
(1996) 03 MAD CK 0054
In the Madras High Court
Case No : Writ Petition No. 636 of 1996

C. David Thampi Dhas

APPELLANT

Vs

N.M. Christian College, Marthandam and Others

RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 30(1), 31

Citation : (1997) 2 LLJ 911

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : D. Sadhasivan, for the Appellant; Addl. Govt. pleader, R. Gandhi and Ms. B. Saraswathi Prasad, for the Respondent

Judgement

1. The short question that arises for consideration in this writ petition is, whether the impugned order refusing to reemploy the petitioner and

continue his service till May 31, 1996 but relieving him from duties on the afternoon of January 31, 1996 is in violation of G.O.Ms. No. 281,

Education, dated February 13, 1981.

2. The short facts are, the petitioner completed his 58th year of age on January 10, 1996, i.e., after the commencement of the academic year

1995-96. According to him, he is eligible to continue in service till May 31, 1996 by virtue of G.O.Ms. No. 281, Education, dated February 13,

1981. Under that Govt. Order, the age of retirement of teachers is fixed as 58 years and if any teacher has to retire in the middle of the academic

year, he would be permitted to continue till the end of the academic year with, the permission of the Director of Collegiate Education. The

petitioner gave a representation to the 1st respondent to continue him in service till May 31, 1996. The 1st respondent by the impugned order

dated December 13, 1995, held that the petitioner would not be given reemployment upto May 31, 1996 and that he would be relieved from

duties on the afternoon of January 31, 1996. According to the petitioner, the 1st respondent has acted contrary to 3 G.O.Ms. No. 281,

Education, dated February 13, 1981 and that other Professors by name Prof. P.Ponnuswami and Prof. Yedamuthu have already been permitted

to continue in service in this academic year after the date of their superannuation and that the petitioner alone has been singled out.

3. The petitioner sent a representation to the 3rd respondent, who is the competent authority. However, the 1st respondent passed the following

impugned order on December 13, 1995 :

In the Governing Board Meeting of the College held on September 22, 1995, it was resolved not to give reemployment to you upto May 31,

1996. So, you will be relieved of your duties in this College in the afternoon of January 31, 1996.

This is for your information.

Hence " the petitioner has filed the present writ petition for a mandamus directing the 1st respondent to continue him in service till May 31, 1996.

4. Respondents 1 and 2 filed a counter affidavit and pointed out certain deficiencies in the service of the petitioner and the issuance of various

memos to the petitioner by the college management from time to time. According to them, there was non-cooperation in finalising the internal

assessment marks on the part of the petitioner and therefore memo dated May 20, 1987 was issued to him by the Principal, who was the Chief

Superintendent of the University Examinations. Again, there was a complaint from the second year Botany students that the study tour prescribed

for them for the first year course was not conducted. The petitioner was issued a memo by the Principal on December 23, 1987. Again, on

February 8, 1989, due to the indifferent attitude of the petitioner, the Department of Botany was closed as no staff member of the Department was

available and the petitioner being the Head of the Department took no care to see that the Department was functioning on that day. Consequently,

the Principal issued a memo dated February 8, 1989 and called upon the petitioner to submit his explanation. "Re petitioner in his explanation

stated that he has made necessary arrangements and he has not denied the

closure of the Department due to want of staff in the Department on that date. Therefore, it is submitted by respondents 1 and 2 that the performance and past conduct of the petitioner while working as the Head of the Department of Botany in the college is not satisfactory and that there are several complaints with regard to his administration of the Department, submission of internal assessment marks and in conduct of study tour to the students.

