



W.P.No.8963 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

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THE HON'BLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.8963 of 2023
and M.P.Nos.9094, 9095 & 18376 of 2023

V. Rajathi

... Petitioner

Vs.

1. The Director,
Office of Directorate of Collegiate Education Chennai,
Institute of Advance Study in Education Campus,
No.577, Anna Salai,
Saidapet,
Chennai 600 015.

2. Teachers Recruitment Board
Rep.by its Secretary
Puratchi Thalaivar Dr.M.G.R.Centenary Building,
3rd & 4th floors, DPI Campus,
College Road,
Chennai 600 006.

3. The Principal
Government Arts College
Chidambaram 608 102

4. D.Rajendran
Department of Zoology
Government Arts College
Chidambaram 608 102.

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the communication made by the 3rd respondent bearing reference Na.Ka.No.165/A/2023 dated 09.03.2023 and quash the same as unconstitutional and ultravires and consequently direct the 1st respondent to restore the seniority of the petitioner in accordance with law.

For Petitioner : Mr.A.K.Rajaraman

For Respondents : Mr.P.Muthukumar
Additional Advocate General
Asst.by Mr.P.Kumaravel
Additional Government Pleader
for R1 & R3

Mr.R.Neelakandan
Additional Advocate General
Asst.by Mr.K.Sathish Kumar for R2

Mr.T.Thiyagarajan for R4

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the communication made by the 3rd respondent bearing reference Na.Ka.No.165/A/2023 dated 09.03.2023 and quash the same as unconstitutional and ultravires and



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consequently direct the 1st respondent to restore the seniority of the petitioner in accordance with law.

2. By order dated 09.03.2023 passed by the 3rd respondent, the petitioner was placed in Sl.No.2 below the 4th respondent namely Rajendran who was in Sl.No.1. The said order also considered the regularisation of the period from 2005 to 2010 as service, as the 4th respondent was not in service during the said period and was reinstated into service pursuant to the order of this Court in W.P.No.17863 of 2008 dated 10.11.2008. Since the 4th respondent's seniority was restored, the 4th respondent was also directed to function as Head of the Department. Aggrieved by the same, the present writ petition is filed.

3. The learned counsel appearing for the petitioner submitted that since the 4th respondent was not in service in the interregnum, the petitioner has further been granted Career Advancement and by proceedings dated 10.06.2023 the petitioner has further been promoted as Associate Professor. In that view of the matter, there is no question of comparison between the petitioner and the 4th respondent. The petitioner is holding the post of



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Associate Professor drawing more pay than that of the 4th respondent. The petitioner cannot be considered as Junior to the 4th respondent as far as the department is concerned and the petitioner cannot be permitted to work under the 4th respondent.

4. The writ petition is resisted by the respondents by filing counter affidavit.

5. *Mr Muthukumar*, the learned Additional Advocate General appearing for the 1st & 3rd respondents submitted that vide proceedings of the 1st respondent dated 28.07.1994 it has been clearly stated that the post of the Head of the Department is not a promotional post in the College. It does not carry any additional pay or remuneration. It is only to facilitate better administration of the particular department. As per G.O.Ms.No.1785 Education (H3) Department dated 05.12.1988, the senior most person in the Department of the college irrespective of his Ph.D. qualification will be nominated and designated as "Senior Lecturer/Selection Grade Lecturer/Reader and Head of Department". He further submitted that the scale of pay as that of the Associate Professor is granted under Career



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Advancement Scheme and the same cannot be taken into account as if it is a promotion. The petitioner cannot be considered as if she is in a promotional cadre and therefore the original seniority as between the petitioner and the 4th respondent is taken into account and if that is taken into account, the 4th respondent is senior to the petitioner as far as the date of entry into service and therefore the 4th respondent is senior and as per the G.O.Ms.No.1785 Education (H3) Department, dated 05.12.1988 4th respondent is rightly designated as the Head of the Department.

6. *Mr Neelakandan*, learned Additional Advocate General appearing on behalf of the 2nd respondent submitted that the impugned order is nothing but an exercise of implementation of the order of this Court. Whenever Court orders are implemented the individuals will retain their seniority and the persons affected thereby cannot have any separate cause of action to approach this Court.

