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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.10247 OF 2009

Dr.K.Gunavathi

... Petitioner

.Vs.

1. PSG College of Technology,
Rep. by its Principal,
Peelamedu, Coimbatore - 641 004.

2. Dr.S.Subha Rani

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 28.05.2009 passed by the first respondent in Reference No.N/1535/89 and also the order dated 02.06.2009 of the first respondent, quash the same and consequently direct the first Respondent to nominate and designate the petitioner as HOD of Electronics and Communication Engineering Department with effect from 01.06.2009, award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondent : Mr.Abishek Jenasaenan
For R1

No Appearance for R2

O R D E R

Heard Mr.V.Ajoy Khose, learned counsel for the petitioner and Mr.Abhishek Jenasenana, learned counsel for R1, the PSG College of Technology, Coimbatore. There is no representation on behalf of R2.

2. A preliminary objection is raised on the maintainability of the Writ Petition and I deal with the arguments in this



regard, in seriatim. The first submission is that there is no Government Agency or Department arrayed as a respondent. R1 would argue that it is not a public authority, though an aided institution. It offers unaided courses as well, and is governed by a council comprising private individuals as well as nominees of the Government.

3. Having said so, the respondent would also challenge maintainability on the ground of alternate remedy, as the grant-in-aid code provides for an appeal before the governing council of the institution and therefore, R1 would argue that the petitioner ought to have availed of the appeal remedy.

4. Admittedly, the petitioner receives grant-in-aid from the State and the governing council comprises nominees from the Government. It is also affiliated to the All India Council for Technical Education, and thus, is a public authority. This will, in my view, suffice to maintain this writ petition. As regards the argument of alternate appeal remedy, I reject the same since there are no disputes on facts and issues of some public importance have been raised.

5. The petitioner has challenged the appointment of R2 admittedly holding the post of Assistant Professor, to the position of Head of the Department (HOD) of the Department of Electronics and Communication Engineering. The challenge is on the ground that the petitioner is more senior and thus ought to have been preferred for appointed as HOD. Pending writ petition, R2 has retired and thus learned counsel for R1 would argue that the writ petition has been rendered infructuous in such circumstances.

6. However, Mr.Khose would point out that even after retirement of R2, the injustice to his client continues. Yet another junior, one Dr.V.Krishnaveni has come to be appointed as HOD who also, admittedly, was only holding the post of Assistant Professor at the relevant point of time. Since the writ petition is of the year 2009, I have not considered impleading the incumbent to the position of HOD and neither was a request made in this regard.

7. In my view, the question raised relates to the veracity or otherwise of the order passed by R1 rejecting the request of the petitioner to be considered on the ground of her seniority, for the position of HOD. Though R2 has retired, she has been succeeded by an incumbent who is also admittedly, junior to the petitioner. Thus the cause of action survives, though not against R2. The writ petition is thus not, in my view, rendered, infructuous as the lis qua the petitioner and R1, the contesting respondent survives in right earnest. Moreover, this writ



petition has been pending for 12 years as on date and also for this ground, I am not inclined to non-suit the petitioner on the ground of maintainability. The writ petition is thus held to be maintainable.

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8. The brief and admitted facts as relevant, are as follows:

(i) The petitioner was appointed as Associate Lecturer on 02.07.1986, thereafter promoted to the post of Lecturer. Pursuant to a call for applications to the post of Assistant Professor, she responded, was selected and appointed as Assistant Professor. At that juncture, the Professor in the same Department, one Dr.S.Jayaraman had been designated, and was holding the position of HOD.

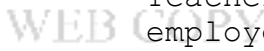
(ii) As per convention, only the senior most Professor must be designated with the position of HOD and this procedure, has been violated in the present case.

(iii) After the retirement of the serving HOD, when the petitioner as the senior most member of the Department ought to have been assigned that role, R2 who was an Assistant Professor as on the date of consideration, was assigned the position.

(iv) The admitted position is that as on 28.05.2009, the petitioner was a Professor whereas, R2 was an Assistant Professor. This position continues presently when the petitioner though a senior professor has been overlooked and a junior holding the post of HOD has been invited to the position of HOD in place of R2 after her retirement.

9. The impugned order does recognise the existence of a convention that the senior-most professor in the Department is normally invited to assume the position of HOD. However, the convention has been given a go-by in this case and R2 has been preferred, the order states, since she was senior to the petitioner by age and had also obtained her Under Graduate and Post Graduate Degrees prior to the petitioner. This is the reasoning upon which the request of the petitioner has come to be rejected.

10. Learned counsel for R1 would fairly concur with me on the position that the reasoning adduced to reject the request of the petitioner is not well founded. However, a perusal of the pleadings, particularly paragraph-10 of the affidavit filed in support of the writ petition counter would reveal the real reason for rejection of the petitioner's request to be assigned the position. R1 was making an attempt to convert its status into a private university and the move came to be opposed by a



11. A Branch unit of the Association of University Teachers, an Association representing the teaching staff employed in Government Aided Private Colleges thus came to be started, of which the petitioner was part. The husband of the petitioner is also stated to be employed as an Assistant Professor in the Department of Metallurgical Engineering in R1 College and he was selected as the Chairman for the Branch Unit. The petitioner was selected to be a Member of the Executive Committee for the Unit.

13. Both learned counsels bring to my notice Government Orders issued by the respective State Department as well as the AICTE, setting out the hierarchy of the faculty as well as the possible promotional avenues. G.O.Ms.No.342 issued by the Higher Education (C2) Department, dated 07.08.2000, G.O.Ms.No.19 issued by the Higher Education (C2) Department, dated 14.01.2020 and Notification dated 01.03.2019 issued by the AICTE set out the hierarchy of the faculty and the prescribed work load varies from the level of Lecturer to Assistant Professor to Professor and thereafter to Director/Principal.

15. To meet the argument put forth by R1 that there is no post of HOD sanctioned and no regulation which governs such a position, the petitioner would point out that such a position is in-built in the hierarchy, as it is, evidently, a stepping stone for appointment to the post of Principal. By denying her such opportunity, her growth within the institution has been crippled and having never been HOD, she cannot now aspire to be a Director or a Principal of R1 institution despite her seniority.



16. Admittedly, there is no reference to the post of 'HOD' in the hierarchy of faculty demarcated in the Notification and Orders shown to me. That apart, in my considered view, a HOD is a 'position' and not a 'post'. There is a convention, no doubt, also referred to by R2 in the impugned letter, that the senior-most professor in the Department must be invited to assume the position of HOD, but the question that arises is as to whether this convention is binding upon the Management of the Institution or whether any discretion is available in this regard.

17. The position of HOD carries, in addition to teaching responsibilities, administrative responsibilities, as well. Generally, senior members of the department are invited to fill the position. However, seeing as no post of HOD has been sanctioned as such, and the invitation to assume the position is based upon convention, I am of the view that the management, will have the liberty and final decision, as to the most appropriate person who should assume such role.

18. Though the reasoning set out in the impugned order falls short of what one would expect, as seniority in age and time of acquisition of degrees cannot be the sole criterion to determine suitability of a candidate for the position of HOD, I decline to intervene in the matter having held that the matter involves the exercise of discretion and some amount of subjectivity. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rkp

+2ccs to Mr.A.Jenasenan, Advocate, S.R.No.52928
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.52942

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SVI (CO)
PBS/13/12/2021