5. Respondents 1 and 2 would further submit that the petitioner was not loyal to the institution and the management and since his performance is

too was not satisfactory, it was resolved not to grant reemployment to the petitioner till May 31, 1996. Other teachers were given reemployment

till May 31, 1996 as their performance in the college was satisfactory and there was no complaint against any one of them warranting refusal to

grant reemployment. If there is complaint or allegation against the teaching staff and if their service is not satisfactory, the said teaching staff cannot

claim to continue on reemployment basis till the end of the academic year on the ground that he is medically fit. The reemployment or non-

employment in a minority college cannot be decided by the 3rd respondent and it is the prerogative of the minority management which is in

administration of the college which flows from Article 30(1) of the Constitution of India, which guarantees fundamental right to establish and

administer educational institutions. The petitioner was relieved of his duties on January 31, 1996 and he is no longer functioning as the Head of the

Department of Botany in the college and that another senior most Lecturer viz., Mr. Ebenezer is functioning as the Head of the Department of

Botany from February 1, 1996 and as such, the petitioner cannot maintain the writ petition.

6. Respondents 1 and 2 have also filed an additional counter affidavit stating that the 3rd respondent has no jurisdiction to give permission to the

petitioner to continue in service as employment, reemployment or non-employment powers are vested with the management under the Private

Colleges Regulation Act and the Constitution and Rules of the Educational Agency. It is stated that the proceedings issued by the 3rd

respondent on January 22, 1996 stating that permission is granted to continue the petitioner's service from February 1, 1996 to May 31, 1996,

though proposal was not received from the Correspondent, is without any authority and that the said recommendation of the 3rd respondent cannot be accepted in view of the pendency of the writ petition.

7. A reply affidavit has been filed by the petitioner denying all the contentions raised in the counter affidavit and the additional counter affidavit.

8. I have heard the arguments of Mr. D. Sadhasivan, learned counsel for the petitioner, Mr. R. Gandhi, learned Senior Counsel for Respondents 1

and 2 and Ms. B. Saraswathi Prasad, a learned Addl. Govt. Pleader for Respondents 3 and 4.

9. It is contended by Mr. D. Sadhasivan, learned counsel for the petitioner, that when no disciplinary action has been taken against the petitioner, it

is mandatory on the part of the management to continue the petitioner in service till May 31, 1996. As rightly pointed out by Mr. D. Sadhasivan,

no disciplinary action has ever been taken against the petitioner though some irregularities have been alleged to have been committed in the years

1987 and 1988 when the petitioner was the Head of the Department of Botany. G.O. Ms. No. 281, Education, 5 dated February 13, 1981 states

as follows :

The Government accordingly direct that the age of retirement of aided college teachers shall be 58 years for purpose of assessment of grant. No

teacher shall be permitted to continue beyond 58 years for purpose of grant. Those who attain 58 years in the middle of the academic year shall

however be permitted to continue till the end of that academic year.

There may be some teachers who would have attained 58 years and may be in the age group of 59-60 years, now working in aided colleges.

Such teachers, who are on reemployment, may be continued till the end of the academic year 1980-81 and they shall be assessed for grant as a

special case only for the year 1980-81.

10. It is contended by the learned counsel for the petitioner that the alleged memos dated May 20, 1987, December 23, 1987 and February 8,

1989 do not warrant any action against the petitioner as they were found to be baseless and the entire matter was dropped then and there. It is

also pointed out that the Governing Board has passed a resolution behind the back of the petitioner and the alleged allegations contained in the

resolution were never served on the petitioner and he was not given any

opportunity to 1! explain. The procedure adopted by the management, therefore, is against the principles of natural justice. Consequently, as rightly contended by the learned counsel for the petitioner, the said resolution is void and it is not open to 2(Respondents 1 and 2 to rely on it. It is also not fair on the part of the management to have passed the impugned order and resolution, which are, in my opinion, void.

11. It is submitted by the learned counsel for the petitioner that the 1st respondent has stated that the reemployment was not granted by the 1st respondent on the specific ground that the petitioner was not loyal to the institution and the 3rd(management and that his performance too was not satisfactory. But the resolution of the Governing Board relies on another allegation also, viz., the petitioner has not fulfilled his obligation to the management. Admittedly, this has 3! also not been communicated to the petitioner. 7!is allegation has been denied as incorrect in the reply affidavit.

