

(2010) 12 MAD CK 0089

In the Madras High Court

Case No : WPMP No. 29339 of 2001 in WP No. 19908 of 2001

C. Rajagopal

APPELLANT

Vs

Director of Collegiate Education, Bharathiar University and
Erode Arts College

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Private Colleges Regulation Act — Section 15
Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 15

Citation : (2010) 12 MAD CK 0089

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : R. Subramanian, in WP Nos. 19908 and 23461 of 2001 and V. Ajay Khose, in WP Nos. 24577/07 and 6862/2010, for the Appellant; R. Subramanian in WP No. 24577/07 for R5 and WP No. 6862/10 for R4, N. Kavitha, for Bharathiar University, V. Raghavachari, for Erode Arts College, Erode, P. Muthukumar, Government Advocate for Joint Director of Collegiate Education, Chennai and Director of College Education, Coimbatore, for the Respondent

Judgement

M.M. Sundresh, J.—In view of the common issues involved in all the four writ petitions, they have been up together for disposal.

2. The writ petition in WP No. 19908 of 2001 has been filed by the Petitioner challenging the proceedings of the Respondents No. 2 dated

03.07.2001, wherein the approval sought for to approve the Petitioner's appointment as a Lecturer in Computer Science by the Principal of the

3rd Respondent College was rejected. The Petitioner has also sought for consequential direction directing the 2nd Respondent to approve the

qualification of the Petitioner for the appointment as Lecturer in Computer Science.

3. Writ Petition No. 23461 of 2001 has been filed by the very same Petitioner in WP No. 19908 of 2001, challenging the proceedings of the Joint

Director of Collegiate Education, Coimbatore who has been arrayed as the 2nd Respondent in the writ petition whereby permission has been given

for the bifurcation of departments into Mathematics and Computer Science from the earlier combined department Computer Science.

4. Writ Petition No. 24577 of 2007 has been filed by the Petitioner challenging the order of the Director of Collegiate Education dated

19.04.2007 with a further prayer for a consequential direction to establish separately the Computer Science department. The writ petition has been

filed by challenging the order impugned which has been passed as a consequent to the interim order of the order passed in WP No. 23461 of

2001.

5. Writ Petition No. 6862 of 2010 has been filed by the Petitioner in WP No. 24577 of 2007 seeking to quash the order dated 25.03.2010

passed by the Respondent college whereby the appointment of the writ Petitioner in WP Nos. 19908 of 2001 and 23461 of 2001 as a Chairman,

Board of Studies in Computer Science was made. By the said order, the earlier appointment made in favour of the Petitioner as the Chairman,

Board of Studies of Computer Science was kept in abeyance in view of the interim order obtained in WP No. 23461 of 2001.

6. The Petitioner in WP No. 19908 of 2001 was appointed as an Asst. Professor of Mathematics with the Respondent college. The said order of

appointment was made on 31.10.1985 appointing him as a Asst. Professor of Mathematics from 01.11.1985 to 31.05.1986. It has been made

clear in the said order that the appointment is subject to the approval of the Registrar, Bharathiar University, Deputy Director of Collegiate

Education and Director of Collegiate Education. The Petitioner's qualification was approved by the Respondent University as an Asst. Professor

of Mathematics subject to the condition that he should qualify for the M. Phil. Degree. Similarly, the appointment of the Petitioner in WP No.

24577 of 2007 and 6862 of 2010 was made by the Respondent college on 25.07.1986 as an Asst. Professor of Computer Science subject to the

approval of the authorities concerned.

7. The Respondent college was a private aided college affiliated with the

Bharathiar University. From the year 1998, it became an autonomous college subject to the control of the Respondent University. The departments of Mathematics and Computer Science were combined into one even though they are two separate departments and accordingly they have been given a nomenclature of Computer Science department.

8. The Petitioner in WP No. 19908 of 2001 is having the qualification of having a master degree in M. Sc. Mathematics. He was also having PG

Diploma in Mathematics at the time of his appointment. He was allowed to take classes for the Computer Science students as well. A decision was

made by the Joint Director of Collegiate Education to bifurcate Computer Science course and Mathematics course into separate departments in

and by the order dated 23.10.2001. In the meanwhile, an order was passed by the Bharathiar University on 03.07.2001 rejecting the approval

sought for by the Respondent college seeking qualification of the approval of the Petitioner in WP No. 19908 of 2001 for the post of Lecturer in

Computer Science. Challenging the order bifurcating the two departments separately, a writ petition was filed, an interim order has been obtained.

