

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.12.2019	Delivered on 02.01.2020
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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.Nos.4608 & 4630 of 2018
and
WMP Nos.5676 & 5707, 6774 of 2018

Dr.E.Ravi .. Petitioner
in W.P.No.4608/2013

Dr.S.Prabakaran ..Petitioner
in W.P.No.4630/2018

.Vs.

1.The Vice Chancellor,
Tamil Nadu Open University,
No.577, Anna Salai,
Chennai 600 015.

2.The Registrar,
Tamil Nadu Open University,
No.577, Anna Salai,
Chennai 600 015.

.. Respondents
in Both WPs

PRAYER in W.P.No4608/2018.: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Order No/TNOU/Estt/T/SYN34/2017/dated 01.02.2018, issued by the 2nd respondent and to quash the same and subsequently direct the First and Second Respondents to consider the right of Lien to retain the post of professor and absorb the petitioner in the post of Professor in the School of History and Tourism Studies with the Tamil Nadu Open University.

PRAYER in W.P.No.4630/2018.: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to

the Order No/TNOU/Estt/T/SYN34/2017/dated 01.02.2018, issued by the 2nd respondent and to quash the same and subsequently direct the First and Second Respondents to consider the right of Lien to retain the post Associate Professor and absorb the petitioner in the post of Associate Professor in the School of Political and Public Administration with the Tamil Nadu Open University.

For Petitioner : Mr.Mohan
(Both WPs) for Mr.Suresh Sakthimurugan
& Mr.M.Baskar

For Respondents: Mr.P.Sanjai Gandhi
(Both WPs) Standing Counsel

COMMON ORDER

The issues involved in both the writ petitions are common and therefore both the Writ Petitions are dealt together and this common order is pronounced.

2.The petitioners were appointed in the year 2003 and 2002 respectively as lecturers in Annamalai University. During the year 2014, the respondent University through an open advertisement called for candidates to fill up the vacancy to the post of Professor in History and Tourism Studies and Associate Professor in politics and public administration respectively. The petitioners were selected and appointed to their respective posts on 28.11.2015. The petitioners got lien of service for a period of two years from Annamalai University from 02.02.2015 to 02.02.2017 and they were relieved from Annamalai University and they joined their respective posts in the respondent University.

3.As per the appointment order of the petitioners, two years period was prescribed as the probation period for permanent absorption to the said post. The lien granted was to expire on 02.02.2017 and therefore, the petitioners made a representation to the respondent University to consider for absorption on 25.07.2016. The process was going on and in and in the meantime, the petitioners got their lien extended for a further period of one year from 02.02.2017 to 01.02.2018 from their parent institution viz; Annamalai University. The petitioners again made a request for permanent absorption on 30.01.2017. The respondent University permitted the petitioners to continue in the post, but however, the probation was not declared even after the expiry of two years.

4.The 2nd respondent by virtue of the impugned order relieved the petitioners from their respective posts. Thereby, the petitioners were left with no other alternative except to rejoin their parent institution viz; Annamalai University on 02.02.2018, in a lower grade post since as per the conditions of lien, the petitioners were not entitled for any seniority or pay protection during the period when they were permitted to join the respondent University.

5.The petitioners aggrieved by the impugned order passed by the 2nd respondent, relieving them from service, have filed the above writ petitions and have also sought for the consequential relief of permanent absorption in the respondent University.

6.Mr.T.Mohan, learned counsel appearing on behalf of the petitioners submitted that as per the appointment order given to the petitioners by the respondent University, they are governed by Tamil Nadu Civil Services [Discipline and Appeal] Rules in all matters relating to service conditions and disciplinary proceedings, wherever it is not expressly governed by the rules of the University. The learned counsel submitted that insofar as the probation and absorption to the post is concerned, there were no rules provided by the respondent University and therefore, Rule 27 of the Tamil Nadu State and Subordinate Service Rules, will apply to the facts of the present case. The learned counsel specifically relied upon 27 (a) and (b) of the Rules and the same is extracted hereunder:

"27. Probationer's suitability for full membership - (a) At the end of the prescribed or extended period of probation, as the case may be, the appointing authority shall consider the probationer's suitability for full membership of the service, class or category for which he was selected.

(b) If the appointing authority decides that a probationer is suitable for such membership, it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation. If no such order is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the prescribed or extended period of probation. A formal order declaring the completion of probation shall, however, be issued by the competent authority.

In all cases in which serious charges are pending, and therefore, probation cannot be declared, an order to the effect that the question of declaration of probation cannot be considered till the charges are disposed of shall be issued by the competent authority within six months from the due date for completion of probation and the final order on probation shall be passed as early as possible and in any case within one month after the disposal of the charges or six months after the due date for completion of probation, whichever is later".

