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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P. No. 3349 of 2006
and
WMP.Nos.3550 and 3551 of 2006

M.Venkatachalam,
Lecturer (S.G)
Department of Electronics,
Erode Arts College (Autonomous),
Rangampalayam,
Erode-638 009.

... Petitioner

Vs.

1. The Director of
Collegiate Education,
College Road, Chennai-600 006.

2. Thiru.N.pasupathi
Lecturer (S.G.), Department of Electronics,
Erode Arts College (Autonomous),
Rangampalayam,
Erode-638 009.

3. The Joint Director of
Collegiate Education,
Coimbatore Region, Coimbatore-641 018.

4. The Secretary,
Erode Arts College (Autonomous),
Rangampalayam,
Erode-638 009.

... Respondents

Prayer: Writ petition is filed under Art. 226 of Constitution of India, praying to issue a WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate writ or direction in the nature of writ, calling for the records relating to the order of the 3rd Respondent made in proceedings Na. Ka. No. 10240-E2-2005 dated 13.12.2005 appointing 2nd respondent as Head of Department, Department of Electronics, Erode Arts College pursuant to the order of the 1st Respondent bearing Pa. Mu. No. 31455/F1/04.1. Dated 28.07.2005 and quash both the orders and consequently



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restore the seniority of the petitioner over the 2nd Respondent and appoint him as Head of Department, Department of Electronics, Erode Arts College, Erode.

For Petitioner : Mr.K.Shakespeare
For Respondents : Mr.R.Jayaprakash,
Government Advocate
for R1 & R3
Mr.V.Ajay Khose for R2
Mr.V.Raghavachari for R4

ORDER

This writ petition is filed challenging the order of the 3rd Respondent dated 13.12.2005 in appointing the 2nd respondent as Head of Department, Department of Electronics, Erode Arts College pursuant to the order of the 1st Respondent bearing Pa. Mu. No. 31455/F1/04.1. Dated 28.07.2005 and seeks to quash the same and consequently to restore the seniority of the petitioner over the 2nd Respondent and appoint him as Head of Department, Department of Electronics, Erode Arts College, Erode.

2. The Petitioner submits that earlier he filed W.P. No.15562 of 2001 challenging the Letter bearing No. Ka. No. 10240-E2-2001 dated 07.08.2001 of the Joint Director of Collegiate Education, Coimbatore-Region, Coimbatore-18, (the 3rd Respondent herein) communicated to the petitioner by the Principal of the Erode Arts College, Erode (the 4th Respondent herein) vide letter dated 17.08.2001 and consequently to direct the 3rd and 4th respondents herein to restore the Rank of the petitioner as number 2 next to the Head of Department, in the Department of Electronics. The said writ petition was disposed of by order dated 14.06.2004 in the following terms:-

"However, though the fact that the petitioner had sent a representation cannot be disputed, a perusal of the impugned order discloses that there is absolutely no reference to the representation of the petitioner dated 17.07.2001. Nor is there any discussion about the mutual contentions raised by both the petitioner and the second respondent on merits. Both parties are relying on several documents in support of their rival several contentions and also inspite of the petitioner having raised several factual contentions in his representation dated



17.07.2001, there is absolutely no discussion of his contentions and the representation.

In the above circumstances, the impugned order is vitiated by non-application of mind....."

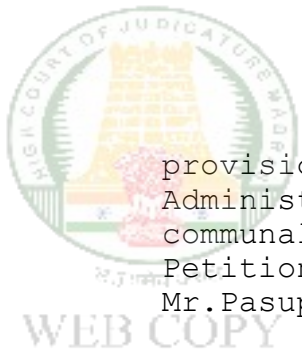
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3. In pursuant to the above order passed by this court, by proceedings dated 8.12.2004, the 1st Respondent required the petitioner to appear before him on 15.12.2004. On that day, the 2nd Respondent was also present. But the 4th Respondent namely the Secretary of the College was not present. The petitioner and the 2nd Respondent were called for appearance. Thereafter, by proceedings of the 1st Respondent dated Nil.03.2005, the petitioner, the 2nd Respondent and the 4th Respondent were called for the personal hearing fixed for 23.03.2005.

4. On 02.08.2004, petitioner received the 1st Respondent's impugned proceedings dated 28.07.2005, wherein it is stated that the grant in respect of the post held by the 2nd Respondent was released on 30.09.1988 whereas the grant in respect of the petitioner was released on 12.10.1988 and that the inter-se seniority concerning the staff of the aided college can be determined only on the basis of the date of release of the grant.

5. The Principal of the College/the 3rd Respondent by his proceedings Na.Ka.No. 10240/E2/ 2005 dated 13.12.2005 has directed that in view of the proceedings of the Director dated 28.07.2005 ordering that the 2nd Respondent is senior in service to the petitioner, the 2nd Respondent is appointed as the Head of Department in the place of the petitioner who has been appointed long ago as the Head of the Department, Department of Electronics from 01.02.2004 by the proceedings of the 4th Respondent dated 01.02.2004.