Consequent to the said order, orders have been passed by the Director of Collegiate Education continuing the department as Computer Science

and consequentially, the Respondent college passed an order withdrawing the order passed in favour of the Petitioner in WP No. 6862 of 2010

appointing him as the Chairman, Board of Studies in Computer Science and in his place, the Petitioner in WP No. 19908 of 2001 has been

appointed.

9. The above said facts narrated would indicate that the subsequent writ petitions have been filed as a consequence to the order passed by the

Respondent University dated 03.07.2001 which is the subject matter of the writ petition filed in WP No. 19908 of 2001 whereby the approval

sought for by the Respondent college was rejected. Therefore, the reliefs sought for in the other writ petitions being consequential, the core issue to

be decided is as to whether the rejection order passed by the Respondent University on the approval sought for by the Respondent college in

favour of the Petitioner in WP No. 19908 of 2001 is valid in law or not.

CONTENTIONS OF THE PETITIONER IN WP No. 19908/01 & 23461/01

10. Mr. R. Subramanian, learned Counsel for the Petitioner in WP Nos. 19908 of

2001 and 23461 of 2001 submitted that the qualification obtained by the Petitioner is the prescribed qualification for the appointment of a Lecturer of Computer Science. The learned Counsel submitted that it is a fact that the Petitioner was made to work both as a Lecturer in Mathematics and as a Lecturer in Computer Science and therefore the Petitioner being a senior person, the approval ought to have been granted by the Respondent University. The departments of Mathematics and Computer Science were combined into one department and appointments have been made together for the vacancies and hence it cannot be said that the approval cannot be given in favour of the Petitioner. The Respondent University had in fact considered the approval in an earlier case in favour of one, K. Natarajan, who is identically placed like the Petitioner and in fact filed a counter affidavit before this Hon"ble Court stating that the qualification obtained with M. Sc Mathematics issued by Indian Institute of Technology can be taken as a required qualification for the appointment as Lecturer in Computer Science.

11. It is the further submission of the learned Counsel that the Respondent University cannot adopt two different yardsticks, one in the case of one Mr. K. Natarajan and another in the case of the Petitioner. The Petitioner having worked as a Lecturer in Computer Science and being a senior cannot be deprived of his seniority. The subsequent order of the Director of Collegiate Education was challenged in view of the fact that the Petitioner would be placed with the Mathematics department if the bifurcation is given effect to without deciding his rights. Therefore, the learned Counsel submitted that the writ petitions filed by the Petitioner in WP Nos. 19908 and 23461 of 2001 will have to be allowed and consequently, the other two writ petitions filed will have to be dismissed.

12. The learned Counsel further submitted that a perusal of the order impugned dated 03.07.2001 would exemplify the fact that the said order has been passed contrary to Section 15 of the Private Colleges Regulation Act. In as much as the Respondent University being the authority, it cannot act as per the directions of the Joint Director of Collegiate Education. Therefore, the order impugned will have to be set aside.

CONTENTIONS OF THE PETITIONER IN WP No. 24577/07 & 6862/10

13. Mr. V. Ajay Khose, the learned Counsel for the Petitioner in WP Nos. 24577 of

2007 and 6862 of 2010 submitted that the writ petitions filed

by the Petitioner in WP Nos. 19908 and 23461 of 2001 will have to be dismissed for not impleading the necessary and aggrieved party as a

Respondent. Admittedly, for the Petitioner in WP No. 19908 of 2001, approval was given by the Respondent University as a Lecturer in

Mathematics. The seniority has been fixed by the Respondent University separately for the department of Mathematics and Computer Science.

The relevant rules and regulations of the University clearly spells out the procedure to the effect that in a given case when two departments are

functioning in a single name, and after the bifurcation, a Lecturer working in one of the department cannot seek seniority over others in the other

department. Such as person has to get his approval and while doing so, he will loose his seniority.

14. The reliance made upon for the approval given in favour of one K. Natarajan has no factual basis in as much as the Petitioner in WP No.

19908 of 2001 has in fact been appointed only as a Lecturer in Mathematics unlike in the other case. The said K. Natarajan is not a party before

the proceedings and nobody knows the basis upon which the decision has been made by the Respondent University. The contention regarding

violation of Section 15 of the Private College of Regulation Act cannot be accepted for the reason that based upon the clarification given by the

Deputy Director of Collegiate Education, the power has been exercised by the Respondent University which is permissible in law. In support of his

contention, the learned Counsel has relied upon the information obtained under the Right To Information (RTI) Act from the Respondent University

and the college whereby it has been stated that the appointment of the Petitioner in WP No. 19908 of 2001 was made specifically for the

Mathematics department and he was wrongly allowed to do some work in the Computer Science department. Therefore the learned Counsel

submitted that the writ petition will have to be dismissed.