7. The 4th respondent has also filed a separate counter affidavit. It is the claim of the 4th respondent that he is senior to the petitioner as far as the date of service is concerned. Only because the 4th respondent was out of



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service on account of the error committed on behalf of official respondents, the 4th respondent did not earn his consequential in-situ promotion.

Therefore, when the 4th respondent has been reinstated into service pursuant to the order of this Court, the 4th respondent is entitled for all the consequential benefits. The impugned order only treated the 4th respondent's period of service as regularised and consequently the 4th respondent's seniority over the petitioner is restored. Once the consequential seniority of the 4th respondent is restored, the posting of the 4th respondent as Head of the Department is in order.

8. I have considered the rival submissions made on either side and perused the materials available on record.

9. As far as the impugned order is concerned, it is treating the services of the 4th respondent as duty and consequently restoring the services of the 4th respondent. When the same is done pursuant to the order of this Court, the petitioner cannot have any grievance. To that extent the challenge to the impugned order in its entirety cannot be entertained by this Court at the instance of the writ petitioner. If at all the writ petitioner is aggrieved, the



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writ petitioner's concerns are only regarding the designation of the petitioner as the Head of the Department.

10. As far as the seniority in the grade of Assistant Professor is concerned, the same can no longer be gone into by this Court since the petitioner has already been promoted as Associate Professor with effect from 26.12.2023. The contention on behalf of the 1st respondent is that still there can be *inter se* seniority between the petitioner and the 4th respondent cannot be accepted. The stand of the respondents that it is only in respect of the pay scale cannot be accepted. Even the order dated 07.06.2024 granting promotion clearly reads thus:-

“ 4. The Joint Director of Collegiate Education (P&D) Chennai – 15, hereby accords sanction for the creation of the Associate Professor Level 13A with effect from the date mentioned in Column 8 of the Annexure in lieu of equal number of posts of Assistant Professor Level 13A in the above said college. The above post shall be treated as purely personal. In the event of the vacancy arising due to retirement, transfer, promotion etc., of the individual the post shall stand downgraded as Assistant Professor of the same subject. The Principal is requested to ensure that the number of sanctioned posts of Assistant Professors and Associate Professors put together does not exceed the total number of sanctioned strength for the department at any time”.



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11. Therefore from the order itself it can be seen that the petitioner is upgraded along with the post. Both the posts of Associate Professor and the Assistant Professor cannot be equated. There is no question of any seniority vis-a-vis between the petitioner and the 4th respondent, as they are in different posts altogether. The very fact that the order mentions that the post will be down graded in case of retirement etc., of the petitioner would clearly adumbrate that the post is in the higher pedestal. Therefore, there is no question of any common seniority between the Associate Professor and Assistant Professor. In that view of the matter, now the only question which has to be determined is that as to whether or not the respondents are right in designating the 4th respondent as the Head of the Department.

12. As rightly contended by the learned Additional Advocate General appearing for the 1st and 3rd respondents, the post of Head of Department is not a promotional post. Neither any additional pay or remuneration is attached to the said post. Therefore, it is for the 1st respondent namely the Director of Collegiate Education Chennai or the



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Government as the case may be, to frame the rules to designate a person as the Head of the Department. This Court is also in agreement with the respondents that the designation of a particular person as Head of Department is only to facilitate administration in the matter of coordination with the Principal and to undertake such works as allotment of duties, coordination of various activities of the departments etc.. There are institutions and universities where the Head of the Department is also nominated for a specific period and is given on rotation basis to every teacher, so that they have experience in this regard. It would not result in any stigma to the senior. Therefore, it is for the respondents to frame rules to nominate the person as Head of the Department.

