



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2021

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE Mr. JUSTICE KRISHNAN RAMASAMY

W.A.Nos.985 & 1199 of 2020 and
C.M.P. Nos.12029, 12030 & 14702 of 2020

Dr.E.Ravi ... Appellant in W.A. No.985 of 2020
Dr.S.Prabhakaran ... Appellant in W.A. No.1199 of 2020

Vs.

1. The Vice Chancellor
Tamil Nadu Open University
No.557, Anna Salai
Chennai - 600 015

2. The Registrar
Tamil Nadu Open University
No.557, Anna Salai
Chennai - 600 0015

... Respondents in both the writ appeals

PRAYER : Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 02.01.2020 passed in W.P. Nos.4608 and 4630 of 2018.

Prayer in W.P. No.4608 of 2018:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to Call for the records pertaining to the Order No. TNOU/Estt/T/SYN34/2017 dated 01.02.2018 issued by the 2nd respondent and to quash the same and subsequently direct the first and second respondents to consider the right of lien to retain the post of professor and absorb the petitioner in the post of professor in the school of History and Tourism Studies with the Tamil Nadu Open University.



Prayer in W.P. No.4630 of 2018:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order F.No/TNOU/Estt/T/SYN34/2017 dated 01.02.2018 issued by the 2nd respondent and to quash the same and subsequently direct the first and second respondents to consider the right to Lien to retain the post of Associate Professor and absorb the petitioner in the post of Associate Professor in the School of political and Public Administration with the Tamil Nadu Open University.

For Appellant in : Mr.T.Mohan
W.A. No.985/2020 for Mr.A.Suresh Sakthimurugan

For Appellant in : Mr.R.Sankarasubbu
W.A. No.1199/2020

For Respondents in : Mr.R.Shunmugasundaram,
both Appeals Advocate General
Assisted by Mr.Sanjai Gandhi

COMMON JUDGMENT

PUSHPA SATHYANARAYANA, J.

These intra-court appeals relate to the journey of two of the Associate Professors, who were appointed in the first respondent-University. Both the appellants were appointed as Lecturers in Annamalai University in the year 2003 and 2002 respectively. The first respondent-University, had called for candidates to fill up the vacancy of the Post of Professor in History and Tourism Study and Associate Professor in Politics and Public Administration in the year 2014. The appellants were also selected and appointed to the respective posts on 28.01.2015. The appellants also got the lien of service for a period of two years from the parent university from 02.02.2015 to 01.02.2017. After they were relieved from Annamalai University, they joined as Professor and Associate Professor in the respondent university in the respective departments.

2. The appointment order dated 28.01.2015 prescribed a period of two years for probation and at the end of the period of probation or the extended period of probation, if considered fit and suitable for the post, they may be confirmed. It further stated that the continuation of appointment in the respondent-University, shall be subject to the satisfactory work and conduct. Clause 16 of the Appointment Order imposed a condition that the appellants have to make their own arrangements to



obtain necessary orders from the parent department and also take necessary steps for the renewal of the lien well in advance before the expiry of the lien granted to them and if the extension of lien is not granted by the parent department, they will be reverted to the parent department immediately on completion of the lien period.

3. The lien granted earlier was to expire on 02.02.2017. Hence the appellants made a representation to the respondent-University to consider their absorption. In the meanwhile, the lien period came to an end and the appellants got their lien extended for a further period of one year from 02.02.2017 to 01.02.2018 from the parent department, namely Annamalai University. After the extension of the lien, once again the appellants have made a request to the respondent-University to confirm and permit them to continue in the post. However, the first respondent had not declared the probation of the appellants even after the expiry of three years, but relieved them from their posts on the date, when the lien came to an end. Since they were relieved, they had to rejoin their parent institution on 02.02.2018 in a lower grade post as per the conditions of the lien. The appellants were also not entitled to any seniority or pay protection during the period when they were permitted to join the respondent-University. Challenging the said Relieving Order, the appellants have filed the writ petitions, which were dismissed. Aggrieved by the same, the above appeals are filed.

4. Condition No.13 of the Appointment Order dated 28.01.2015 specifically mentioned that the appellants are governed by the Tamil Nadu Open University Employees' Conduct Rules and Professional Ethics as in force from time to time and also all other conditions and procedures relating to the service matters, as prescribed or adopted from time to time including Tamil Nadu Civil Services (Discipline and Appeal) Rules. In all matters relating to service condition and disciplinary proceedings, not expressly covered in the above said Rules, Ordinances and Statutes, the appellants shall be governed by the Rules of the State Government in those matters.

