

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.27735 of 2014

S.Premchand

..Petitioner

Vs

1.The Secretary to Government
Department of Higher Education
Fort St. George
Chennai-600 009.

2.The Registrar
Anna University
Guindy
Chennai-25.

3.The Regional Director
Anna University
Regional Centre
Veerapandi Pirivu
Coimbatore-47.

...Respondents

Prayer:- This Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus after calling for the records of the 2nd respondent pertaining to his proceedings in Memo No.AURCBE/PR 24/2013 and quash the order dated 16.12.2013 and consequently direct the 2nd respondent to pay the Contributory Pension Amount payable to the petitioner for his service for the period between 30.10.2008 to 27.05.2013 along with appropriate interest.

For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.K.Karthikeyan for R1
Government Advocate
Mr.L.P.Shanmugasundaram- R2 & R3
Special Government Pleader

O R D E R

The writ petitioner has filed this Writ Petition for issuance of a Writ of Certiorarified Mandamus challenging the proceedings of the 2nd respondent in Memo No.AURCBE/PR 24/2013

and quash the order dated 16.12.2013 and consequently direct the 2nd respondent to pay the Contributory Pension Amount payable to the petitioner for the period between 30.10.2008 to 27.05.2013 along with appropriate interest.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the 1st respondent and the learned Special Government Pleader appearing for the 2nd and 3rd respondents.

3. The case of the writ petitioner is that originally the petitioner was working as Commander of Indian Navy for about 21 years without any unblemished records. The erstwhile Anna University of Technology, Coimbatore by its letter dated 14.10.2007 requested the Indian Navy for volunteers to join as Professors in their Institute of Maritime Education and Research (IMER). Based upon the said request, the petitioner volunteered himself and the Naval Head Quarters had sponsored his name vide their letter dated 14.11.2007 and the petitioner joined in the University as Professor on 08.05.2008. According to the petitioner, the petitioner has satisfied all the educational qualification and experience and the same was approved by the Syndicate vide their resolution No.7.1.3.1 dated 25.09.2008. According to the petitioner, the Act 20 of 2011 came into force with effect from 01.08.2012. Thereafter, the petitioner was compelled to seek an alternative employment, and accordingly, he applied to the post of Deputy General Manager in Cochin Shipyard and he has been provisionally selected as Deputy General Manager, Cochin Shipyard. Therefore, he made several representations to the respondent university to issue appropriate relieving order and service certificate. In spite of several representations, the respondent university deliberately delayed to issue the relieving order. Therefore, the petitioner was constrained to approach this Court by way of W.P.No.16013 of 2013 seeking for direction to the 2nd respondent for issuance of the service certificate and also for settlement of his service benefits. This Court, by an interim order dated 1.7.2013 directed the respondent to pass suitable orders on his representation. In pursuance of the interim order, the 2nd respondent by its proceedings dated 5.8.2013 initially ordered to relieve the petitioner from service on 27.05.2013 A.N. However, on the very same day, a subsequent order has been passed cancelling the earlier order. The respondent university has also passed another order that the petitioner was relieved from his service in view of his resignation. Therefore, the petitioner sent a representation on 12.11.2013 to the respondent university. In reply to the said representation, the 2nd respondent, by his order dated 16.12.2013 had held that since the petitioner has been resigned from the service, the release of its contributory pension scheme can be made only after

obtaining necessary orders from the Government. Challenging the aforesaid order, the present writ petition has been filed by the petitioner.

4. The learned counsel appearing for the petitioner drew attention of this Court the clause 15 (9) (a) of the Act 20 of 2011, which reads as follows;

"Every person who was serving in the Anna University of Technology, Tiruchirappalli, Anna University of Technology, Coimbatore, Anna University of Technology, Tirunelveli, Anna University of Technology, Chennai and Anna University of Technology, Madurai or in any of the constituent colleges of that Universities shall cease to be an employee of that Universities, or of the constituents colleges, as the case may be".

