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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4980 of 2014

Monita Mohan Singh @ Monita Jose

..Petitioner

Vs.

1.The Principal Secretary to Government,  
Tourism, Culture & Religious Endowments Department,  
Fort St.George, Chennai - 600 009.

2.The Commissioner,  
Directorate of Art and Culture,  
Thendral, Greenways Road,  
Chennai - 620 028.

3.The Principal,  
Government College of Fine Arts,  
Chennai - 600 003.

... Respondents

PRAYER: This Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent herein in his proceedings Na.Ka.No.1824/Aa/1/2009 dated 08/10/2012 and quash the same and consequently direct the respondents herein to regularize the services of the petitioner in the post of Lecturer (History of Arts) from the date of her initial appointment, i.e. 06/12/1999, together with all consequential service and monetary benefits.

For Petitioner : Mr.Bala  
for M/s.G.Bala and Daisy

For Respondents : Mr.T.Chezhiyan  
Additional Government Pleader



## ORDER

When a vacancy for the post of lecturer in History of Arts in the third respondent/Government College of Fine Arts, Chennai, fell vacant, the second respondent herein had filled-up the post in the year 1999, by interviewing a list of candidates, sponsored by the District Employment Office. Though the post that fell vacant was for lecturer in History of Arts, in the appointment order dated 30.11.1999, the second respondent herein had described the nomenclature of the petitioner's post as lecturer in History of Arts (Instructor Cadre). Subsequently, through G.O.(Ms)No.190, Tourism and Culture Department, dated 22.10.2008, the petitioner's appointment was regularized with effect from 06.12.1999 for the post of Lecturer in History of Arts. Through a letter dated 04.03.2010, when the Commissioner of Department of Arts and Culture, sought for permission for the petitioner to continue as a lecturer in the department of Arts, the Government through a letter dated 28.07.2011, had stated that, under the Adhoc Rules relating to temporary post of lecturer in History of Arts under Madras Industries Subordinate Service, there is no post for a lecturer (Instructor Cadre), and that the Adhoc Rules provides for only temporary post for Lecturer in the department of History of Arts. In continuation of such a clarification, the Government had instructed the Commissioner to pass necessary orders, rectifying the mistake in nomenclature of Lecturer (Instructor Cadre), and pass necessary orders.

(ii) However, contrary to the recommendation of the Government, the Commissioner had passed the impugned order dated 08.10.2012, stating that since the petitioner was appointed only to the post of Lecturer in Arts (Instructor Cadre), her request for grant of service and monetary benefits from the date of her original appointment is not favourable. The petitioner's scale was fixed for the post of Instructor, where as he ought to have been fixed for the post of a lecturer. In order to rectify this parity, the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that in the clarification given by the Government on 28.07.2011, it has been clearly stated that there was no nomenclature as a lecturer in Arts (Instructor Cadre), and that though the Government had directed the Commissioner to pass orders in the light of the clarification, the Commissioner has overlooked such recommendations and thus, denied the petitioner's claim.



3. Per contra, the learned Additional Government Pleader for respondents submitted that the Adhoc Rules relating to temporary post for lecturer in History of Arts, provides for pay scale for the lecturer on par with an instructor and therefore, since the petitioner was originally appointed as a lecturer in Arts (Instructor Cadre), she cannot claim the pay scale of an Instructor. He further placed reliance on Paragraph No.3 of the counter affidavit and submitted that the post of Lecturer in History of Arts (Instructor Cadre), was sanctioned to the Government College of Fine Arts and since this post fell vacant, the second respondent had rightly appointed her to the lecturer post in Instructor Cadre.

4. At the outset, it requires to be mentioned as to how the Commissioner of the Directorate of Art and Culture, had superseded the instructions given by the Government, in the letter dated 28.07.2011 and passed orders declining to accept the recommendations of the Government? When the Superior Department of a Government issues administrative and executive instructions, the Subordinate Officials are bound by such instructions and in case, they are of the view that such instructions cannot be implemented, they are required to seek for further clarifications from such higher authorities, rather than overlooking the specific instructions of the higher officials. This is precisely what has happened in the present case. The Government in the letter dated 28.07.2011, had specifically stated that there was no such nomenclature of lecturer in Arts (Instructor Cadre) and therefore, directed the Commissioner to pass necessary orders to the query raised. However, ignoring such instructions of the Government, the Commissioner had rejected the petitioner's claim for all the service and monetary benefits to the post of a Lecturer.

