

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 05.02.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.26365 of 2007

C.Subburaman

... Petitioner

Vs.

State of Tamil Nadu rep. by
Secretary to Government
Higher Education (F1) Dept
Fort St. George, Chennai 600 009.

... Respondent

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent made in letter No.9289/F1/06 dated 23.4.2007 and quash the same and direct the respondent to pay to the petitioner all monetary benefits applicable and payable to the post of Principal Grade I with effect from June 2005 till end of May 2007, when the petitioner retired from service.

For Petitioner : Mr.K.Chandrasekaran

For Respondent : Mr.S.Karthigai Balan
Government Advocate

ORDER

The prayer sought for in this writ petition is to issue a writ of certiorarified mandamus to call for the records of the respondent made in letter No.9289/F1/06 dated 23.4.2007 and quash the same and direct the respondent to pay the petitioner all monetary benefits applicable and payable to the post of Principal Grade I with effect from June 2005 till end of May 2007, when the petitioner retired from service.

2.The petitioner was initially appointed on temporary basis as Assistant Professor from 22.07.1972 at the respondent Department and subsequently, he has been regularly selected in the year 1975 through the Tamil Nadu Public Service Commission as Assistant Professor. In the meanwhile, since has been

continuously working from 1972 the petitioner and other similarly placed persons filed Original Applications before the Tamil Nadu Administrative Tribunal in O.A.Nos.6350, 6376 of 2000, where, the petitioner's Original Application is O.A.No.6350 of 2000. In the said Original Application, they sought for a prayer from the Tribunal that, the respondents shall regularize the services of the applicant, that is the petitioner and another with effect from the date of their first appointment retrospectively from 22.07.1972 in respect of the petitioner and 23.11.1970 in respect of another.

3.The Tamil Nadu Administrative Tribunal, having considered the said plea made by the petitioners and another disposed those Original Applications by order dated 04.07.2001, where, the Tribunal has held as follows:

"2.Among these two applicants Natarajan applicant in O.A.No.6376/2000 was first appointed in 1970 and was selected by TNPSC only in 1978, and Subburaman, the applicant in O.A.No.6350/2000 entered service in 1972 and was selected by TNPSC in 1975. If their services are to be regularised from their initial date of appointment, Natarajan who was found less meritorious will steal a march over the other man. Similar persons like the applicant will march over some other candidates who have been selected directly in the same year and who have been placed at the top of the list by giving top rank by the TNPSC. Therefore, if their services are to be regularised from the date of their original appointment subject to the fact that they have been continuously appointed every year, such regularisation shall in no way affect the seniority of others. The seniority shall be determined only in accordance with ranking given by TNPSC in the selection list. Subject to this, regularisation shall be done as directed above."

4.Subsequently, pursuant to the order passed by the Tribunal referred to above, the Director of Collegiate Education, who is the Head of the Department, vide his proceedings dated 21.04.2006, has given retrospective regularization to the petitioner as Assistant Professor with effect from the original date of appointment i.e., from 22.07.1972 unmindful of the subsequent selection of the petitioner as Assistant Professor by the TNPSC made only in the year 1975.

5.While issuing the said proceedings dated 21.04.2006, it has been clearly stated by the Director of the Collegiate Education, in the said proceedings that, consequent on the

retrospective regularization, the incumbent (the petitioner) is not eligible to claim seniority and no monetary benefits are to be given as per the G.O. first cited i.e., G.O.Ms.No.46, Higher Education (F1) Department dated 02.02.2006.

6. Therefore, two aspects are there in the said order passed by the Director dated 21.04.2006 wherein, though the petitioner's appointment has been regularized retrospectively from the original date of appointment i.e., 22.07.1972, merely because of such retrospective regularization, he shall not be eligible to claim seniority from that date and his seniority would be reckoned only from the date of actual selection or appointment made, pursuant to the TNPSC selection as assigned by the TNPSC and second aspect is that, no monetary benefits pursuant to the retrospective regularization shall be claimed by the petitioner as per the G.O.Ms.No.46 Higher Education (F1) Department dated 02.02.2006.

7. In this context, the grievance of the petitioner is that, the Director, by his proceedings dated 21.04.2006, since has upgraded the petitioner as Professor of Mathematics with effect from 06.08.1982, i.e., exactly on completion of ten years service as Assistant Professor with effect from 22.07.1972, the subsequent seniority as Professor shall be reckoned only from the date when the petitioner was promoted or upgraded as Professor, i.e., from 06.08.1982.

8. In this context, the respondent Department seems to have issued a seniority list of selection grade Lecturers, Readers who were appointed by direct recruitment as Professor, Assistant Professor during the year 1970 on 04.04.2002, wherein the petitioner's name has not been there as he has not come in the seniority among others where totally 63 person's seniority have been given, in view of the fact that, though he got retrospective regularization from 1972, his seniority will be calculated only from the date assigned by the TNPSC, i.e., in the year 1975.

