

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.11439 of 2011

1.K.Gopalakrishnan
2.R.Devarajan
3.K.Vijayakumar
4.N.Thukkaiappan
5.P.Kanthimathi
6.V.Senthil Kumar
7.V.Mangayarkarasi
8.V.Gunasekaran
9.R.Sampath Kumar
10.M.Ashok
11.P.Gnanambikai
12.N.Arumugam

... Petitioners

-Vs-

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

2.The Commissioner of Technical Education
Guindy, Chennai-25.

3.The Principal, Natchimuthu Polytechnic College
Pollachi, Coimbatore District.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus to direct the respondents to regularize the service of all the petitioners in the Post of Lecturer from their respective dates of their initial appointments based on G.O.Ms.No.244 Higher Education Department dt.27.7.2006 and G.O.Ms.No.1081 Education dt.19.8.89 and grant all consequential service and monetary benefits.

For Petitioners : Mr.K.Prem Narayan

For Respondents : Mr.S.Karthikei Balan,
Government Advocate
- for RR 1 and 2

O R D E R

The prayer sought for herein is for a Writ of Mandamus to direct the respondents to regularize the service of all the petitioners in the Post of Lecturer from their respective dates of their initial appointments based on G.O.Ms.No.244 Higher Education Department dated 27.7.2006 and G.O.Ms.No.1081 Education dated 19.8.89 and grant all consequential service and monetary benefits.

2. These petitioners, with the qualification of B.E. Degree were appointed at various point of time in 1990's as Instructors in the third respondent Polytechnic College. During the relevant point of time, where they had been appointed, the post of Instructors was not readily available because the same was directed to be abolished by issuance of G.O.Ms.No.1081, Higher Education Department dated 19.08.1989.

3. Despite such ban was imposed and the post of Instructor was done away, continuously appointments were made for several years upto 01.12.1997 in all the Polytechnic Colleges across the State, including the third respondent Polytechnic College, for the post of Instructor.

4. Subsequently, on need basis these appointments made during the ban period or during the period after the G.O.Ms.No.1081 dated 19.08.1989 was issued, the Government had come forward to regularize the services and accordingly issued G.O.Ms.No.534 dated 19.11.2004.

5. In that Government Order dated 19.11.2004, 236 qualified Instructors including the petitioners, whose names are found in Sl.Nos.196 to 207 and between 192 to 195 were regularized from the subsequent date as has been shown in the annexure to the Government Order, whereas these petitioners have been appointed prior to the said date and therefore, they wanted to regularize their services with effect from the date when they originally were appointed in the third respondent College.

6. Learned counsel for the petitioners would submit that, the very same issue had come up for consideration before this Court in W.P.No.11343 of 2011 (K.Saravanan -Vs- The Secretary to Government and Others), where, this Court, by an order dated 17.03.2021, had allowed the writ petition. Therefore, relying upon the said order, the learned counsel for the petitioners would contend that, similar or same relief can be granted to these petitioners as well.

7. Heard Mr.Karthikei Balan, learned Government Advocate appearing for respondents 1 and 2, who has fairly submitted that, since the similar prayer sought for in the other writ petition was allowed by this Court by order dated 17.03.2021, if the Court wants to extend the same benefit to these petitioners also, the respondents 1 and 2 would not stand in the way.

8. I have considered the submissions made by the learned counsel appearing for the parties and have perused the materials placed on record.

9. As has been rightly pointed out by the learned counsel for the petitioners, which has not been controverted by the learned Government Advocate that, the issue has already been decided in the aforesaid writ petition by order dated 17.03.2021, where this Court has passed the following order.

" 13. I have considered the submissions made by the learned counsel appearing for both sides and have perused the materials placed on record.

14. The entire issue is covered under the import of G.O.Ms.No.534 dated 19.11.2004. Therefore, in order to appreciate the import of the said Government Order, the said Government Order is extracted in entirety herein.

"ORDER :

There are 17 Government Polytechnic Colleges, 35 Aided Polytechnic Colleges and 5 Special Institutions functioning under the control of Director of Technical Education. Among the teaching posts, Instructor Post was the entry level post. In the G.O., first read above, it was ordered that,

- i. Recruitment to the post of Instructor will be dispensed with, and
- ii. All the incumbents of the post of Instructor as and when they acquire B.E., 1st class qualification, will be promoted to the post of Associate Lecturer (later)
- iii. Adequate number of supernumerary posts in the category of Associate Lecturer will be created to accommodate the Instructors mentioned under items (i) and (ii) above.

