



W.A.No.873 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.873 of 2012

1.V.Veerabadran
2.P.Gowthaman
3.M.Panneerselvam
4.Pandian R

... Appellants

Vs.

1.Government of Tamil Nadu
Rep. By its Principal Secretary,
Higher Education Department
Fort St. George, Chennai 600 009.

2.The Director of Collegiate Education
D.P.I. Compound,
College Road, Chennai – 600 006.

3.G.P.Raman
4.M.Mohanam
5.Jayanthi Sivananda
6.C.Leelavathy
7.Greetamary Thendral. D
8.K.M.Ponnathal
9.Dr.K.Ambujam
10.R.Ambigapathi
11.Dr.A.Neelaiyadakshi
12.Peru Sivagana Janaki

... Respondents



W.A.No.873 of 2012

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 25.01.2012 in W.P.No.14580 of 2011 passed by this Court and consequently direct the 1st and 2nd respondents to issue fresh seniority list of Selection Grade/Associate Professor by fixing seniority based on the date of regularization service and following communal rotation and thereafter effect promotion based on the same.

For Appellants : Mr.Balan Haridas

For Respondents : Mr.K.V.Sajeev Kumar
Spl. Government Pleader for R1 & R2

: Batta due - for R3

: M/s.D.Nagasaila - for R4

: No appearance - for R5 to R7

: Not necessary parties - for R8 to R12

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

These four appellants were the writ petitioners in W.P.No.14580 of 2011. They were appointed as Assistant Professors on temporary basis on 10.02.1981, 05.03.1982, 04.08.1982 and 04.01.1983 respectively. They had been working in that capacity for some years. Thereafter the Government had come forward to regularise the services of such temporarily appointed Assistant Professors under Rule 10(a)(i) of the



W.A.No.873 of 2012

Tamil Nadu State and Subordinate Service Rules and accordingly after getting the concurrence from the Tamil Nadu Public Service Commission under its Regulation 1954 decided to regularise their services and accordingly their *inter se* seniority also had been fixed for which the Government issued G.O.(Ms).No.1840 Education Department dated 16.12.1988 wherein the seniority of these four appellants have been fixed at Serial No.8, 49, 89 and 127.

2. Subsequently some of the proceedings had been issued pursuant to the seniority and in the meanwhile there has been some representations with regard to regularisation of their services from the date of their initial appointment and accordingly the seniority *inter se* must be fixed based on the initial appointment and this seems to have been referred to the Tamil Nadu Public Service Commission (in short “TNPSC”) to get their concurrence and the TNPSC also given its concurrence pursuant to which the Government had come to issue G.O.(Ms).No.336 Education Department dated 08.03.1990, where, *inter alia* the Government has stated the following:

“6. The Government after careful consideration pass the following orders:



WEB COPY



W.A.No.873 of 2012

i. In partial modification of the orders issued in G.O.Ms.No.1840 Education dated 16.12.88 the Government direct that the rule of reservation applied to the orders issued in the Government order be cancelled and the seniority of Assistant Professors whose temporary services were ordered to be regularized with the concurrence of the Tamilnadu Public Service Commission under the later part of 16(b) of its regulations 1954 be fixed with reference to their date of temporary appointment in the said posts without applying the rules of reservation for appointment.”

3. Therefore as per the import of G.O.(Ms).No.336, what has been made in G.O.(Ms).No.1840 Education Department dated 16.12.1988, referred to above, had been partially modified and therefore the Government directed that, the rule of reservation applied to the orders issued in the Government Order i.e. G.O.(Ms).No.1840 be cancelled and the seniority of Assistant Professors whose temporary services were ordered to be regularised with the concurrence of the Tamil Nadu Public Service Commission be fixed with reference to their date of temporary appointment in the said posts without applying the rules of reservation for appointment.



W.A.No.873 of 2012

WEB COPY

4. Therefore, pursuant to this G.O.(Ms).No.336 it become necessitated to redrawn the seniority and accordingly the seniority has been redrawn under which the seniority of these four appellants who are the petitioners in the writ petition referred to above had been pushed back to the Serial Nos.82, 151, 177, 293.

5. Aggrieved over the same, these appellants had filed the said writ petition which was heard and decided by a learned Judge along with connected writ petitions in a batch of cases and it was disposed of by the common order of the Writ Court dated 25.01.2012 wherein insofar as the *inter se* seniority among the 10(a)(i) appointees are concerned as Assistant Professors who have been subsequently regularised, the learned Judge has stated that, what was the original date of appointment that is the initial appointment shall be reckoned as the date for regularisation, therefore from that date the seniority has to be fixed of course by following the rule of reservation.