7.The learned counsel by placing reliance upon the above rule submitted that the two year probation period for both petitioners came to an end on 02.02.2017 and no orders were passed extending the probation nor was any order passed declaring the probation and therefore after the expiry of six months from the date of completion of the period of probation, the declaration of probation is automatic and therefore the petitioners must be held to have been permanently absorbed in the respondent University. The learned counsel submitted that at the time of the expiry of the six months after the completion of the probation, the Lien was alive with the Annamalai University.

8.The learned counsel further submitted that 14 Professors who joined along with the petitioners out of the 19 Professors, got their probation declared and they were absorbed in the respondent University.

9.The learned counsel further submitted that the impugned order has been passed by the 2nd respondent mainly on the ground that the performance of the petitioners was not found satisfactory and their lien had expired after the completion of three years and therefore they have to be reverted to their parent department as per Clause 16 of the appointment order and that the services of the petitioners are no more required in the respondent University.

10.The learned counsel submitted that the expiry of the probation period and six months thereafter, clearly fell within the Lien period and therefore Clause 16 cannot be put against the petitioners. The learned counsel further submitted that if the respondents are not satisfied with the performance of the petitioners, they could have been sent back to the parent

department immediately after the probation period expired and there was no requirement to keep the petitioners in service for more than three years and thereafter revert them back to the parent department. The learned counsel therefore submitted that the impugned order passed by the 2nd respondent requires interference of this Court and the petitioners must be directed to be permanently absorbed in the respondent University.

11. Per contra, Mr. P. Sanjai Gandhi, learned Standing Counsel appearing on behalf of the respondents submitted that there are absolutely no grounds to interfere with the order passed by the 2nd respondent. The learned counsel submitted that when the petitioners got their lien extended after the expiry of two years, the petitioners approached the respondents to ratify the extension of lien. At that point of time, the petitioners gave a specific undertaking that they will not claim for permanent absorption in the respondent University due to the extension of the lien for one year. The learned counsel submitted that based on the undertaking given by the petitioners, the same was placed in the meeting of the Syndicate held on 28.08.2017 and the Syndicate specifically took into consideration the undertaking given by the petitioners and only thereafter the petitioners were permitted to continue in the respondent University. The learned counsel therefore submitted that having undertaken not to claim for permanent absorption, the petitioners are estopped from claiming the said relief. Therefore, the learned counsel submitted that on the expiry of the lien after expiry of three years the petitioners were rightly reverted to their parent department as per Clause 16 of the appointment order. The learned counsel therefore submitted that there are absolutely no grounds to interfere with the order passed by the 2nd respondent.

12. This Court has carefully considered the submissions made on either side and the materials available on record.

13. The short issue that arises for consideration in both the writ petitions is as to whether the petitioners were entitled to be considered for absorption in the respondent University and whether the impugned order passed by the 2nd respondent reverting the petitioners back to their parent department is legally sustainable.

14. The appointment order of both the petitioners specifically provides that Tamil Nadu Civil Services [Discipline and Appeal] Rules will apply in all matters wherever it is not provided under the rules of the respondent University. Since the rules governing the respondent University does not provide

for declaration of probation after the expiry of the probation period, reliance is placed upon Rule 27 of the Tamil Nadu State and Subordinate Service Rules. The relevant Rule has also been extracted supra.

15.The specific case of the petitioners is that the two year probation period was over on 02.02.2017 and there was no order passed extending the probation. Therefore, according to the petitioners, if no orders are issued within six months from the date on which they became eligible for declaration of probation, the same is deemed to have been satisfactorily completed on the expiry of the six months.

16.In the present case, the lien that was obtained from the parent department was extended for a period of one year by the Annamalai University by an order dated 27.01.2017 and thereby the lien was extended upto 01.02.2018. This lien becomes important for the purpose of continuing the services with the respondent University. It has been made as a condition precedent even as per the appointment order, failing which, the candidate will be reverted back to the parent department.

17.After the extension of lien granted by the Annamalai University, the petitioners will have to get the same ratified by the respondent University in order to continue in service. They have therefore made a representation to the respondent University and had also given an undertaking to the effect that they will not claim for permanent absorption in the respondent University by virtue of the extension of lien. This undertaking was taken into account by the Syndicate of the respondent University when it was placed before the Syndicate for consideration and ratification. Based on the undertaking, the extension of lien for one year was ratified.

18.It is clear from the above that the service of the petitioners would not have been extended in the respondent University if not for the undertaking given by them. Therefore, the petitioners are bound by the undertaking given by them to the respondent University. In view of this finding, the petitioners cannot claim for automatic declaration of probation as per Rule 27(b) of the Tamil Nadu State and Subordinate Service Rules.