Based on the above orders, Government issued orders in G.O.third read above for

the creation of 162 supernumerary posts of Lecturer for giving promotion to 162 instructors from 19.08.1989.

2) Subsequently, it has been brought to the notice of the Government by Director of Technical Education that due to administrative reasons, some names of the Instructors, who were eligible to be promoted as Lecturer from 19.08.1989 were not included in the list sent to the Government and hence supernumerary posts were not created for promoting them as Lecturer. Eventhough recruitment to the post of Instructor had been dispensed with as per the G.O., first read above, due to administrative exigencies, the Director of Technical Education, continued to appoint Instructors even after 19.08.1989 and such recruitment was done till 01.12.1997 and this was approved by the Government. The recruitment to the post of Instructor was virtually stopped after 01.12.1997. It has been reported that Government, Government Aided Polytechnic Colleges and Special Institutions. All those Instructors who were appointed after 19.08.1989 and upto 01.12.1997 have been representing, through various forums, for promotion as Lecturers as was done in the case of instructors who had been appointed prior to 19.08.1989 as per the G.O., second read above.

3) While the proposal of the Director of Technical Education for the creation of supernumerary posts of Lecturers are under examination, some instructors have gone to the Tamil Nadu Administrative Tribunal / High Court and got orders in their favour.

4) The Government have examined the matter in detail and decided to accept the request of the instructors appointed till 1.12.97. Taking into consideration the financial position of the State, the Government direct that,

(i) 236 Instructors presently working in the Polytechnic Colleges and the Special Institutions be promoted as Lecturers from 19.8.1989 or from the date of their initial appointment or from the date of their acquiring the required qualification whichever is later by upgrading the

instructor posts as Lecturer posts as in the annexure to this order, and
(ii) their pay in the promoted post be fixed only from the date of issue of orders.

5) The Director of Technical Education is requested to take necessary action accordingly.

6) This order issues with the concurrence of Finance vide its U.O.No.487/J.S(KG)/2004 dated 19.11.2004.

(By Order of the Governor)

K.GNANADESIKAN

Secretary to Government"

15. Though G.O.Ms.No.1081 dated 19.08.1989 was issued, whereby the post of Instructors in the Polytechnic colleges were done away with, including at the third respondent College, and due to administrative exigency, appointments were continued to be made by the Department of Technical Education, all those appointments made between 19.08.1989 and 01.12.1997 were approved by the Government. This has been accepted by the Government at Para 2 of the Government Order in G.O.Ms.No.534 dated 19.11.2004.

16. In the very same Government Order, at Para 4, it has been explained as to how and from which date these 236 qualified Instructors can be regularised to the post of Associate Lecturers. Three dates have been given, one is that, either they may be regularized with effect from 19.08.1989 or from the date of their initial appointment, or from the date of the acquiring the required qualification ie., B.E., whichever is later.

17. In the case in hand, admittedly the petitioner was appointed as Instructor on 03.08.1992. This is the period governed under G.O.Ms.No.534 ie., between 1989 and 01.12.1997. All those appointments made during this period, according to the Government, had been approved by the Government. Therefore, it can be deemed that the appointment made in respect of the petitioner also on 03.08.1992 has been approved by the Government.

18. Even though it was claimed by the respondents, as projected by the learned Government

Advocate for the respondent that, during the two years period between 1992 and 1994, the petitioner has been ousted from service for one day, as his services during the said period was only contractual service and not a regular service, this Court is not impressed with the said submission that, such artificial break of one day can be treated as break in service or re-appointment and because of the stand now taken by the Government in the G.O., dated 19.11.2004, every such appointment made having been approved by the Government, the said stand raised by the Government Advocate cannot hold much water.

19. Therefore, the petitioner, whether would be entitled to get regularization from 03.08.1992 can be examined only under the import of G.O.Ms.No.534 dated 19.11.2004.

20. G.O.Ms.No.534, as stated above, has given three dates or three situations under which all these 236 qualified Instructors can be regularized.

21. In this context, the petitioner at the initial appointment ie., 03.08.1992 itself was having the qualification of B.E., ie., the required qualification. Therefore, the latest date, according to the petitioner's candidature is 03.08.1992. From that date he had been appointed and had been continuously working till he was regularized under the Government Order referred to above, of course with two artificial breaks of one day each between 1992 and 1994. Therefore, the latest date according to the petitioner for the purpose of regularization of his service can only be 03.08.1992 and not 02.06.1994, because 02.06.1994 is an artificial date, that has been taken into account by the respondents.