6. The petitioner submits that both the impugned orders made by the 1st and 3rd Respondent are ultravires of the statutory provision of the Tamilnadu Private Colleges (Regulation) Act (hereinafter referred as Act in short) and Tamilnadu Private Colleges (Regulation) Rules 1976 (hereinafter referred as Rules in short). Chapter IV of the Act deals with the terms and conditions of the service of the Teachers. As per Section 16 of the Act, no person who does not possess the qualification prescribed by University shall be appointed as Teacher in any college. The petitioner submits by his letter-dated 21.12.1988, the Registrar of Bharathiar University has intimated that the petitioner is qualified for appointment as Assistant Professor of Electronics. The petitioner also submits that his Roster Number is 53, which is in compliance with the



provisions of Rule 11 of the Rules and G.O.No.206 Personnel and Administrative Reforms, dated 07.04.1989 indicating the order of communal rotation to be followed. The date of birth of the Petitioner is 07.05.1963 whereas the date of Birth of Mr.Pasupathi/2nd respondent is 25.06.1964.

7. The learned counsel for the petitioner would contend that it is well settled principle of service law that in fixing inter se seniority among the persons appointed on the same date, their seniority has to be determined on the basis of their dates of birth. The 1st respondent passed the impugned order dated 28.07.2005 without applying his mind on the representation of the petitioner dated 17.07.2001 and 16.08.2004. The impugned order is vitiated as in respect of filling up vacancies in the post of teachers in an aided college Rule 11 and communal rotation prescribed in G.O.Ms.No.206 ought to have been followed. The order of the 1st respondent is vitiated due to gross violation of principles of natural justice. The order of the 1st respondent dated 28.07.2005 has no legal basis as the 1st respondent is not empowered under the Tamilnadu Private Colleges (Regulation) Act or Rules issued thereunder to fix the seniority on the basis of date of approval of grant.

8. The petitioner filed additional typed set of papers by producing a copy of Letter of Secretary, 4th Respondent College to Director of Collegiate Education, Chennai dated 20.10.2004. But the said letter was not having any signature or seal of the Secretary and Correspondent of the 4th respondent College. The learned counsel for the petitioner relied on the said letter dated 20.10.2014 to state along with the petitioner, 2nd respondent, one P.Kapuasamy also joined on the same date and were issued appointment order dated 30.09.1988 and all signed the staff attendance register on the same day.

9. Learned counsel for the petitioner in support of his submissions, placed reliance on the decision reported in 1981 STPL 127 SC [P.Kasilingam Vs P.S.G.College of Technology].

10. The second respondent filed counter affidavit and submitted that one Mr.Sivaprakassam, former Assistant Professor in Electronics in the 4th respondent college, who stayed away from work from 31.05.1988, claimed re-appointment. Pending his claim, there was no approval for grant of his salary. Ultimately, the Government issued G.O. Rt. No.190, Education Department, dated 22.02.1990 rejecting the request of Mr.Sivaprakasam for re-appointment and approving his appointment for salary grant from 30.09.1988, only thereafter he was paid salary from 30.09.1988 to 28.02.1990 as claimed by the 4th respondent in their letter dated 01.03.1990 based on G.O.No.190,



though he discharged his duties all along. The 2nd petitioner states that the writ petitioner was appointed by the 4th respondent by proceedings dated 12.10.1988 and joined duty on 12.10.1988. The same is recorded in the service register. It is stated that in all the college records, he was shown senior to the writ petitioner upto 2000, that is, the attendance Registers, Salary Bills and Calendars for the 10 long years from 1990 to April 2000 shows him as senior to the writ petitioner. But only in April 2000, the 4th respondent had shown him as junior to the writ petitioner in the Salary bill and thereafter in the attendance register. Since such a change was made by the 4th respondent college, it is detrimental to him, without hearing him, and the Association of University Teachers, shortly AUT made representations to the 3rd respondent to fix correct seniority. He approached the 3rd respondent. The 3rd respondent passed an order dated 7.08.2001 holding that he is senior to the writ petitioner.

11. The contesting 2nd respondent would also submit that there were 5 staff during that time in Electronics Department including the HOD Mr. Loganathan. Since Mr. Loganathan was to retire on 31.01.2004, the 4th respondent college wanted to bring the writ petitioner as HOD over his head though he is junior to him. Thus, the 4th respondent manipulated and forged records and committed criminal offence. He state that the writ petitioner and Mr. R. Murugesan were appointed on 12.10.1988. the other person Mr. Kappusamy, who was also appointed on 12.10.1988, left the job. Later, Tmt. Saroja, wife of writ petitioner, joined the Department.

12. The 2nd respondent would further state that the writ petitioner challenged the order dated 07.08.2001 in W.P. 15562/2001 and obtained stay and that he moved WVMP 196/2002 to vacate the stay. Ultimately the writ petition was disposed on 18.06.2004 directing the 1st respondent to hear both parties and to determine the seniority on the ground that the writ petitioner was not heard by 3rd respondent before passing the order dated 07.08.2001. Thereafter hearing both sides, the first respondent has passed the order dated 28.07.2005 holding that he is senior to the writ petitioner.