19.It is also relevant to take into account the proceedings of the Registrar of Annamalai University dated 21.12.2016 and 02.01.2017. In these proceedings, the request made by the petitioners seeking for extension of lien for a further period of two years from 2017 to 2019 was considered and rejected on the ground that the petitioners had already availed

the eligible lien period of two years. The petitioners thereafter gave an undertaking to the Annamalai University on 31.01.2017 to the effect that they will abide by the decision of the Syndicate for either approval of extension of one year lien or revert back to the parent department and that the extension of lien for one year will not entitle the petitioners to claim for permanent absorption in the respondent University. The Registrar of Annamalai University has also conveyed his consent for extension of lien for one year subject to the approval of the Syndicate of the Annamalai University. The approval was granted by the Syndicate with a specific condition that the one year extension of their service on lien shall not confer any claim for the petitioners for permanent absorption and for continuance of service in the respondent University. A similar undertaking was also given by the petitioners to the respondent University.

20. In view of the above, the petitioners were not entitled for declaration of their probation automatically and the submissions made by the learned counsel for the petitioners on this ground, is hereby rejected.

21. The lien period of the petitioners expired on 01.02.2018 and therefore Clause 16 of the conditions of appointment started operating and therefore, the 2nd respondent by virtue of the impugned order dated 01.02.2018, relieved the petitioners and reverted them back to their parent department viz; Annamalai University. This was done purely in accordance with the conditions of appointment and the petitioners are bound by the said condition in the appointment order. The absorption of the other Professors and declaration of their probation, is not a ground for the petitioners also to claim for a similar relief.

22. In view of the above discussion, this Court does not find any grounds to interfere with the impugned order passed by the 2nd respondent and accordingly, both the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

1.The Vice Chancellor,
Tamil Nadu Open University,
No.557, Anna Salai,
Chennai 600 015.

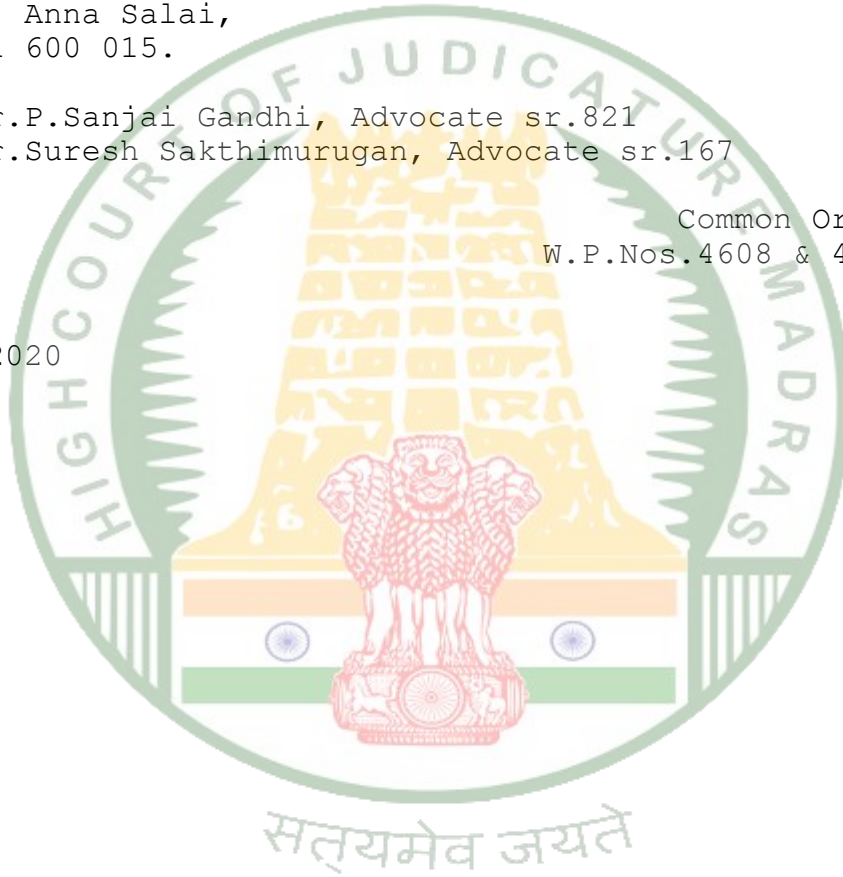
2.The Registrar,
Tamil Nadu Open University,
No.557, Anna Salai,
Chennai 600 015.

+1cc to Mr.P.Sanjai Gandhi, Advocate sr.821

+1cc to Mr.Suresh Sakthimurugan, Advocate sr.167

Common Order made in
W.P.Nos.4608 & 4630 of 2018

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