6. In this context, it is the case of the State Government that even at the time of making selection and appointment by way of Rule 10(a)(i)



W.A.No.873 of 2012

appointment, the rule of reservation i.e. 50 point roster having been followed, the question of re-doing the said exercise does not arise, therefore from the date of initial appointment who were will be the senior, accordingly they have been selected and appointed by way of regularisation by making them in the fitment of 50 point roster, this point was accepted by the learned Judge and ultimately he passed an order that, the *inter se* seniority among them must be on the basis of the initial appointment.

7. Therefore, further felt aggrieved over the said order passed by the learned Judge, these appellants have preferred the present appeal.

8. Supporting their contention, Mr.Balan Haridas, learned counsel appearing for the appellants would submit that, initially as per G.O.(Ms) No.1840 the seniority of these appellants were at Serial Nos.8, 49, 89 and 127 respectively and subsequently this has been changed drastically and they have been pushed back as stated supra, therefore they lost their seniority and in this context, certain Government letters issued in this regard, especially Letter dated 08.06.2011 issued by the Principal Secretary to Government, Higher Education (F2) Department has not



W.A.No.873 of 2012

been followed. In this context, the learned counsel has relied upon a part of the letter dated 08.06.2011 which reads thus:

“ii) It is reiterated that communal rotation should be followed: but seniority will date from the date of issue of order of regularization vide Supreme Court Judgment in C.A.No.2791 -93/2002. No ante-dating before the year of appointment is permissible.”

9. Relying upon this letter and some correspondences between the Head of the Department and the Government, the learned counsel would contend that, though the G.O.(Ms).No.336 was issued it has not been implemented and it was kept in abeyance and in the meanwhile what has been decided by the Government, as reflected in the letter stated above, was to be implemented and if that is implemented, certainly the position already earned by these appellants would not have been disturbed, this position has not been considered by the learned Judge of the Writ Court in proper perspective, therefore the order impugned insofar as the denying such original seniority earned by these appellants by the impugned order is in firm and therefore it requires interference from this Court, the learned counsel contended.



W.A.No.873 of 2012

10. We have heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for respondents 1 and 2 as well as Ms.D.Nagasaila, learned counsel for the 4th respondent.

11. Insofar as the seniority that has earned by these appellants are concerned, as per the G.O.(Ms).No.1840 dated 16.12.1988 is concerned, though such a seniority list had been made in the said G.O. it become necessitated for the Government to make the modification of the said seniority in view of G.O.(Ms)No.336 dated 08.03.1990.

12. The reason being that, the issue was referred to the TNPSC of course in whose purview the selection and appointment of Assistant Professors in Tamil Nadu had been brought in and therefore the TNPSC alone since is empowered under its Regulation 1954 to accept such appointment under Rule 10(a)(i) and to regularise their services and if so, any qualified person straight away selected whether they can be regularised, all these issues can be gone into and decided only by the TNPSC, accordingly the TNPSC has decided and communicated its decision to the Government where under later part of 16(b) of its TNPSC Regulations 1954, this 10(a)(i) temporary appointment as Assistant



W.A.No.873 of 2012

Professors can very well be regularised with effect from the date of initial appointment and thereafter as per the communal roster in the 50 point roster or what was the roster that has been followed by the Government they can be fit in.

13. This concurrence given by the TNPSC since is binding the Government, they have to necessarily act upon therefore they issued G.O.(Ms).No.336 dated 08.03.1990 under which such a modification in the seniority has been made. When such a modification is made, automatically the juniors who had been appointed even as 10(a)(i) appointees and later will get seniority only according to the initial appointment. If at all these appellants in 1981, 1982 and 1983 have already earned the seniority against those who have initially appointed prior to these appointees, certainly the seniority have to be reckoned only from the date of initial appointment and in that case naturally the seniority should be reworked and that has been made through the impugned seniority list which was challenged before the learned Judge.

14. But it is to be noted that, they are questioning the re-arranged seniority but not questioned the G.O.(Ms).No.336 dated 08.03.1990.



W.A.No.873 of 2012

Once the Government has issued G.O. under Article 162 of the Constitution, it will have validity of law unless and until a suitable legislation is made in this regard and therefore in pursuance of the G.O.(Ms).No.336 which was in force, what has been acted upon by the Government pursuant to the said G.O. cannot be questioned. Therefore, the very foundation for the challenge that has been made by these appellants before the Writ Court as well as before this Bench by way of intra-Court appeal challenging their *inter se* seniority cannot have legs to stand and therefore for that reason alone this appeal has to fail. Moreover, we have gone through the order which is impugned herein where the learned Judge having gone through the factors had given his findings, therefore we do not find any error in the said order and it does not require any interference from this Court. In the result, the writ appeal fails, hence it is dismissed. No costs.

(R.S.K., J.) (K.B., J.)

17.07.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

Sgl



W.A.No.873 of 2012

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To

- 1.The Principal Secretary,
Government of Tamil Nadu
Higher Education Department
Fort St. George, Chennai 600 009.
- 2.The Director of Collegiate Education
D.P.I. Compound,
College Road, Chennai – 600 006.



WEB COPY



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