In my opinion, the petitioner is entitled to be reemployed and continued in service till May 31, 1996 like other 4(teachers who were given such reemployment, and that the impugned resolution and the order are arbitrary and violative of Articles 14 and 16 of the Constitution of India.

12. It is also asserted by the petitioner that there has never been any adverse remark against him in his Service Register. The 3rd respondent, who

is the competent authority in deciding upon the matter of reemployment, has 5(passed an order permitting the petitioner to continue in service from

February 1, 1996 to May 31, 1996, which is binding on Respondents 1 and 2. The Government Orders and the various instructions issued are

binding on the private s colleges receiving aid or grant. As per G.O.Ms. No. 281, Education, dated February 13, 1981 and the Proceedings of the

4th respondent in Re. No. 48914/G.3195 dated September 14, 1995, no proposal for reemployment should to be with held by tne management

as the Regional Joint Director concerned is the competent authority to decide the merit of the case. In the instant case " according to the learned

counsel for the petitioner, the 3rd respondent by his order dated January 22, 1996 granted reeniplo ment from February 1, 1996 to May 31, 1

after considering the merits of the case and that the said order is binding on Respondents 1 and 2 as they have to obey the said order and continue

to the petitioner in service till May 31, 1996.

13. In support of his contention, Mr. D. Sadhasivan placed strong reliance on the judgment of a Division Bench of this Court in is W. A. No. 1

179 of 1993 etc. dated September 6, 1994 (S.Sundaram v. 7he Secretary, C.S.L Diocese of Madras). In that case, a common question that

arose for consideration was as to whether the directions contained in the Government orders as to continuation of the teaching staff who attain the

age of superannuation during the academic year till the end of that academic year is binding on the minority institutions like the present one. It was

contended on behalf of the teachers that reemployment of such teachers till the end of that academic year is not a fresh appointment inasmuch as it

is the very same teacher who is continued on reeniployment conditions and not as a to regular appointee. On the contrary, it was contended on

behalf of the minority institutions that the reemployment is not a continuity of service because as per the Government Order, on attaining the age of

superannuation, pension has %5 to be settled and the reemployment is not a continuity of service and it is a fresh appointment, which is not

permissible in the case of minority institutions as it is the right of the management of the minority institutions to select and appoint teachers who Mfill

the qualifications prescribed by the State Government and 915 that the State Government has no authority to compel the minority institutions to

obey its order which is contrary to the right guaranteed to theni under Article 30 of the Constitution of India. The Division Bench has pointed out,

that an s analysis of the Government Orders would disclose that reemployment is for ensuring continuity of benefit of teaching from the same

teachers to the students during thd academic year, that it is a reemployment and not continuity of service on fulfilling the conditions that the work

and conduct are satisfactory, that they are physically found fit for further service and that no disciplinary proceedings are pending against them.

Therefore, it is clear, that it is the very is same teacher, whose work and conduct are found to be satisfactory and who is physically found to be fit

for further service and against whom no disciplinary proceeding is pending, is directed to be continued on reemployment basis during the remaining

period of that academic year.

14. Learned counsel for the petitioner is right in saying that when the State Government has power to prescribe the age of superannuation of the

