



WEB COPY

W.P.No.19777 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.03.2024
Pronounced on	12.04.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**W.P.No.19777 of 2020andWMP.No.24442 of 2020

G.Vijayakumar

...

Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to
Government, Higher Education
Department, Fort. St. George,
Chennai 600 009.
2. The Director of Technical Education,
Directorate of Technical Education,
No. 53, Sardar Patel Road,
Guindy, Chennai - 600 025.
3. The Principal, Government Polytechnic
College for Women (WPT),
Bharathiyar Road,
Coimbatore-641 044.

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Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of



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India, to issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to order dated 29-04-2019 having Ref. Proceeding No.23711/B-1/2011 the and order dated 26-12-2019 having Ref.Letter. No.23711/B-1/2011 issued by the 2nd Respondent and quash the same and consequently direct the 1st Respondent to instruct the 2nd Respondent to restore the Petitioner to Sl.No. 46 from Sl.No.58 in the seniority list of Lecturers (Civil Engineering), working in Government Polytechnic Colleges as per the proceedings of the 2nd Respondent dated 02-01-2014 having ref Proceeding No.23711/B-1/2011.

For Petitioner : Mrs.Nalini chidambaram,
Senior counsel for Mrs.C.Uma

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

Heard Mrs.Nalini Chidambaram, learned senior counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate for the respondents and perused the materials available on records.

2. A Writ of Certiorarified Mandamus has been filed by the petitioner to challenge the order dated 29-04-2019 having Ref.



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Proceeding No.23711/B-1/2011 and the order dated 26-12-2019 having Ref.Letter. No.23711/B-1/2011 issued by the 2nd Respondent and to direct the 1st Respondent to instruct the 2nd Respondent to restore the petitioner to Sl.No. 46 from Sl.No.58 in the seniority list of Lecturers (Civil Engineering), working in Government Polytechnic Colleges as per the proceedings of the 2nd Respondent dated 02-01-2014 having ref Proceeding No.23711/B-1/2011.

3. The petitioner has been appointed as a chargeman (civil (OP) grade II) in the Cordite Factory owned by the Ministry of Defense, Central Government, Aravankadu, Nilgiris District and he was directed to join training as a chargeman. On 30-06-2003. On 23-06-2003, the petitioner executed a BOND for Rs. 1,00,000/- on the condition that, in the event of the petitioner leaving his service under the Government of India as chargeman Grade II shall on demand refund to the President of India. On 17.01.2006 the petitioner has got the permission to the post of Lecturer /Civil Engineering in Tamil Nadu State Government Engineering Colleges/ Polytechnic and his



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application was forwarded through the Works Manager/A1 General Manager, Cordite Factory.

4.The petitioner has submitted an undertaking to the effect that he would resign his post held in C.F.A. in the event of his selection to the post and agreed to fulfil the bond condition agreed by him on his appointment. On 01.04.2006 the petitioner wrote through the proper channel to the General Manager, Cordite Factory, Nilgris, requesting a NOC to attend the certificate verification for the post of Lecturer/Civil Engineering on 05.04.2006.

5. After the certificate verification was over and he attended the selection process and was declared selected for the post of Lecturer in Civil Engineering on 20.04.2006. On 24.07.2006 the petitioner attended counselling, and he was allotted to Government Polytechnic College, Coimbatore. It was decided that the petitioner should join duty on 18.08.2006.



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6. In the meantime, the petitioner wrote a letter to the General manager of Cordite Factory to relive him from Cordite Factory. On 25.07.2006 the petitioner requested the Director, DOTE, issue a confirmation letter to the General Manager stating the acceptance of the remaining part of the bond at the earliest. On July 29, 2006, the Director of DOTE gave a confirmation letter as to the enforceability of the remaining part of the bond period (4 years) under DOTE. On 04.09.2006 the Director, DOTE, wrote a letter regarding the enforceability of the remaining part of the bond period with the government of Tamil Nadu and sought permission to transfer the bond in favour of the State Government of Tamil Nadu. The orders are awaited. Extension of time was granted to the petitioner for joining the post of lecturer. However, there was a delay in getting concurrence from the government of Tamil Nadu with regard to the enforceability of the remaining part of the bond period. On 29.12.2006 the government of Tamil Nadu has issued G.O.Ms.No.469, Higher Education (12) Department dated 29.12.2006, were permitting the petitioner to execute a fresh bond to serve the remaining period of



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bond in the Technical Education Department. Thereafter, the Director of Technical Education wrote a letter to the General Manager, Cordite Factory, requesting him to obtain a fresh bond as stipulated by the State Government in the above government order. Subsequent to that the petitioner had executed a new bond as required and got relieve from the Cordite Factory on 01.02.2007. In view of the time consumed in completing the above said procedure the petitioner could join duty as a lecturer at Government Polytechnic College on 05.02.2007. The petitioner was given the 46th rank among 56 lecturers working at Polytechnic College, Coimbatore. However, the petitioner was given to understand that a person below the petitioner in the seniority list is going to make a request to place the petitioner at the bottom of the seniority list as he had taken more than six months to join.

7. Mrs.Nalini Chidambaram, learned senior counsel for the petitioner submitted that the delay in joining is not due to the fault of the petitioner but due to the time consumed for the interaction



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between the two governments, i.e., the central and state governments, in getting the bond formalities and relieving the petitioner from Cordite Factory.

8. Hence, the petitioner has requested DOTE not to alter the seniority already fixed by the Director, DOTE, in proceedings dated 02.01.2014 in Ref.No.23711/B-1/2011 dated 02.01.2014. However, in the consequential seniority list prepared, the petitioner has been placed at the bottom, below the junior most in the seniority list.