13. As on date the only rule which is placed before this Court is that the G.O.Ms.No.1785, Education (H-3) Department, dated 05.12.1988. It is relevant to extract paragraph No. 7 of the said order which reads as follows:-

“ the senior most person in the Department of college irrespective of his Ph.D. qualification will be nominated and designated as "Senior Lecturer/Selection Grade Lecturer/Reader and Head of Department" by the Director of Collegiate Education and that no special pay will be allowed to that post”



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14. It is also further relevant to extract paragraph No.6 of the counter affidavit whereby regulations is based on the said rule only and the same is extracted as hereunder:-

“6. It is submitted that the Director in his proceeding Mu.Mu.No.027957/A6/1994 dated 28.07.1994 wherein has been clearly stated that Head of Department (HOD) Post is not a promotion post in the College. For the post of Head of the Department, the rule 4 (1) and (ii) of Tamil Nadu Private Colleges Regulations Act 1976 is not applicable. It is further submitted that it has been formulated to facilitate the better administration of a particular department in the college. Senior most person in term of service in a Department would act as a Head of Department and also this is not promotional category post. With respect of Head of Department in G.O.No.1785 Education (H3) Department dated 05.12.1988 following stated as:-

"The senior most person in the Department of college irrespective of his Ph.D., qualification will be nominated and designated as "Senior Lecturer/Selection Grade Lecturer/Reader and Head of Department" by the Director of Collegiate Education and that no special pay will be allowed to that post".

15. On a perusal of the said rule, it can be seen that the same is



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framed for designating a person as “Senior Lecturer/Selection Grade Lecturer/Reader and Head of Department” and can no longer be relevant. In spite of the matter being adjourned for hearing, the learned Additional Advocate General has made a categorical submission that there is no other rule which is framed in respect of designating a person as Head of the Department in the Colleges which are under the 1st respondent. In that view of the matter, when there is no proper rule, and it is to be held that so long it is the practice of respondents to follow the principle of seniority. When a person is designated as Associate Professor or Professor as the case may be, then that person cannot be considered as junior to the person who is working in the lower cadre taking the length of service alone as basis.

16. In that view of the matter, in view of the past practice of the respondents whereby seniority is taken as the only criteria, then it is the petitioner who should be considered as the senior most person since she has been promoted in the higher post of Associate Professor drawing more pay than the 4th respondent.

17. It would be open to the Director or the Government to frame



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proper rules so that the same can be followed by the Colleges. That can be framed by making a proper study and the current needs and basis for designating the person as Head of the Department. It can even be posting teachers for specific periods as the Head of the Department alternatively or the persons of higher post or as per the seniority, whatever may be the criteria the respondents would choose to prefer. It would be completely within the domain of the respondents, given the fact that the post of the Head of the Department is only a post to facilitate administration and cannot be a stigma on the senior or the persons who is holding the higher post etc., if a junior is post as Head of the Department. In view of the above, this writ petition is disposed of on the following terms:-

(i) The impugned order dated 09.03.2023 is upheld to the extent to grant the consequential service benefits to the 4th respondent as per the order of this Court in W.P.No.17863 of 2008 dated 10.11.2008;

(ii) However, the fixation of seniority by the impugned order between the petitioner and the 4th respondent can no longer be relevant in view of the fact that the petitioner has already been promoted as Associate Professor with effect from 26.12.2023.



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(iii) In view of the fact that except G.O.Ms.No.1785 Education (H3)

Department dated 05.12.1988 there is no other rule in respect of designating a person as Head of the Department and the rule of seniority is the only criteria to follow, it is only the petitioner who has to be designated as Head of the Department as on date and therefore the respondents are directed to designate the petitioner as the Head of the Department within a period of four weeks from the date of receipt of a copy of this order;

(iv) It will be open to the first respondent as well as the Government of Tamil Nadu to consider the issue of designating the teaching staff namely the staff in cadre of Professor, Associate Professor or Assistant Professor as Head of the Department and frame criteria in that regard and that it would be open for the respondents to thereafter revisit the appointment as Head of the Department in view of such criteria that may be framed by them. It would be in the best interests of the administration of departments in the colleges that such rules be framed at the earliest.

(v) No costs. Consequently, connected miscellaneous petition are also closed.

10.06.2024

Neutral Citations: Yes/No



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D.BHARATHA CHAKRAVARTHY, J.

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To

1. The Director,
Office of Directorate of Collegiate Education Chennai,
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No.577, Anna Salai,
Saidapet,
Chennai 600 015.
2. Teachers Recruitment Board
Rep.by its Secretary
Puratchi Thalaivar Dr.M.G.R.Centenary Building,
3rd & 4th floors, DPI Campus,
College Road,
Chennai 600 006.
3. The Principal
Government Arts College
Chidambaram 608 102

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