teachers in the minority educational agencies, it can very well instead of increasing their age of superannuation, direct that they should be continued on reemployment basis till 30 the end of the academic year. Such a power is concomitant to or flows from the larger power to prescribe the age of superannuation and other conditions of service of teachers, whether serving under minority educational agencies Or 35 other private educational agencies. I am of the view that the management of the minority educational institutions shall not be permitted to take shelter under Article 30(1) of the Constitution of India. The management of the minority 40 institutions cannot complain of invasion of the fundamental right to administer their institutions when they deny their members of staff the opportunity to achieve the very object of Articles 30(1), which is to make the institution an 45 effective vehicle of education. As pointed out by the Division Bench, the Government Order is only regulatory in nature. It did not take away the right of the management to manage its affairs in accordance with the rules and regulations and also to make recruitment in accordance with the rules and regulations framed by the State Government from which they receive the full aid. I am of the view that the Government Order does not in any way interfere with the rights guaranteed to the minority institutions under Article 30(1) of the Constitution of India. They are only regulatory and they satisfy the tests laid down by the Supreme Court in various cases. They are, in my opinion, reasonable and are regulatory and do not affect the character of the minority institution.

15. It is useful to refer the following passages which occur in paragraph 16 of the judgment of the Division Bench.

We are not concerned with the filling up of vacancies nor with the appointments. It is only on reemployment with a view to ensure continuity of the benefit of teaching by the teachers who attain the age of superannuation during the middle of the year, for the rest of the academic year.

Therefore, the measure itself is for a short period till the end of the academic year, applicable to such of the teachers, who retire during the academic year. It does not take away the right of the management to fill up the said post by recruitment at the end of the academic year. For the reasons stated above, point (i) is answered in the affirmative.

16. In the impugned order in the instant case it is only stated that the

management has resolved not to give reemployment to the petitioner upto May 31,1996. Nothing is stated in regard to the work and conduct of the petitioner or about his physical fitness for further service. o Admittedly, no disciplinary proceeding is pending against the petitioner as on date. The decision, in my opinion, has been taken without looking into the records of the petitioner. The petitioner has produced many merit certificates issued to him by the very same management. In the certificate dated April, 27,1981 issued by Mr. Arthur J.Harris, Principal and Secretary of Christian College, Marthandam, it is stated thus :

He has had considerable experience in teaching Botany and organising laboratory work in it. He can express himself clearly and lucidly.

Prof. C. David Thampi Dhas is sociable and cosmopolitan in outlook. He makes friends easily and can fit into new situations and environment

without difficulty . He has been loyal to the institution and helpful to the Management. His character and Conduct have been excellent.

The certificate issued by Mr. B.O.B Fagbomi, Principal Lecturer and Head of Department of Biology, The Polytechnic, Ibadan, is Nigeria dated

September 13, 1984 refers to the petitioner's organising ability and his other good qualities. The petitioner has also produced several other

certificates which have been filed in the typed set and additional typed set to prove his Merit.

17. As far as the conduct of the petitioner is concerned, no material is put forth by the management. Therefore, I am of the view, that the decision

of the management not to continue the petitioner in service after January 31, 1996 is without any basis and arbitrary. As rightly contended by the

learned counsel for the petitioner, there is no question of any teacher asking for 30 any continuation. The Government Order specifically states that

the institutions are to continue the teachers till the end of the academic year provided they satisfy the three conditions laid down in the Govt.

Order., G.O.Ms. No. 452 dated March 24, 1970, which has been followed in the subsequent orders. In addition to this, the records placed

before me disclose that the petitioner did seek for extension and when the same was not granted, he approached the educational authorities of the

Government by way of representation and that the 3rd respondent has passed the following Order :

Phonogram To Thiru D. Murugesan, Special Government Pleader (Education), High Court, Madras-104

W. P. No. 636 of 1996 and W. M. P. No. 1038 of 1996 in W.P. No. 636 of 1996 filed by C. David Thampi Dhas.

Re-employment from February 1, 1996 to May 31, 1996 for the petitioner orders issued by the Joint Director of Collegiate Education,

Tirunelvely, RC. NO. 23338/D2/95 dated January 22, 1996.

Joint Director of Collegiate Education.

Rc. No. D2/23338/95 dated January 22, 1996,

Post copy sent for confirmation. Re-employment orders in respect of Thiru C. David Thampi Dhas for the period from February 1, 1996 to May

31, 1996 already issued by this office by using discretionary powers even though the management refused to send proposal.