5. With regard to the claim made by the second respondent that the post of a lecturer in History of Arts (Instructor Cadre), was sanctioned to the Government College of Fine Arts, Chennai, is concerned, the respondents have produced the copy of the sanction accorded in G.O.Ms.No.1613, (Ind), Industries, Labour and Cooperation Department, dated 18.03.1961, which is in approval of the scheme for the expansion of the School of Arts and Crafts and up-gradation to College of Arts and Crafts. In the said Approval Order, 11 posts of Instructors and one post of Lecturer were sanctioned for the College of Arts and Crafts. There is absolutely no reference in the sanction order that the post of Lecturer in History of Arts (Instructor Cadre), was sanctioned to the Government College of Fine arts. If that be so, the averments in the Paragraph No.3 of the counter



affidavit, is a misinterpretation of the actual sanction order in G.O.Ms.No.1613.

6. It is pertinent to mention here that Paragraph No.2 of the counter affidavit takes a contradictory stand that the petitioner was called to attend interview for the vacant post of Instructor in History of Arts, sanctioned to the Government College of Fine Arts and there is no mention about the lecturer in an "Instructor Cadre" therein. Even without giving importance to the contradictory stands taken in the counter affidavit, the sanction order in G.O.Ms.No.1613, sanctioning temporary appointment to 11 Instructors and one lecturer, is clear to the effect that these two posts are distinct by themselves and there is no other sanction accorded or permission granted to the respondents to appoint a candidate to the post of lecturer in History of Arts "(Instructor Cadre)".

7. In this background, when the post of a lecturer in History of Arts (Instructor Cadre), which is a sanctioned post, fell vacant, the second respondent herein cannot appoint a candidate to such a post by changing the nomenclature and introducing a new nomenclature, as that of a lecturer (Instructor Cadre). Admittedly, the Adhoc Rules does not provide for such a post. The counter affidavit also does not place reliance on the Adhoc Rules or on other Government Instructions, empowering the Commissioner to place the petitioner in the pay scale of an Instructor by terming her designation as lecturer in History of Arts (Instructor Cadre). In the absence of any such specific rules or Government instructions, the Commissioner has overstepped his authority in creating such a post and substantiating the same through the impugned order, in spite of the contra recommendations of the Government.

8. Though the petitioner herein was originally appointed on temporary basis, by an order dated 22.10.2008, her appointment came to be regularized with effect from the date of her initial appointment i.e., 06.12.1999, to the post of lecturer in History of Arts. If that being the case, the petitioner would be entitled for all the service and monetary benefits, that arises from the date of her initial appointment.

9. In the light of the above findings and observations, the impugned order dated 08.10.2010, on the file of the second respondent, is set aside. Consequently, there shall a direction to the second respondent herein, to pass appropriate orders, re-fixing the petitioner's pay scale to that of a lecturer in Arts of History, with effect from her date of initial appointment i.e., from 06.12.1999 onwards and disburse the entire arrears that accrues on such re-fixation. The second respondent herein, shall pass such orders for re-fixation and disbursement of



arrears, within a period of four weeks from the date of receipt of a copy of this order.

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10. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Principal Secretary to Government,  
Tourism, Culture & Religious Endowments Department,  
Fort St.George, Chennai - 600 009.

2.The Commissioner,  
Directorate of Art and Culture,  
Thendral, Greenways Road,  
Chennai - 620 028.

3.The Principal,  
Government College of Fine Arts,  
Chennai - 600 003.

+1 cc to M/s.G.Bala & Daisy Advocate sr28086  
+1 cc to the Government Pleader, High Court, Madras  
in Sr.No.28901

W.P.No.4980 of 2014

ss(co)  
aa01/06/2022