



W.A.No.3099 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.12.2024**

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE MR JUSTICE C. SARAVANAN

Writ Appeal No.3099 of 2024

and C.M.P.No.23632 of 2024

1.The State Of Tamilnadu
Rep.by its Secretary to Government,
Higher Education Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner
Director of Technical Education,
Chennai - 600 025.

3.Government Polytechnic College
Rep.by its Principal, Nagercoil.

... Appellants

-Vs-

1.S Alfred Xavier
S/o. S. Savarianantham,
8/18-A, Pleasant Home, Kadampara Vilai,
Ritapuram- 629159, Kanyakumari district.

2.E M Srinivasan
Principal, Govt. Polytechnic College,
Adi dravider Welfare Govt. Higher
Secondary School Campus,
Chevvaipattai, Thiruvallur District.



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3. Hebziba Angelo Durairaj
Principal, Govt. Polytechnic College,
Uthangarai.

... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent to set aside the order dated 08.02.2023 made in WP No.15093 of 2018.

For Appellants : Mr.D.Ravichander
Special Government Pleader

For Respondents : Mr.A.R.Suresh
for Mr.K.Arumugam – for R1

JUDGMENT

(Judgment of the Court was delivered by **R. Suresh Kumar, J.**)

This intra Court appeal has been directed against the order passed by the Writ Court dated 08.02.2023 made in WP No.15093 of 2018.

2. The first respondent herein / writ petitioner one Alfred Xavier was originally inducted as Instructor in the Polytechnic College on contract basis, which post has been subsequently re-designated as Lecturer. Thereafter, pursuant to the orders passed by the Tamil Nadu Administrative Tribunal on 06.04.2004, vide G.O.No.6, Higher Education (I2) Department dated 19.01.2012, the services of the writ



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petitioner has been regularized with effect from 21.12.1990, the date of his initial appointment. There has been an artificial break in service, for which a proposal has been sent by the Head of the Department to the Government, pursuant to which G.O.Ms.No.338, Higher Education (I2) Department dated 24.11.2017 was issued condoning the artificial break in service. By virtue of that, since already the services of the writ petitioner had been regularized with effect from his initial appointment ie., from 21.12.1990, it goes without saying that the writ petitioner would be entitled to get all service benefits including seniority and promotion on par with others as if that he has joined in service as Instructor, which post has subsequently been re-designated as Lecturer with effect from 21.12.1990.

3. When that being the position, the Government came forward to give promotions to the post of Principal of various Polytechnic Colleges by issuance of G.O.Ms.No.23 Higher Education (I2) Department dated 25.01.2018, before which on the same day G.O.Ms.No.22 was also issued, whereby the name of the writ petitioner / respondent has been left out in the panel fit for promotion to the next higher category. However, chance had been given to those whose names have been left out in the said Government Order to redress their grievance by making representations. But, without waiting for such representations from the aggrieved persons since G.O.Ms.No.23 also was issued, whereby the panel for promotion was



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operated and promotions were given to various people as Principals of Polytechnic Colleges, there has been absolutely no chance for the writ petitioner and other similarly placed persons even to make such representation for inclusion of their names in the panel for promotion and thereby become eligible for promotion to the post of Principals of Polytechnic Colleges.

4. On these circumstances, G.O.Ms.No.23 dated 25.01.2018 has been put under challenge in a writ petition in W.P.No.15093 of 2018, which was allowed by the learned Judge through the impugned order dated 08.02.2023, which order is under challenge in this writ appeal.

5. Insofar as the services of the writ petitioner is concerned, he entered into the services on 21.12.1990. Though initially he entered into service by way of temporary appointment, at the end of every academic year there has been an artificial break in service. In order to regularize the services from the date of initial appointment, the writ petitioner had approached the Tamil Nadu Administrative Tribunal and filed Original Application. The Original Application had been allowed and orders were passed by the Tribunal on 06.04.2004, where a direction has been given to the employer to regularize the services of the writ petitioner from 21.12.1990 ie., the date of his initial appointment. There has been an inordinate



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delay on the part of the employer in implementing the said order and ultimately a Government Order was issued in G.O.Ms.No.6 dated 19.01.2012 by the Higher Education Department, whereby the services of the writ petitioner had been regularized with effect from 21.12.1990 but without any arrears of monetary benefits. In the said G.O., the Head of the Department was also directed to send proposal to the Government to condone the artificial break in service at the end of every academic year.

