



W.P(MD)No.16878 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16878 of 2022

and

W.M.P.(MD)Nos.12291 & 12292 of 2022

H.Lathamaheswari

... Petitioner

Vs.

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

2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli -627 002.

3.The Manonmaniam Sundaranar University,
Rep. By its Registrar, Abishekapatti,
Tirunelveli District-627 012.

4.The Secretary,
Sree Devi Kumari College for Women,
Suchindram, Kuzhithurai,
Kanyakumari District-629 704.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the first respondent



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Director in Na.Ka.No.17594/F2/2022, dated 21.06.2022 and quash the same and further, direct the first respondent to remove the employment of the petitioner as Lecturer/Assistant Professor in Tamil in the fourth respondent college for the period from 01.08.2001 to 04.07.2006 for service benefits including seniority, promotion and pension.

For Petitioner : Mr.Isaac Mohanlal
for M/s.Isaac Chambers

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader for R1 & R2

: Mr.Mohamed Athiff for R3

: Mr.K.Sathiya Singh for R4

ORDER

Heard the learned Senior Counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for R1 & R2 and the learned Standing Counsel appearing for the 3rd respondent University and the learned counsel appearing for the College.

2. The writ petitioner is presently working as Assistant Professor in Tamil in the 4th respondent College. The college is under the control of HR & CE Department. It is governed by Tamil Nadu Private Colleges (Regulation) Act and the Rules framed thereunder. The case of the petitioner is that the post of Lecturer in the department of Tamil fell vacant on 07.02.1993 following the



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demise of the then incumbent Thirumathi.K.Parameshwari. The petitioner claims that she was appointed in the said post on honorary basis with effect from 12.12.1994. It is not in dispute that the petitioner possessed the requisite educational qualification namely M.A. and M.Phil degrees. The petitioner was appointed on consolidated pay on 31.07.2001. Two other proceedings dated 30.03.2006 and 29.03.2006 were issued appointing the petitioner on consolidated basis by the college secretary. The petitioner was regularly appointed on 05.07.2006 on regular time scale of pay.

3. The learned senior counsel makes it clear that the petitioner is only asking for including the past teaching service for seniority purpose and that the petitioner does not have any claim for monetary benefit. This submission made by the petitioner through her senior counsel is placed on record. The only question that arises for consideration is whether the petitioner's past teaching experience prior to 05.07.2006 can be included.

4. The learned Additional Government Pleader submits that whenever a person is regularised in a given post, it can only be prospective and that it cannot be retrospective so that seniority of those who are already in regular service is not affected. The learned Additional Government Pleader relies on



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the decision reported in **(1998) 8 SCC 690 (Registrar General of India Vs.**

V.Thippa Setty) and the order dated 08.12.2006 made in **Civil Appeal No.5666**

of 2006 (R.Mohan Vs. S.M.Ratanpaul). The stand of the learned Additional

Government Pleader is that the petitioner can count her seniority only from the

date of her regular appointment and the service put in by her on consolidated

pay cannot be counted. The management had expressed its stand vide

communication dated 25.03.2022. It is in favour of the petitioner and the

management submitted proposal for counting seniority of the petitioner with

effect from 01.08.2001. As far as the University is concerned, they are only a

formal party. The learned Senior Counsel draws my attention to the order dated

12.06.2017 made in W.P.(MD)Nos.21316 & 21317 of 2015. A learned Judge of

this Court had held as follows:-

“3. In these cases, it is not in dispute that the petitioners were appointed as junior PG Assistant (History) and Junior PG Assistant (Tamil) respectively, with effect from 02.08.2004 and 27.01.2005 respectively. Though the said appointment were regularized by the first respondent with effect from 01.06.2006, based on G.O.(Ms)No.99, School Education Department, dated 27.06.2006. The Government Order does not render the appointment invalid till it is regularized. Merely because the petitioners were not granted the regular scale of pay with effect from the date of appointment, it cannot be said that their appointments were valid only from the date of regularization. The fact that the petitioners were appointed in sanctioned posts and that their appointment in the year 2004 and 2005 respectively were following the Recruitment Rules are not in dispute. It is only due to financial constraints, instead of appointing them in regular time scale of pay, the Government made the appointment on consolidated pay. Since the



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appointments were made in the regular post, merely because the regular time scale of pay were denied to the petitioners for some time, there is no reason to hold that the appointments made earlier on adhoc basis would disable them to claim seniority from the date of entry into service.

7.This Court is also of the view that the petitioners are entitled to claim the seniority of teaching experience from the date of their appointments, ie., with effect from 02.08.2004 and 27.01.2005 respectively, for the purpose of calculating their period of rendering service as a teacher, for the purpose of promotion to the post of Headmasters/Headmistress of the Higher Secondary Schools. Hence, this Court is inclined to allow these Writ Petitions.”

5. A careful reading of the aforesaid order would indicate that the learned Judge was conscious that the rights of the other teaching staff working in the institution should not be affected. It appears that one Mrs.Baby was appointed as Assistant Professor in Economics on 05.09.2001 on consolidated pay. It appears that career of the petitioner as well as that of the said Mrs.Baby run almost parallely. Their entry as teaching staff in the 4th respondent college was initially on consolidated pay and thereafter, both were appointed on regular basis.

6. A reading of the decision of the Hon'ble Apex Court would indicate that regularization should be prospective so that seniority of those who are already in service should not be affected. In the case on hand, we are concerned with only two candidates namely the writ petitioner herein and Mrs.Baby and nobody else. A learned Judge of this Court had already held vide



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order dated 12.06.2017 in W.P.(MD)Nos.21316 & 21317 of 2015 that the past teaching service can be counted only for the purpose of seniority and promotion and not for any monetary benefit. I am inclined to adopt the very same approach. Since Mrs.Baby is not before this Court and since the issue can as well be decided by the Management itself, I direct the fourth respondent to take a call in the matter. The fourth respondent will consider the case of the writ petitioner and that of Mrs.Baby. The same yardstick will be applied for both of them. After hearing the petitioner as well as Mrs.Baby, the fourth respondent will determine their *inter-se* seniority. In other words, even though both the persons are appointed on regular basis only in the year 2006, their past teaching service on consolidated pay can be counted only for the purpose of seniority and promotion without casting any financial burden on the Government. I reiterate that the college management will pose only one question who was appointed on consolidated pay first? If there is clinching material that the petitioner was appointed prior in point of time, then, the seniority of the petitioner will be reckoned accordingly. If there is no such material, then, obviously the Management has to go only by what is on record. This exercise shall be completed by the fourth respondent within a period of eight weeks from the date of receipt of a copy of this order.



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7. Though the fourth respondent is run by HR & CE Department, the fact remains that the 4th respondent is only a private college. It is governed by the provisions of Tamil Nadu Private Colleges (Regulation) Act. The seniority of the teaching staff and non-teaching staff working in the private college can be decided by the management by applying the well settled parameters. In my view, the fourth respondent need not have submitted a proposal to the first respondent at all. The impugned order passed by the first respondent is declared as not having any legal consequence. The issue will be decided afresh by the 4th respondent in the manner indicated above.

8. The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

20.04.2023

Index : Yes / No
Internet : Yes/ No
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To

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

2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli -627 002.



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G.R.SWAMINATHAN, J.

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