13. According to the 2nd respondent, the following facts are borne out by records and it would make it clear that he is senior to the writ petitioner. It is submitted that based on the order of the first respondent dated 28.07.2005, the 3rd respondent passed an order dated 13.12.2005 appointing him as HOD, Electronics Departments. Since there was holiday for the college from 13.12.2005 to 18.12.2005, he joined as HOD on 19.12.2005 and the joining report is enclosed in the typed set, which contains the counter signature of the Principal. The writ



petitioner is working under him thereafter in his Department. Since 19.12.2005, he has been working as HOD Electronics and he have been attending meetings of all HOD's. Since he is the HOD of Electronics Department, he has appointed as Chairman, Board of Studies for Electronics in 4th respondent college. Hence the WPMP 3551/2006 of the writ petitioner seeking direction to continue him as HOD deserves to be dismissed.

14. According to the 2nd respondent, the writ petitioner has made wild allegations before the first respondent and they are full of imaginations and fictitious. The first respondent never said that his appointment was not proper and that roster was not followed. The allegation as to his resignation and re-entry is also full of imagination and has no basis. The learned counsel for the 2nd respondent in support of his contentions placed reliance on the following decisions

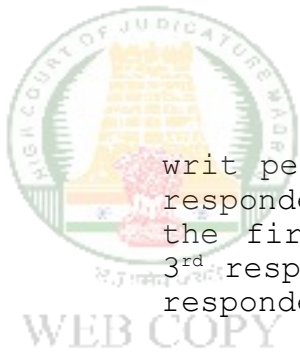
1. 1981 STPL 4364 SC [Chhaganlal Keshavlal Mehta Vs Patel Narandas Haribhai]
2. 2000 STPL 13652 SC [Tata Iron and Steel Co. Ltd Vs Union of India and Others.]
3. 2014 STPL 10620 SC [Bhagwati Vanaspati Traders Vs Senior Superintendent of Post offices, Meerut]

15. It is the case of the writ petitioner that in fixing inter se seniority among the persons appointed on the same date, their seniority has to be determined on the basis of their dates of birth. The 1st respondent passed the impugned order dated 28.07.2005 without applying his mind on the representation of the petitioner dated 17.07.2001 and 16.08.2004. Therefore, the impugned order is vitiated as in respect of filling up vacancies in the post of teachers in an aided college and that Rule 11 and communal rotation prescribed in G.O.Ms.No.206 ought to have been followed. According to the writ petitioner, the order of the 1st respondent is vitiated due to gross violation of principles of natural justice. The 1st respondent has to follow the Tamilnadu Private Colleges (Regulation) Act or Rules and fix the seniority on the basis of date of approval of grant.

16. It is relevant to note that the writ petitioner even though claims that he was appointed on 30.09.1988, in the Service Register, it is not entered as such. It is submitted by the 2nd respondent that a wrongful and illegal attempt has been made to make entry in the Service Register to record as if the writ petitioner was appointed on 30.09.1988. On the other hand, the 2nd respondent was appointed on 30.09.1988 and the writ petitioner was appointed only on 12.10.1988. This fact has been published in the seniority list of the Principal/4th respondent college as on 14.07.1992. It is further stated that in the seniority for the year 1988, at page 56, the name of the 2nd



29.5 1990s and 2000s



writ petitioner was appointed on 12.10.1988. However, the second respondent was appointed on 30.09.1988. Based on the records, the first respondent passed the order dated 28.07.2005 and the 3rd respondent passed an order dated 13.12.2005 appointing the 2nd respondent as Head of Department, Electronics Department.

23. A perusal of the entire records would transpire that the writ petitioner was appointed by the 4th respondent by proceedings dated 12.10.1988 and joined duty on 12.10.1988. On the other hand, the 2nd respondent was appointed on 30.09.1988. This has been clearly established in the published seniority list of the Principal/4th respondent college as on 14.07.1992. The seniority list and the roster clearly shows that the writ petitioner was appointed only on 12.10.1988 and the 2nd respondent was appointed on 30.09.1988. There is no material to substantiate the claim of the petitioner. In such view of the matter, the relief sought for in the Writ Petition cannot be entertained by this court. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

nvsri

Note: Registry is directed to return the original Service Registers (2 Nos.), which were called for by this Court at the time of arguments to the respective counsel obtaining acknowledgment for the same.

To

1. The Director of
Collegiate Education,
College Road, Chennai-600 006.
2. The Joint Director of
Collegiate Education,
Coimbatore Region, Coimbatore-641 018.
3. The Secretary,
Erode Arts College (Autonomous),
Rangampalayam,
Erode-638 009.



+1cc to M/s.K.Shakespeare, Advocate, S.R.No.56821

+1cc to M/s.V.Ajoy Khose, Advocate, S.R.No.57085

+1cc to M/s.V.Ragavachari, Advocate, S.R.No.57124

+1cc to the Government Pleader, S.R.No.57612

W.P. No. 3349 of 2006

BP (CO)
SU (02/03/2022)