6. Thereafter, the Government also came forward to issue G.O.Ms.No.338 Higher Education Department dated 24.11.2017, whereby the artificial break in service also had been condoned. Therefore, insofar as the services of the writ petitioner is concerned, his services were regularized without any break even from the date of his initial appointment as temporary service on 21.12.1990. From that date he shall be deemed to have been considered as permanent regular employee and is entitled for all service benefits except for arrears of monetary benefits.

7. When that being so, for the seniority list his initial date of appointment shall be taken into account and ultimately his name should have been considered to be included in the seniority list for promotion to the post of Principal. That was not done in view of the issuance of G.O.Ms.No.22 dated 25.01.2018. However, chance



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had been given to the writ petitioner and similarly placed persons to redress their grievance by making a representation. Without waiting for such representation to be made and redress their grievance, the Government issued another Government Order on the same day by G.O.Ms.No.23, whereby number of promotions have been given to the post of Principal. The writ petitioner having no other option filed W.P.No.15093 of 2018 challenging G.O.Ms.No.23 dated 25.01.2018.

8. After considering the said factual matrix as well as the legal position based on the various orders passed by the Government, of course belatedly, as well as the earlier order passed by the Tamil Nadu Administrative Tribunal dated 06.04.2004, which has been fully implemented only by the implementation of G.O.Ms.No.338 dated 24.11.2017, the learned Judge of the Writ Court has come to the conclusion, of course rightly, that the writ petitioner would be entitled to get the benefit of considering his seniority with effect from 21.12.1990, ie., his initial date of appointment in the post of Lecturer and thereby, he is also entitled to be given consequential promotional benefits including promotion to the post of Principal. Holding so, the writ petition was allowed by giving a direction to the respondents 1 and 2 in the writ petition, who are the appellants herein, to give notional promotion to the petitioner to the post of Senior Lecturer with effect from 03.02.2009; and notionally include his name in the seniority list, as well as the promotional panel in



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G.O.Ms.No.23 dated 25.01.2018 in the 28th place, immediately above the name of the fourth respondent herein and grant notional promotion to the post of Principal, with effect from 25.01.2018, together with all the service and monetary benefits, including the arrears of pay.

9. Insofar as the said direction is concerned, it is in consonance with the service seniority of the petitioner as well as various Government Orders passed in this regard except G.O.No.23 dated 25.01.2018. Therefore, to that effect the orders of the writ Court by giving the aforesaid directions cannot be said to be infirm and therefore, we do not want to interfere with the same.

10. However, the direction given by the writ Court through the impugned order with regard to arrears of monetary benefits would be taken effect from the date the writ petitioner has become eligible to be considered for promotion to the post of Principal, as the earlier Government orders ie., G.O.Ms.No.6 dated 19.01.2012 and G.O.Ms.No.338 dated 24.11.2017 have become final, which have not been challenged by the writ petitioner and therefore, with regard to the arrears of salary, the direction given by the learned Judge is to be clarified and accordingly it is clarified.



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11. It is also to be noted that even arguments were advanced by the learned Special Government Pleader that in G.O.Ms.No.37, Higher Education Department dated 13.02.2018, qualification has been prescribed for promotion to the post of Principal, whereby, apart from Undergraduate and Postgraduate degrees, the incumbent must have Ph.D for holding the said post, and since the writ petitioner does not possess Ph.D, he is not entitled to get such benefit of getting promotion to the post of Principal. The said argument is to be rejected for the simple reason that the said Government Order was issued on 13.02.2018, whereas, before such qualification has been prescribed, promotion has been operated by G.O.Ms.No.23 dated 25.01.2018 and also it is a fact that number of such persons who have been promoted to the post of Principal by virtue of G.O.Ms.No.23 did not have such a qualification. Therefore, on par with those people when the writ petitioner is also placed, seniority wise he should have been included in Sl.No.28 as directed by the learned Judge. Therefore, that argument also made on behalf of the appellants cannot hold any water and it has been rejected.

12. For all the reasons stated above, we do not want to interfere with the impugned order allowing the writ petition, except the clarification that we have made herein above with regard to arrears of salary. Accordingly, the directions



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given by the learned Writ Court shall be complied with by the appellants within a period of two months from the date of receipt of a copy of this order.

13. Resultantly, the writ appeal is dismissed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (C.S.N.,J.)
09.12.2024

KST
Index : Yes/No
NCS : Yes/No



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R. SURESH KUMAR, J.
AND
C.SARAVANAN, J.

KST

To

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