22. The said action on the part of the respondent to take 02.06.1994 as the date for the purpose of regularizing the services of the petitioner is not in consonance with the G.O.Ms.No.534 dated 19.11.2004. Therefore, such a regularization given only from the later date ie., 02.06.1994 may not be justifiable as the petitioner would be entitled to get regularization from 03.08.1992 itself.

23. In that view of the matter, this Court is inclined to dispose of this writ petition with the

following order. That there shall be a direction to the respondents, especially the second respondent to regularize the services of the petitioner K.Saravanan with effect from 03.08.1992 in the post of Associate Lecturer and accordingly whatever the service benefits for which the petitioner is entitled to, shall be calculated and conferred on him. The needful as indicated above shall be undertaken by the respondents especially the second respondent within a period of twelve (12) weeks from the date of receipt of a copy of this order."

10. In view of the said order having been passed, this Court feels that, these petitioners also since are similarly placed and are covered by the said Government Order, are entitled to get the same relief. Accordingly, these writ petitions are ordered with a direction to the respondents especially the second respondent to regularize the services of the petitioners with effect from the date originally they were appointed and accordingly whatever service benefits for which the petitioners are entitled to, that shall be calculated and be conferred on them. The needful as indicated above shall be undertaken by the respondents especially the second respondent within a period of twelve 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.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kst

To

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

2.The Commissioner of Technical Education Guindy,
Chennai-25.

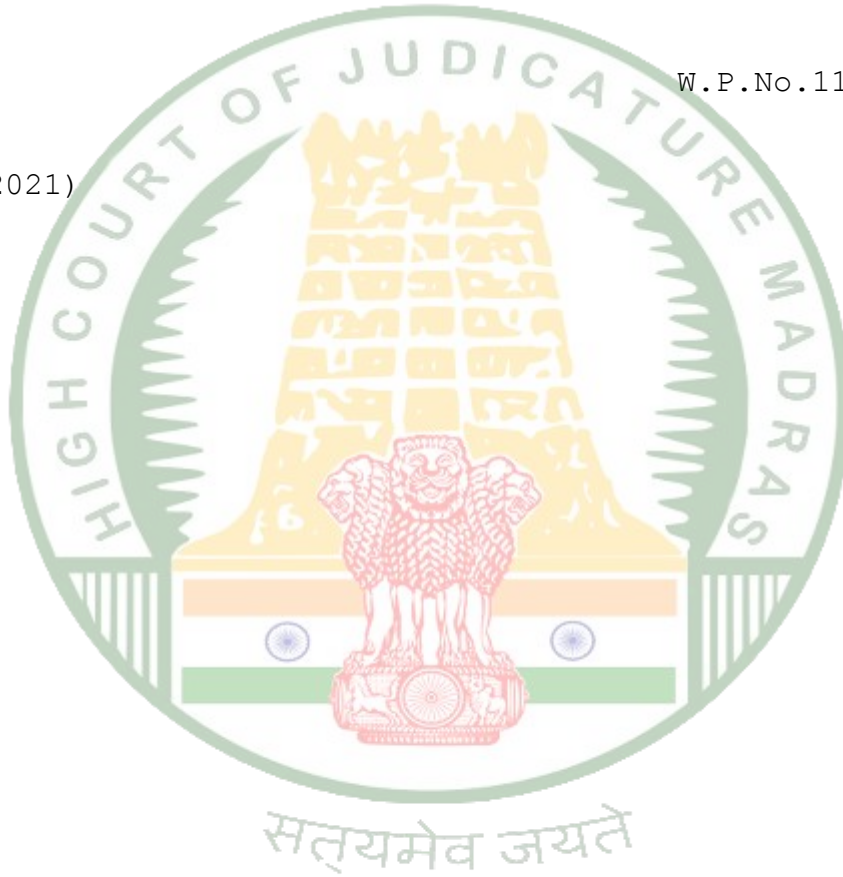
3.The Principal, Natchimuthu Polytechnic College
Pollachi, Coimbatore District.

+1cc to Mr.R.Prem Narayan, Advocate, S.R.No.21347

+1cc to the Government Pleader, S.R.No.21418

W.P.No.11439 of 2011

GPL (CO)
KM(29/04/2021)



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