9. Therefore, aggrieved over the non-inclusion of the petitioner's name in the seniority list dated 04.04.2002, whereby, since the petitioner apprehended that he may miss the chance of further promotion to the post of Principal, he had given a representation to the respondent i.e., the Director of Collegiate Education on 25.04.2006 requesting that, he should be placed in between the seniority at Serial Nos.61 and 62. The basis for the claim for including his name between Serial Nos.61 and 62, according to the petitioner is that, the 62nd person in the seniority list got upgraded as Professor only on 07.08.1982 whereas the petitioner retrospectively was upgraded from 06.08.1982. Therefore, one day prior to 62nd man since the

petitioner got upgraded, he should have been in between 61 and 62, that is his plea made to the Director on 25.04.2006.

10.The said request of the petitioner having been considered, was rejected by the respondent herein, i.e., the Special Secretary to Government, Higher Education (F1) Department, by proceedings dated 23.04.2007, which is the order impugned herein, where the petitioner has sought for the aforesaid prayer in this writ petition.

11.Heard Mr.K.Chandrasekaran, learned counsel appearing for the petitioner, who would submit that, the reason cited in the impugned order is untenable because, though there was a seniority list among the Assistant Professors where the Tamil Nadu Public Service Commission seniority assigned to various candidates including the petitioner can be reckoned with, however, once the persons like the petitioners from the post of Assistant Professors have been given upgradation as Professors, only the date on which such upgradation was given as Professor alone shall be the criteria for fixing the seniority and in that case, certainly the petitioner would be entitled to get the seniority above the 62nd person who got such an upgradation only on 07.08.1982, whereas the petitioner got such upgradation on 06.08.1982. Therefore, the plea raised by the petitioner should have been considered positively by the respondent. However, through the impugned order, they rejected it stating that, the seniority fixed in the category of Assistant Professor as assigned by the TNPSC seniority list is retained throughout the carrier. According to the learned counsel appearing for the petitioner, the said reason cannot stand in the legal scrutiny, as there must be a separate seniority list in the category of Professor, for which, the date to be reckoned is only the date on which those who got upgradation or promotion as Professors.

12.However, Mr.S.Karthigai Balan, learned Government Advocate appearing for the respondents, by relying upon the averment made in the counter affidavit, would submit that, though the petitioner was appointed in the year 1972, he was not appointed regularly and subsequently, only in the year 1975, he was appointed through the selection made by the TNPSC. Therefore, the seniority for those who have been selected by the TNPSC would be given on the basis of the seniority assigned by the TNPSC and this has been made clear by passing orders by the Tamil Nadu Administrative Tribunal, referred to above in the O.A. filed by the petitioner, where, it was held that, the seniority shall be determined only in accordance with the ranking given by the TNPSC in the selection list and pursuant to which, only the proceedings dated 21.04.2006 was issued, where also, this has been clearly stated. Having accepted all these orders, the petitioner now cannot turn around and say that, he

would have the seniority from the date of his original appointment and consequently, he would be eligible to get selection from the date of his upgradation i.e., after 10 years from his original date of appointment and therefore, based on which, now he cannot seek for any inclusion of his name in the selection list, he contended.

13.I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14.As has been rightly pointed out by the learned Government Advocate appearing for the respondent, the order passed by the Tribunal dated 04.07.2001 is quite clear, which has already been quoted herein above, where, even though the Tribunal has directed the respondent to regularize the services of the petitioner and another from the date of their original appointment unmindful of the intermediate break in service as well as the subsequent selection made in the year 1975, the Tribunal has made it very clear that, the seniority shall be determined only in accordance with the ranking given by TNPSC in the selection list. The Tribunal also has stated that, subject to this condition only the regularization shall be done as directed.

15.Only in pursuance of the said order passed by the Tribunal, the Director has issued the proceedings on 21.04.2006, where also, though a retrospective regularization has been given to the petitioner from 22.07.1972 and retrospective upgradation also given to the petitioner as Professor of Mathematics from 06.08.1982, those regularization and upgradation was given retrospectively only on condition that, the petitioner is not eligible to claim seniority and no monetary benefits are to be given to him as per the concerned G.O. Insofar as the monetary benefit is concerned, the petitioner has not espoused his case here and his only grievance is that, his seniority to be reckoned only from the date where he was retrospectively upgraded as Professor on 06.08.1982. Absolutely there is no scope for giving such seniority to the petitioner with effect from the date of upgradation with retrospective effect as Professor i.e., from 06.08.1982. This seniority has been denied to the petitioner in the order of the Tribunal as well as the proceedings of the Director dated 21.04.2006. As against which, the petitioner has not raised any issue and those orders have not been challenged and those orders admittedly have become final.

16.Therefore, the reason cited in the impugned order that, the seniority fixed in the category of Assistant Professors as per the TNPSC seniority list is maintained throughout the

carrier and therefore, the date of upgradation or placement cannot be taken into account for the fixation or re-fixation of the seniority of the Lecturers/Professor is sustainable and therefore, the same cannot be found fault with.

17. In that view of the matter, this Court feels that absolutely there is no ground available for the petitioner to successfully challenge the impugned order dated 22.04.2007. Therefore, this Court feels that this writ petition fails, hence, it is liable to be rejected and accordingly, this writ petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Secretary to Government
State of Tamil Nadu
Higher Education (F1) Dept
Fort St. George, Chennai 600 009.

+1cc to the Government Pleader, S.R.No.6683

W.P.No.26365 of 2007

AJB (CO)
CB(09/07/2021)



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