respondent by the order dated 05.02.2003. This order was under challenge in W.P.No.28963 of

2003. Thereafter, the first respondent therein communicated to the petitioner that they have decided to adopt the guidelines framed by the UGC under Career Advancement Scheme. But at a later point of time, the first respondent rejected the request of the petitioner by the orders dated 19.11.2003 and 11.02.2004.

2.1. Challenging the same, another writ petition was filed in W.P.No.10049 of 2004. ***This Court, by the order dated 26.11.2009 gave a direction to the first respondent to grant the petitioner the benefits of Career Advancement Scheme and consequentially fix the seniority.***

3. Thereafter, as the first respondent did not comply with the order, a contempt petition was filed in Contempt Petition No.1648 of 2010. Thereafter, the first respondent promoted the petitioner to the post of Associate Professor with effect from 05.08.2003. Compliance report was filed and thereafter contempt petition was closed with a direction to the Contemnor to release the seniority list within four weeks.

3.1. The petitioner's juniors filed a writ petition in W.P.No.6546 of 2011 challenging the promotion given to the petitioner. In the meantime, the petitioner completed his Ph.D., on 10.02.2014.

3.2. The petitioner's application for the post of Professor under

the Career Advancement Scheme was rejected by the first respondent, despite the orders in W.P.No.30908 of 2014. The petitioner filed another Writ Petition in W.P.No.23411 of 2015. This Court passed an order that the selection and promotion would be subject to the result of the writ petition No.23411 of 2015.

3.3. The first respondent took initiative to appoint the petitioner's junior, i.e., the second respondent / Dr. Saravanane as HOD. The petitioner submitted his objections stating that the first respondent cannot overlook the seniority of the petitioner and they cannot promote the petitioner's junior. However, seniority was overlooked and the second respondent was appointed as HOD.

3.4. On 18.09.2018, the first respondent issued a tentative seniority list, in clear violation of the order of this Court, by placing the petitioner far below in the seniority. For the tentative seniority list, the petitioner has submitted objections on 25.09.2018. The petitioner also issued notice of contempt to the first respondent on 27.09.2018. As the tentative list was finalized, without considering the objections raised, W.P.No.33985 of 2018 has been filed.

4. Heard both sides.

5. The learned counsel appearing for the petitioner pointed out paragraph 16 of the order passed in W.P.No.10049 of 2004, dated

26.11.2009 where-under there was a finding that, as the first respondent / Institute has taken into consideration the past services of Dr.Nagarajan, Dr. Kothandaraman and Dr.Paramananthan, the Institute cannot refuse to take the past services of the petitioner alone, as it would amount to discriminatory treatment; there was a direction to extend the same benefit to the petitioner as it is given to other similarly placed persons.

5.1. The learned counsel for the petitioner also pointed out the order passed in Contempt Petition No.1648 of 2010, dated 11.01.2011, where-under the order passed by the first respondent has been quoted which reads as under:-

"As regards seniority, in the post of Lecturer, he (the petitioner) will be considered as senior most among lecturers recruited in the Staff Selection (Teaching) Committee Meeting held on 03.05.1999 and over all revised seniority of lecturers in the Department of Civil Engineering will be issued shortly."

(Emphasis supplied)

5.2. Thereupon, there was a direction to fix the petitioner's seniority within four weeks from the date of receipt of a copy of that order.

6. Pointing out these two orders, the learned counsel for the petitioner would submit that the petitioner is always compelled to

approach the Court on each and every occasion and the first respondent always commits contempt of the order of the court by not obeying the orders.

7. A perusal of the order dated 06.09.2018 would go to show that in the Civil Engineering Department, one Dr.Saravanane, the second respondent has been promoted as Head of the Department.

7.1. ***By the order dated 12.10.2018 the seniority of professors has been finalized, where-under the petitioner's seniority has been shown in S.No.11. According to the learned counsel appearing for the petitioner, as per the undertaking given in the Contempt Petition, the petitioner must have been shown as senior most in the seniority list.***

7.2. These two impugned orders, dated 06.09.2018 and 12.10.2018 are clearly against the earlier orders passed by this Court and they are against the statement of the first respondent made in the Contempt Petition.