5. Mr.T.Mohan, learned counsel appearing on behalf of one of the appellants, submitted that Rule 27 of the Tamil Nadu State and Subordinate Service Rules states about Probationer's suitability for full membership, and the same reads thus:

(a) At the end of the prescribed or extended period of probation, as the case may be, the appointing authority shall consider the probationer's suitability for full membership of the service, class or category for which he was selected.



WEB COPY

(b) If the appointing authority decides that a probationer is suitable for such membership, it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation. If no such order is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the prescribed or extended period of probation. A formal order declaring the completion of probation shall, however, be issued by the competent authority. In all cases in which serious charges are pending, and therefore, probation cannot be declared, an order to the effect that the question of declaration of probation cannot be considered till the charges are disposed of shall be issued by the competent authority within six months from the due date for completion of probation and the final order on probation shall be passed as early as possible and in any case within one month after the disposal of the charges or six months after the due date for completion of probation, whichever is later.

*(Explanation – For the purpose of calculating the period of probation of a probationer, complete calendar months, irrespective of the number of days in each month, shall first be calculated and then the odd number of days calculated subsequently. Periods of leave, if any, taken during the period of a probation shall be excluded while calculating the period of probation.)

6. As per the above rule, the probation period would be two years and at the end of the second year, the probation can be declared, if the appellants have satisfactorily completed the probation. During the lien period, if there was any report of misconduct, moral turpitude or criminal activities, it was open to the respondents to revert them to the parent department.

7. In this case, the original lien for a period of two years came to an end on 02.02.2017 for both the appellants, on which date, the two year period of probation also came to an end. There was no order passed either extending the probation or declaring the probation of the appellants after the completion of the period of probation. mentioned in the appointment order. Therefore, the learned counsel contended that, when no such order is issued within six months from the date on which they

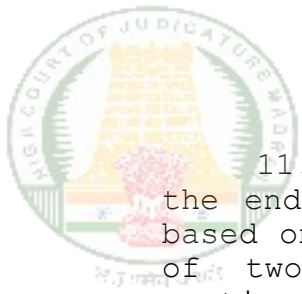


are eligible for such declaration of probation, they shall be deemed to have satisfactorily completed the probation on the date of expiry of the prescribed period.

8. On the strength of the same, it was contended that after the completion of two years probation, when the appellants were continued in service after the expiry of six months when the lien period was also alive, if the probation was not declared, it should be deemed to have been declared. Once the probation is deemed to have been declared, they are entitled to be absorbed by the respondent-University. It is also pointed out that, out of 19 Professors, who joined along with the appellants, the probation of 14 of them were declared and they were absorbed by the respondent-University.

9. However, the learned Advocate General, who appeared on behalf of the respondents contended that, clause 16 of their appointment order clearly indicated that once lien is not extended, the appellants will be reverted to the parent department. It is also not the case of the appellants that the lien was extended after February 2018. Besides, the appellants had given an undertaking dated 01.02.2017, in which it is stated that the lien was extended for one more year from 02.02.2017 to 01.02.2018 and that they would abide by the decision of the Syndicate, either approval of extension of one year lien or revert them back to the parent institution. The further undertaking was that they will not claim for permanent absorption in the respondent-University in view of the extension of lien for one more year. Therefore, as the lien period was over, they were rightly relieved from the first respondent-University.

10. Stating that the appellants were appointed in the respondent-University on lien basis for three years and after the completion of the lien period, they were relieved from the respondent-University, the learned counsel for the appellants would contend that the two years probation period was over on 02.02.2017 and the probation was not expressly extended. Therefore, as per Rule 27 of the Tamil Nadu State and Subordinate Service Rules, if no such order is issued within six months from the date on which they became eligible for such declaration, they shall be deemed to have satisfactorily completed their probation on the date of expiry of the prescribed period of probation. Once a deemed declaration of probation, they are automatically entitled to be absorbed into the respondent-University. Therefore, the order relieving them from the services of the respondent-university is vitiated and the same has to be set aside.