5. It is contended by the learned counsel for the writ petitioner that in view of the above Act, the writ petitioner is ceased to be an employee of Anna University of Technology with effect from 01.08.2012. Thereafter, the University has placed the order by appointment, appointing the petitioner as Head of Department I/c of the Department of Civil Engineering with effect from 17.08.2012, until further orders. Thereafter, the petitioner has made a representation to the respondent University on 17.09.2012 to relieve him from duty. Again, the petitioner has made a representation to the respondent University on 15.04.2013 requesting to relieve him from the service of the University so as to enable the petitioner to join in Cochin Shipyard Ltd., The 3rd respondent, namely, the Regional Director, Anna University has passed an order on 05.08.2013, relieving the petitioner with effect from 27.05.2013 and subsequently, on the same day, the aforesaid relieving order was cancelled by the Regional Director. Thereafter, the Registrar has passed an order on 05.08.2013 accepting the petitioner's resignation and relieved the petitioner from duty on 05.08.2013. Challenging the aforesaid order, the present writ petition has been filed on the ground that the petitioner has to be relieved on the date of 27.05.2013 as accepted by the Regional Director of the respondent University. After accepting the petitioner's joining in Cochin Shipyard, without any reason, the Registrar of the respondent University had reversed his earlier order.

6. The learned Standing Counsel appearing for the respondent University submitted that the Regional Director has no jurisdiction and the only competent authority is the 2nd respondent, namely, the Registrar of University. Therefore, the Registrar has accepted the resignation and relieved the petitioner from his duty on 05.08.2013.

7. This Court, on considering the provisions under the Act 20 of 2011 which came into force with effect from 01.08.2012, the writ petitioner ceased to be an employee of the respondent University and the Regional Director has passed an appointment order on 17.08.2012 placing the petitioner as Head of Department I/c of the Department of Civil Engineering with effect from 17.08.2012 until further orders. Thereafter, the petitioner has submitted his resignation to the 2nd Respondent, namely, the Registrar, Anna University, Chennai on 17.09.2012 and again, he had sent several reminders to the 2nd respondent, but, there was no response. Finally, the writ petitioner sent a letter to the Registrar on 27.05.2013. By accepting the said letter, the Regional Director permitted the petitioner to relieve from his duty from 27.05.2013. Subsequently, the Registrar has passed an order by relieving the petitioner only on 05.08.2013. According to the respondents, the 3rd respondent is not the competent authority to pass a relieving order. The 2nd respondent, namely the Registrar, Anna University is the competent authority to pass such a relieving order.

8. A perusal of the appointment order shows that the Regional Director had passed an order by placing the petitioner as Head of Department. Therefore, even assuming that there is no jurisdiction to consider and pass order by the Regional Director, no specific rule has been placed before this Court to prove that the Registrar is the competent authority to issue the relieving order, not the Regional Director. Further, it is seen that the request of the petitioner, to join in Cochin Shipyard Ltd., on 27.05.2013 was accepted by the Regional Director and relieved the petitioner from duty on 27.05.2013. Therefore, no prejudice would be caused to the respondent in relieving the petitioner from duty with effect from 27.05.2013. Thus, this Court has accepted the contentions of the petitioner.

9. In view of the aforesaid fact that the Act 20 of 2011 came into force with effect from 01.08.2012 and the relieving order has been passed by the 3rd respondent, namely the Regional Director, this Court is of the opinion that no prejudice would be caused to the respondents to permit the petitioner to relieve from duty w.e.f. 27.05.2013. Therefore, to that extent, the impugned order passed by the 2nd respondent is modified. Insofar as pensionary benefit is concerned, it is open to the petitioner to work out his remedy in the manner known to law.

10. In view of the above discussion, the writ petition is partly allowed with the following directions;

- (i). The writ petitioner shall make appropriate application to the 2nd respondent University within a period of two weeks from the date of receipt of a copy of this order.

- (ii) On receipt of such representation, the 2nd respondent University shall consider the same and pass orders, more preferably within a period of twelve weeks thereafter.
(iii).No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government
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Fort St. George
Chennai-600 009.

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3.The Regional Director
Anna University
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Veerapandi Pirivu
Coimbatore-47.

+1 cc to M/s.L.P.Shanmugasundaram, Advocate Sr.No. 17533
+1 cc to M/s.R.Sivakumar , Advocate Sr.No. 17024
+1 cc to The Government Pleader, Sr.No. 17745
+1 cc to Spl Government Pleader (Co-op), High Court Madras,
Sr.No. 17732

सत्यमेव जयते

W.P.No.27735 of 2014

MR (CO)
RMP (03/09/2020)

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