

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.08.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.10325 of 2020
and WMP Nos.12546, 12548, 12550 & 12552 of 2020

Dr.D.Elamparuthi

.. Petitioner

Vs

1. Government of Tamil Nadu,
Rep. By its Secretary,
Higher Education Department,
Secretariat, Chennai - 9.

2. The Director,
Directorate of Collegiate Education,
Chennai - 8.

3. Annamalai University,
Rep. By its Registrar,
Annamalai University,
Chidambaram.

4. The State Commissioner,
Welfare of the Differently-abled,
No.5, Kamarajar Salai,
Lady Wellington College Campus,
Chennai - 600 005.

5. The Principal,
Government Arts and Science College for Women,
Sathankulam,
Thoothukudi District.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his proceedings in Na.Ka.No.6354/D5/2020 dated 25.02.2020, in so far as the petitioner's posting from 3rd respondent University to the 5th respondent college is concerned, and the order of the 3rd respondent in his proceedings in Office Memorandum No.C-C7/12493/2020 dated 10.07.2020 and quash the same and consequently direct the respondents to continue to

permit the petitioner to work under the 3rd respondent University as before.

For Petitioner : Mr.V.Vijay Shankar.
For Respondents: Mr.Karthikeibalan (for R1 & R2)
Government Advocate
Mr.Godson Swaminath (for R3)

O R D E R

This matter was taken up today, through web hearing.

2. The petitioner has approached this Court, seeking the following relief:

"for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his proceedings in Na.Ka.No.6354/D5/2020 dated 25.02.2020, in so far as the petitioner's posting from 3rd respondent University to the 5th respondent college is concerned, and the order of the 3rd respondent in his proceedings in Office Memorandum No.C-C7/12493/2020 dated 10.07.2020 and quash the same and consequently direct the respondents to continue to permit the petitioner to work under the 3rd respondent University as before."

3. The case of the petitioner is that he was working as a Lecturer in Directorate of Distance Education in 3rd respondent University. He came to be appointed as Lecturer originally on 19.04.2007 and subsequently, his services were confirmed in the Department of Distance Education on 18.12.2008. In 2017, the teaching staff employed in the Department of Distance Education were taken over due to merger of the department and he was re-designated as Assistant Professor in the Department of Business Administration. The petitioner belongs to Scheduled Caste Community and he is also physically handicapped with 60% Orthopaedic disability. सत्यमेव जयते

4. The grievance of the petitioner in this writ petition is that on 25.02.2020, the 2nd respondent passed an order posting several teaching staff engaged in the Department of Business Administration of the 3rd Respondent University, to various other Colleges in the State. In pursuance of the 2nd respondent's order dated 25.02.2020, a consequential order was issued by the 3rd respondent University on 10.07.2020 and as many as 39 teaching staff of the University have been subjected to transfer to various other colleges across the State, including the petitioner herein. In so far as the petitioner was concerned, he was posted to Government Arts and Science College for Women, Sathankulam, Thoothukudi District, for a period of three years.

The mass transfers were necessitated in view of the fact that these teaching staff have become surplus over and above the sanctioned strength of the University in their respective departments.

5. The petitioner though cannot be singled out in the matter of posting of surplus teaching staff to various other colleges in the State, however, as an exceptional circumstance in this case viz., that he is 60% Orthopaedic disabled and therefore, it was practically impossible for him to relocate himself in Thoothukudi District, which is far away from the place of his residence and the 3rd respondent University, he requested for being accommodated in the University itself or in any of the nearby institutions.

6. According to the petitioner, despite his submitting all the medical certificates in support of his disability status, his request for retention at Annamalai University on the ground of his disability was not considered and therefore, he is before this Court.

7. Learned counsel Mr.Vijayashankar, appearing for the petitioner would submit that University may be directed to consider his petitioner's plight and may explore the possibility of accommodating the petitioner in and around Cuddalore District or in the 3rd Respondent University itself.

8. According to the counsel, the petitioner was also undergoing treatment for certain ailment and he was on medical leave from 27.02.2020 to 04.04.2020. Besides, due to Covid-19 lock down, the petitioner with his disability was unable to move and therefore, would request this Court to interfere with the orders of transfer on the exceptional circumstances of the disability suffered by the petitioner.