7.3. In the order dated 06.09.2018 the Principal of the College has passed an order stating that, pursuant to the decision taken by the Chairman, the following five professors of the respective Department are appointed as HODs on rotation basis with immediate effect for a period of five years. A perusal of the list would go to show that

Dr.R.Saravanane of the Civil Engineering Department has been shown as HOD. Therefore, in so far as Dr.R.Saravanane has been shown as the person fit to be appointed on promotion, the petitioner has challenged the said order in this writ petition.

8. The said proceeding is against the undertaking given before this Court in W.P.No.10049 of 2004 and Contempt Petition No.1648 of 2010. Hence, the impugned order is quashed. The first respondent is directed to refix the seniority of the petitioner, in terms of the order dated 26.11.2009 passed in W.P.No.10049 of 2004 and consequential order, dated 11.01.2011 passed in Contempt Petition No.1648 of 2010.

9. In the order, dated 26.11.2009, this Court has directed the respondents to take into account the past services rendered by the petitioner for fixing seniority. In the order dated 11.01.2011, having regard to the portion of the order, dated 07.01.2011 regarding seniority, the petitioner's seniority was directed to be fixed within four weeks from the date of receipt of a copy of this order. There was an admission that as regards seniority, in the post of Lecturer, the petitioner will be considered as senior most among Lecturers recruited in the staff selection committee meeting held on 03.05.1999.

10. Under the circumstances, the first respondent is directed to re-fix the seniority of the petitioner, as per the directions stated supra. The said exercise shall be completed by the first respondent within a period of four weeks from the date of receipt of a copy of this order.

11. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected WMPs are closed.

10.01.2019

Index : Yes / No
Web : Yes / No
Speaking order / Non speaking order
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To

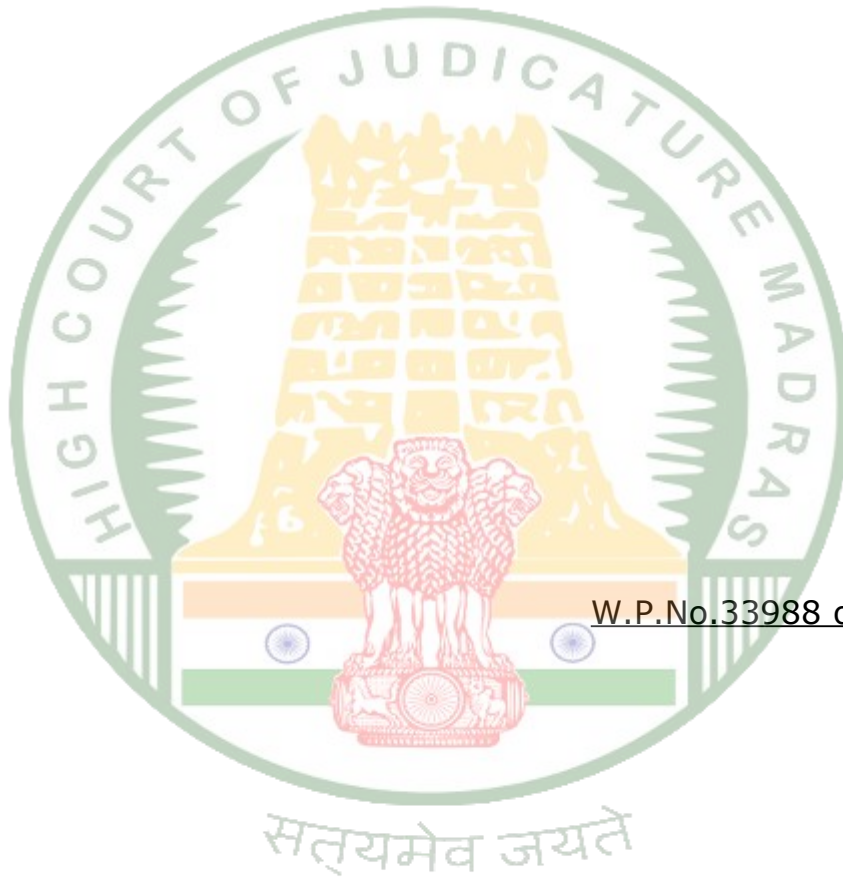
1. The Principal, Pondicherry Engineering College,
Pondicherry 605 014

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Dr. S.VIMALA, J.,

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W.P.No.33988 of 2018

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