



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.12396 of 2021
and WMP.Nos.13179 & 13180 of 2021

A.Manimegalai

... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Higher Education,
Fort St. George, Chennai - 09.

2.The Director of Collegiate Education,
College Road, Chennai - 06.

3.The Joint Director of Collegiate Education,
Vellore Region, Vellore.

4.Jawahar Science College,
represented by its Secretary, Block -14,
Neyveli - 607803.

... Respondents

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 22.02.2021 passed by the fourth respondent in Lr.No.JSC/Est.Ret./2020-21-39 quash the same and declare that the action of the fourth respondent in not extending the petitioner services in their College till her attain the age of 60 years as per G.O.Ms.No.29, Personnel and Administrative Reforms (S) Department, dated 25.02.2021 as illegal, arbitrary and discriminatory and consequently direct the fourth respondent to continue her service till she attain the age of 60 years and till 31.02.2022, as per the above G.O and as extended in the case of Aided Colleges teachers.



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For Petitioner : Ms.Nandhini

For R1 to R3 : Mr.V.Velusamay
Additional Government Pleader

For R4 : Mr.N.Nithianandam

O R D E R

This writ petition has been filed to call for the records pertaining to the order dated 22.02.2021 passed by the fourth respondent in Lr.No.JSC/Est.Ret./2020-21-39 and quash the same and declare that the action of the fourth respondent in not extending the petitioner services in their College till she attains the age of 60 years as per G.O.Ms.No.29, Personnel and Administrative Reforms (S) Department, dated 25.02.2021 as illegal, arbitrary and discriminatory and consequently direct the fourth respondent to continue the petitioner's service till she attains the age of 60 years, as per the above G.O and as extended in the case of Aided Colleges Teachers.

2.Brief facts of the case:

The petitioner was appointed as a Lecturer in Statistics in the fourth respondent College by its order dated 18.05.1993 and on 21.05.1993, she was joined in the duty and subsequently, she was designated as Associate Professor. Later she would be retired from service with effect from 31.05.2020 on reaching the age of retirement of 58 years, but as per the G.O.Ms.No.51, dated 07.05.2020, she was continued in service till she would attain the increased age of retirement of 59 years. Thereafter, the fourth respondent has issued the impugned order of retirement dated 22.02.2021 to the petitioner by stating that she would be superannuated with effect from 31.05.2021 on reaching the increased age of retirement of 59 years. After the issuance of the above said order the Government has issued G.O.Ms.No.29, dated 25.02.2021 increasing the age of retirement of 59 years to 60 years to the employees who are going to retire from service on or after 31.05.2021. Therefore, immediately after the issuance of the G.O.Ms.No.29, dated 25.02.2021, the fourth respondent ought to have allowed the petitioner to continue in service till she attains the increased age of retirement of 60 years, by cancelling its impugned order of retirement dated 22.02.2021. In spite of several representations and G.O.Ms.No.29, dated 25.02.2021, fourth respondent has not cancelled its order dated 22.02.2021. Hence, the present writ petition.

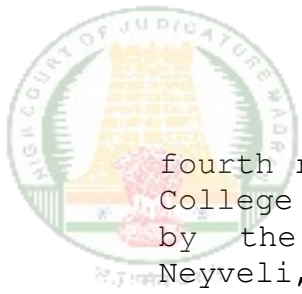


3.The learned counsel for the petitioner would submit that after the outbreak of Covid-19 pandemic, the Government of Tamil Nadu, Personal and Administrative Reforms Department issued G.O.Ms.No.51, dated 07.05.2020 increased the age of retirement/superannuation of Government servants, who were due to retired from service from 31.05.2020, from 58 years to 59 years and it is applicable to all teaching and non-teaching staff working in the Aided Educational Institutions and to the employees of all Constitutional/Statutory Bodies, Public Sector Undertakings, including all the State Corporation, Local Bodies, Boards, Commissions, Societies, etc.

4.He would further submitted that the conditions of service of teachers and other staffs in Private Colleges both aided and unaided are governed by the provisions contained in Section 17 of the Act and Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976. As per the Government orders and directions in terms of the above provisions the petitioner and other are getting pay and allowances, age of retirement, re-employment as fixed from time to time, teachers in private aided and unaided colleges were allowed to retire and given re-employment till the end of the academic year, if their age of retirement fall during the middle of the academic year.