9. Notice was issued and in response to the same, Mr.Karthikeibalan, learned Government Advocate appeared for the respondents 1 and 2 and Mr.Godson Swaminath, learned counsel entered appearance for the 3rd Respondent University.

10. In response to the grievances expressed by the petitioner and also in consideration of the legitimate grievance expressed in the writ petition, the matter was reconsidered by the 3rd Respondent University and by letter dated 17.08.2020, the Registrar of the University had informed the counsel for the University that the petitioner would be permitted to rejoin in the University for the time being on sympathetic grounds. The contents of the letter are extracted hereunder:

Sir,

Sub: Establishment - Dr.D.Elamparuthi, Assistant Professor in Business Administration - filed a Writ Petition in the High Court challenging the proceedings regarding redeployment - Permission to retain him in the University - Reg.

Ref.:1. W.P.No.10325 of 2020.

2. Your mail dated 13.08.2020.

With reference to your letter cited, I am to inform you that Dr.D.Elamparuthi, Assistant Professor in Business Administration who has challenged the proceedings of the Directorate of Collegiate Education regarding redeployment will be permitted to rejoin in the University for the time being on sympathetic grounds. This will not given him any right to remain in the University forever.

I am also to inform you that in the event of reverting him back to the University, another Assistant Professor in the order of seniority will be accommodated in the place of Dr.D.Elamparuthi."

11. When the matter was taken up for hearing today, the learned counsel for the 3rd respondent University would submit that in view of the communication, as extracted above, the University would have no objection for petitioner rejoining the respondent University. However, the learned counsel has made it clear that the reconsideration of the transfer of the petitioner to Sathankulam, Thoothukudi District, vide order dated 10.07.2020, in pursuance of the 2nd respondent's proceedings dated 25.02.2020, was entirely on sympathetic grounds and the reconsideration is only confined to the present petitioner.

12. Mr.Karthikeibalan, learned Government Advocate appearing for respondents 1 and 2 would submit that as the University on reconsideration expressed its willingness to permit the petitioner to rejoin the services in the University itself, the 2nd respondent may not have any objection for recalling the proceedings dated 25.02.2020, only in respect of the present petitioner is concerned and issue appropriate proceedings, accordingly and if any direction is issued by this Court, on that aspect, the same will be complied with.

13. In view of the above narrative and also the development as mentioned above, the writ petition is disposed of as under.

(i) The 2nd respondent is directed to take note of the letter written by the Registrar of the 3rd Respondent

University dated 17.08.2020, agreeing to redeploy the petitioner in the University services itself on sympathetic grounds and in order to facilitate the rejoining of the petitioner, consequential order shall be issued for recalling the transfer of the petitioner to Government Arts and Science College for Women, Sathankulam, Thoothukudi District, as far as the petitioner is concerned.

(ii) The 2nd respondent is also directed to issue appropriate orders in this regard within a period of one week from the date of receipt of a copy of this order.

(iii) The petitioner herein on being redeployed in the University services, he is entitled to payment of salary and allowances for the interregnum period as per the usual conditions of service governing the engagement of the petitioner to the University Services.

(iv) It is also made clear that this order is passed in the exceptional circumstances of the physical disability suffered by the petitioner herein and the same shall not be quoted as a precedent in future, questioning the redeployment on the basis of the staff being found surplus in the University services.

14. The Writ Petition is disposed of, as indicated above. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Higher Education Department, Secretariat, Chennai - 9.

2. The Director,
Directorate of Collegiate Education, Chennai - 8.

3. The Registrar,
Annamalai University, Chidambaram.

4. The State Commissioner,
Welfare of the Differently-abled,
No.5, Kamarajar Salai, Lady Wellington College Campus,
Chennai - 600 005.

5. The Principal,
Government Arts and Science College for Women,
Sathankulam, Thoothukudi District.

+1cc to M/s.V.Vijay Shankar, Advocate in Sr.28198

WP No.10325 of 2020

RSV (CO)
RV(11/9/2020)



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