9. Mrs.Nalini Chidambaram,further submitted that the petitioner was always ready and willing to come and immediately join the post, even before six months. But the delay was only due to fulfilling the bond conditions and that resultant delay in getting the relieving order from Cordite Factory, where he was employed earlier. On 05.05.2020, a government order in G.O.Ms.NO.238 Finance (PGC.II) Department dated 05.05.2020 was issued, permitting the petitioner to continue under the old pension scheme as a special case by exercising powers conferred under Rule 82 of the Tamil Nadu Pension Rules, 1978.



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However, it is claimed the order rejecting the petitioner's representation to restore his seniority is erroneous in law and hence the petitioner has filed this writ petition seeking appropriate relief.

10. According to Rule 7(5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the candidate selected by the Commission for appointment failed to join duty before the maximum extent of the time limit of six months but allowed to join duty beyond the time limit of six months, would get his seniority fixed below the junior most candidate appointed to the post. For the sake of convenience, the said rule is extracted hereunder:

"7.....

(5) If an approved candidate selected by the Commission for appointment by direct recruitment fails to join duty ordinarily within three months from the date of receipt of the order directing him to join duty or within an earlier date, if so specified by the appointing authority in special circumstances, he shall forfeit his right for appointment to the post and his name shall be removed from the approved list: Provided that in special circumstances, the appointing authority may extend the



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time limit referred to in this sub-section up to six months for valid reasons: Provided further that in exceptional circumstances, if any candidate is allowed to join duty beyond the time limit of six months, his seniority in that post shall be fixed below the junior most candidate appointed to that post in that service on the date of his joining duty."

11. For the case of the petitioner, the above Rule has been invoked. Admittedly, the petitioner could not join within six months from the date of receiving the joining order. However, the petitioner contended that the delay was not due to any fault on his part but was due to the delay caused by the formalities to relieve him from the services he rendered as Charge Man Grade II under the Government of India.

12. Mrs.Nalini Chidambaram, submitted that some trifle delay caused due to the reasons out of the control of the petitioner cannot be viewed so strictly that the petitioner's seniority ought not have been disturbed.



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WEB COPY **13.** A reference was made to the division bench judgment of the Allahabad High Court in the case of *M/S Shriram General Insurance Company Vs. Arvind Kumar and Another* dated 11.01.2017 wherein an observation has been made with reference to a settled law that courts of justice generally do not take trifling and immaterial matters into account in view of the maximum *de minimis non curat lex*, which means the law does not concern itself with trifles.

14. The case involved in the above judgment relates to some incidence of insignificant financial burden for which the insurance companies filed appeals. The court has held that in matters involving financial liability up to a particular limit, say Rs. 1 lakh, depending upon the financial position of the company, the appeals need not be filed by incurring litigation expenses more than the financial burden. So it is held that the trifle nature of financial burdens can be ignored instead of loosing the money spent on litigation.

15. The learned senior counsel for the petitioner relied on



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another judgment of this Court in the case of ***S.Ramesh Vs. State through the Inspector of Police and other*** reported in ***2018 SCC***

OnLine Mad 2563. In the said case, it is held that a mere entry into a property is not enough to constitute an offense of criminal trespass unless such an entry is done to commit an offense injurious to some persons interested in the property for the purpose of causing annoyance. So it is held that in such trifling circumstances, no criminal proceedings be initiated and opting to such a course of action is nothing but an instrument of harassment. That cannot have any application in the division bench judgment of Allahabad High Court in the case of ***Dhingra Mechanical Works Vs. Commissioner of Sales Tax, U.P. Lucknow*** reported in ***(1972) 29 STC 238*** , it is held that a shortage of 3 paise is too trivial to prosecute a person for default in payment of tax. In all such cases cited, it is correct to say that the law does not take notice of trifles and that a tiny deviation would weigh little or nothing on the public interest and hence, it should be overlooked for the same reason the maximum *de minimis non curat lex* can be invoked in public interest and not private interest.



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WEB COPY **16.** But in the instant case, to ignore the delay that occurred in joining the post by according the original seniority to the petitioner without following the provisions of Rule 7(5) of the Tamil Nadu Servants (Conditions and Service) Act 2016 would affect the private interests of many persons who had joined in time. The benefit of getting place above the petitioner in accordance with rules is a private right accrued to them and hence the policy of public interest has got no role to play.

17. It is true that the petitioner did not intend to make any delay to join after he got the call letter. But the petitioner's earlier employment and his commitment attached to such employment or the consequent delay have got nothing to do with the other candidates who have already joined in their services within three months or a maximum period of six months as contemplated under Rule 7(5) of the Tamil Nadu Servants (Conditions and Service) Act 2016. If the act of incidence is only on the petitioner and the government, it may be



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possible to cure or condone the delay by giving the benefit of *de minimis non curat lex*.

18. But in the instant case, private interests are affected. Everyone who comes under Rule 7(5) of the Tamil Nadu Servants (Conditions and Service) Act 2016 would be governed under the Act and there cannot be any disparity in invoking the Rules. Hence, one individual cannot be given any advantage over the other and the Rules have to be applied uniformly to all those who come under its purview. Hence, I do not find any reason to ignore the delay and eventually the rules and give the benefit of restoring the original position of the petitioner in his order of seniority. The impugned order has been passed by rightly estimating its impact upon private interest. Hence, in my opinion the impugned action / order does not suffer from any infirmity due to exaggeration of trifles.

In the result, this Writ Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2024



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Index : Yes
Internet : Yes
Speaking
Neutral Citation : Yes

jrs

To

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2. The Director of Technical Education,
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No. 53, Sardar Patel Road,
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R.N.MANJULA, J.

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