(Sd.) X X X X

Joint Director of Collegiate Education.

18. Mr. R. Gandhi, learned Senior Counsel For Respondents 1 and 2, invited my attention to the decision of a Division Bench of this Court

reported in The Correspondent, Kayalpattinam Argument High School v. Esther Selvaraj 1976 (II) M.L.J. 105 wherein the Bench has held as

follows :

Employment in private institutions is entirely governed by contractual basis. No rules having force of law apply to the service conditions. It may be

that the Government, in giving effect to their policies on education may give directions from time to time which is open to the private institutions to

follow or not. The only control the Government may have on such institutions is through the aid which they extend to such institutions. The order of

Government is certainly not a rule having the force of law. It is merely an administrative order which the institutions may choose to ignore whatever

may be the consequences. It cannot be said that the Government Order by its own force brought about any change in the conditions of service

governed by a contract. A private institution is not regulated by a Government Order in the matter of conditions of service of its own employees

which are left to contractual relationship.

19. Referring to the above ruling, Mr. R. Gandhi said that the order of the Government dated January 22, 1996 granting extension of service to the

petitioner is merely an administrative order which the institution may choose to ignore whatever may be the consequences. I am unable to agree

with the said contention. In some situations, a direction may be held to be binding on the administration. In service matters, in the absence of rules,

directions are regarded as enforceable. An example of this was furnished by the Supreme Court in Union of India (UOI) Vs. K.P. Joseph and

Others, . In that case, the Government issued an office Memorandum providing for certain benefits to ex-military personnel on re-employment. The

respondent wanted the memorandum enforced in his case. The Government contended that the memorandum being an administrative direction

conferred no justiciable and enforceable right upon the respondent. The Supreme Court observed as follows :-

Generally speaking an administrative order confers no justiciable right, but this rule, like all other general rules is subject to exceptions. To say that

an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and

impose duties.

Accordingly the Supreme Court held that in that case the memorandum conferred on the respondent the right to have his pay fixed in the near

specified therein and it formed a part of the conditions of service.

20. In Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, , an office memorandum regulating seniority in certain Government

posts was held binding as the Government had been following the same for nearly two decades.

21. , makes it incumbent upon the management, which receives aid from the State Government, to abide by the orders that are issued from time to

time by the State Government, of course, subject to them being in conformity with the right guaranteed on the minority institutions under Article of

the Constitution of India.

22. In a similar case in A. Karunanidhi v. The Secretary and Correspondent, Poompuhar College, Melaiyur 1995 (I) M.L.J. Shivaraj Patil, J.,

held that the teacher in that case ought to have been re-employed till the end of the academic year. The learned Judge, in arriving at the said

conclusion, has referred to various decisions and also followed the Division Bench Judgment of this Court in W.A. No. 1179 of 1993, etc.

referred to supra. The learned Judge has held as follows :

A Principal has also got teaching assignment. It cannot be ignored that the petitioner joined the college as Tutor, later became Lecturer and then

Professor. Looking to the various provisions of the Tamil Nadu Private Colleges (Regulation) Act, the Principal cannot be excluded and denied the

benefit of the Govt. Order in regard to re-employment till the end of the academic year.

23. I have also in a similar case in M. Thangavelu v. Joint Director of School Education (Higher Secondary), Madras-6 (W.P. No. 11248 of 1995

dated January 19, 1996) allowed the writ petition and directed the management to continue the services of the teacher concerned from the date of

superannuation till May 30, 1996.

24. In the result, for the reasons stated is above, I pass the following order :

a) The Writ Petition is allowed;

b) The impugned order relieving the petitioner from service from the afternoon of January 31, 1996 is quashed;

c) The Management/Respondents 1 and 2 are directed to continue the petitioner in service till May 31, 1996 by re-employment paying him salary

and other attendant benefits from the date of his superannuation till May 31, 1996.

d) I make no order as to costs.