5.Further, he would submit that as per the subsequent G.O.Ms.No.29, dated 25.02.2021, the fourth respondent ought to have allowed the petitioner to continue in service, till she attains the increased age of retirement of 60 years, by cancelling its order dated 22.02.2021, but the respondents have not complied the Government order. Hence, the petitioner has made representations to the fourth respondent dated 13.03.2021 & 17.05.2021 and also made representation to the second respondent dated 24.05.2021 but the respondents have not taken any steps to the petitioner's representations. Hence, he submitted that the impugned order of retirement dated 22.02.2021 issued to the petitioner by the fourth respondent is liable to be quashed.

6.The learned Additional Government Pleader appearing for the respondents through the counter filed by the second respondent submitted that G.O.Ms.No.51, dated 07.05.2020 is applicable to the employees who are in regular service and also applicable to all teaching and non-teaching staff working in Aided Educational Institutions and employees of all Constitutional/Statutory Bodies, Public Sector undertakings including all State Corporation, Local Bodies, Boards, Commission, Societies etc. Subsequently, G.O.Ms.No.29, dated 25.02.2021 issued by the Government may not be applicable to the



fourth respondent College since fourth respondent/Jawahar Science College is a Self Finance Arts and Science College, administered by the Educational Agency of Jawahar Educational Society, Neyveli, and affiliated to Thiruvalluvar University, Vellore. Even though, the Self Financing Colleges are Governed by the Tamil Nadu Private Colleges Regulation Act, 1976, no grant-in-aid is sanction by the Government to the Teaching and Non-teaching staff of Self Financing Colleges and the salary to the staff members will be paid by Private College Management and the appointment is also made by the Management only. Hence, he submitted that it is up to the Private Management to decide their functions as stipulated under the Act/Rules.

7.Further, he would rely upon the order of this Court in a similar case in W.P.No.7810 of 2010, dated 10.07.2020, wherein this Court has dismissed the prayer of the writ petitioner therein. Aggrieved over the above said writ petition a writ appeal has been filed before the Hon'ble Division Bench of this Court in W.A.No.610 of 2020 and by an order dated 07.08.2020, the Hon'ble Division Bench of this Court has dismissed the writ appeal and confirmed the order passed in W.P.No. 7810 of 2010.

8.Therefore, he submitted that it is a settled legal position that the teachers and other employees who are getting salary from the Management funds are not equated and cannot expect themselves to be treated on par with Government Staff, who are getting salary from the State funds. Hence, this writ petition has no merits for consideration and liable to be set aside.

9.Heard the learned counsels on either side and perused the materials placed on record.

10.On a perusal of the records it is seen that the fourth respondent/Jawahar Science College is a Self Finance Arts and Science College, administered by the Educational Agency of Jawahar Educational Society, Neyveli, and affiliated to Thiruvalluvar University, Vellore. Further, G.O.Ms.No.29, dated 25.02.2021, is not applicable to the fourth respondent since no grant-in-aid is sanctioned by the Government to the Teaching and Non-teaching staff of Self Financing Colleges. Further, in the order passed by this Court in W.P.No.7810 of 2010, dated 10.07.2020 and the order passed by the Hon'ble Division Bench of this Court in W.A.No.610 of 2020, dated 07.08.2020, it has been held that "a staff working in unaided institution cannot expect himself to be treated along with the Government staff for the benefit under the G.O.Ms.No.29, dated 25.02.2021".



11. In view of the above facts and circumstances of the case and in the light of the order passed by this Court in W.P.No.7810 of 2010, dated 10.07.2020 and the order passed by the Hon'ble Division Bench of this Court in W.A.No.610 of 2020, dated 07.08.2020, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Principal Secretary,
Government of Tamil Nadu,
Department of Higher Education,
Fort St. George, Chennai - 09.
2. The Director of Collegiate Education,
College Road, Chennai - 06.
3. The Joint Director of Collegiate Education,
Vellore Region, Vellore.
4. The Secretary,
Jawahar Science College,
Block -14,
Neyveli - 607803.

+lcc to Mr.V.Ajaykhose, Advocate SR.No.8568

+lcc to the Government Pleader, SR.No.8975

W.P.No.12396 of 2021
and WMP.Nos.13179 & 13180 of 2021

SMI (CO)
CB(03/03/2022)