11. When the appellants have given an undertaking that after the end of the lien period they will not claim for absorption, based on which they are allowed to continue after the completion of two years, they cannot now claim for absorption or continuation of their service even after the lien period was over. Even as per Rule 27 of the Tamil Nadu State and Subordinate Service Rules, though it says that after the two years period of probation, no order of declaration of probation is issued within six months, the probationer is deemed to have completed the period of probation satisfactorily, the same may not be applicable or taken advantage of by the appellants, as there should be a formal order declaring the completion of probation, which shall be issued by the competent authority. Therefore, even if there is a deeming provision, it cannot be stated that in the absence of a formal declaration, the appellants have completed the probation. The above rule, therefore, specifically indicates that, even if the period of two years expired and the appellants were allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because, in terms of the above rule, unless there is a formal declaration, there is no question of deeming confirmation. Therefore, we are of the opinion that there is no question of automatic deeming confirmation as contended by the learned counsel for the appellants, more so, when the lien period has already come to an end.

12. The above referred Rule and also the conditions mentioned in the appointment order make it clear that it is imperative that every person appointed should be on probation for a minimum period of two years and upon expiry of the said period of two years, the person may be confirmed, if his/her work is found to be satisfactory, but there is no automatic confirmation on the expiry of the probation period at the end of two years. Merely because the appellants were permitted to continue even after the period of two years of probation, does not automatically confer them the right, as it is a matter of common knowledge that the delay may be even due to administrative reasons. Therefore, without an express order of confirmation, the appellants cannot be said to have been confirmed in the post in which they were appointed temporarily and were on probation.

13. In this regard, it is useful to refer to the Judgment of a Division Bench of this court in S.Umamaheswari vs. The High Court of Judicature at Madras reported in 2018 (1) CTC 382, wherein, the Division Bench of this court, in paragraph No.32, held as follows:

32. From the various judgments of Honourable Apex Court referred above, it is clear that deemed confirmation or extension period of probation would



WEB COPY

depend upon the concerned service Rules. In the above back ground, when we look at the Rule which governs the writ petitioner, particularly Rule 11(2) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, though service rules provide two years period of probation within continuous period of three years, power to extend the probation vest with High Court, if it is not satisfied with work or conduct of the appointee. Admittedly, Rule 11(2) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules confers power to High Court to provide maximum period of probation. Even after the probation period, one continues his/her service, he/she cannot automatically acquire the right to be confirmed. Further, service rules also require specific act on the part of the High Court for issuing order of confirmation. Admittedly, the High Court has not passed any order of confirmation. Therefore, the writ petitioner cannot contend that her service is deemed to be confirmed after two years period of probation.

Though this judgment arises under the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, the principle stated is the same.

14. In the light of the above judgment and in view of Rule 27(b) of the Tamil Nadu State and Subordinate and Service Rules and also the undertaking given by the appellants, that they will not claim for absorption, the Relieving Order passed by the respondent-University cannot be found fault with. The approval granted by the Syndicate with a specific condition that the extension of one year lien shall not confer any right on the appellants for permanent absorption for continuation of service. As the lien period got over on 01.02.2018, they were relieved on the date of expiry of the lien period and reverted back to the parent department. The relieving order, therefore, is passed only in compliance of the Rules, conditions of the appointment order and also the undertaking given by the appellants. The appellants were only relieved from the respondent-University and they are not terminated, which can be termed as punitive. If their probation was not declared, it is not due to their misconduct or unsatisfactory work, but the lien period came to an end. In the absence of declaration of probation, the probationer remains a probationer, unless he has been confirmed on the basis of work evaluation. Therefore, when there is no provision for automatic or deemed confirmation or deemed appointment on regular basis, the contentions of the appellants that their services have been continued even after the expiry of the probation period, is only misconceived.



15. In the light of the above discussions, we find no reason to interfere with the findings and the conclusion arrived at by the learned single Judge.

16. Accordingly, both the writ appeals are dismissed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Asr

To

1. The Vice Chancellor
Tamil Nadu Open University
No.557, Anna Salai
Chennai - 600 015

2. The Registrar
Tamil Nadu Open University
No.557, Anna Salai
Chennai - 600 0015.

+1cc to Mr.A.Suresh Sakthi Murugan, Advocate Sr No.43452

W.A.Nos.985 & 1199 of 2020

NR (CO)
PR (21/09/2021)