CONTENTIONS OF THE RESPONDENT UNIVERSITY:

15. Ms. N. Kavitha, learned Counsel appearing for the Respondent University submitted that the Petitioner in WP No. 19908 of 2001 was in fact

qualified only as an Asst. Professor of Mathematics. The approval was given only for the above said post by the Respondent University. It has

been resolved by the University that the writ petition in WP No. 19908 of 2001 will have to engaged to deal with Mathematics subjects alone. The

Petitioner having got his appointment as an Asst. Professor in the department of Mathematics, whose qualification was approved by the

Respondent University in and proceedings dated 07.03.19869 cannot thereafter contend that he should be approved as a Lecturer in Computer

Science. The arrangement between the Petitioner and the Respondent college has no bearing on the Respondent University. Separate seniority lists

have been maintained for each department and the Petitioner does not find a place in the Computer Science department. In so far as the approval

made in favour of the said K. Natarajan is concerned, he was having the qualification of M. Phil and he was declared to be qualified from the date

of his appointment. The dispute between the said K. Natarajan and the person therein by name Dr. Arthanari was totally different. The said Dr.

Arthanari who filed a writ petition was also having M. Sc. Mathematics awarded by the Madras University as against the said K. Natarajan who

was having the qualification in M. Sc. Mathematics issued by the Indian Institute of Technology and the said course is applied Mathematics based.

Therefore, there is absolutely no basis for the Petitioner to rely upon the appointment made in favour of the said K. Natarajan and apply the same

to the present case on hand.

16. The learned Counsel has made reliance upon the letters sent by the Respondent University dated 03.06.2002 to all the Principals of the

affiliated colleges wherein the procedure for approving the qualification from one discipline to another discipline has been indicated. Therefore,

relying upon the same, the learned Counsel submitted, that in as much as the Petitioner having been appointed as the Lecturer in Mathematics

keeping him over and above the other persons who are already working in the department of Computer Science is impermissible in law. In so far

as the contention regarding the violations of Section 15 of the Private Colleges Regulation Act is concerned, the learned Counsel submitted that a

separate procedure has been contemplated under the Bharathiar University statute and as per which any appointment made by the institution is

subject to the qualifications prescribed by the University.

17. The learned Counsel further submitted that the Deputy Director of College

Education is a part of Academic council and therefore there is nothing wrong in getting the information from the said authority. It is the further submission of the learned Counsel that, the role of the Board of Studies is very important and it is the one which formulates the syllabi for the course headed by the head of the department and therefore, only a person with highest qualification coupled with seniority will have to be appointed. Hence, the learned Counsel submitted that the Writ Petition Nos. 19908 & 23461 of 2001 will have to be dismissed.

CONTENTIONS OF THE RESPONDENT COLLEGE:

18. Mr. V. Raghavachari, the learned Counsel appearing for the Respondent college submitted, that the Respondent is not involved in the inter se dispute between the Petitioner in all the writ petitions. However, it is a fact that the Petitioner in WP No. 19008 of 2001 is senior to the Petitioner in WP No. 6862 of 2010. The appointment has been made for the post of Lecturer in the combined department and that is the reason why an approval has been sought for. Therefore, the learned Counsel submitted that, the appropriate orders may be passed by this Hon''ble Court.

19. It is not in dispute that the Petitioner in WP No. 19908 of 2001 was appointed as an Asst. Professor by the Respondent college in the department of Mathematics. It is also not in dispute that by the proceedings No. 1539/AE86 dt.07.03.1986, the Respondent University has approved the qualification of the Petitioner as Asst. Professor of Mathematics. The appointment order made by the Respondent college itself indicates that the appointment is subject to the approval of the authorities. Thereafter, he has been treated by the Respondent University only as an Asst. Professor of Mathematics. Similarly, the Petitioner in WP No. 6862 of 2010 was appointed as an Asst. Professor of Computer Science.

20. The mere fact that at the time of appointment of both the Petitioners, the departments of Computer Science and Mathematics were clubbed together for convenient purpose and cannot be a ground to hold that the appointments are interchangeable in nature. The teaching for the course are different as well as the classes alongwith the students. Even assuming that the Petitioner was allowed to do the work of a Lecturer in Computer Science, it cannot be a ground to hold that he should be entitled to be considered as a matter of right. The Petitioner''s seniority has been placed in

the cadre of the department of Mathematics and all his benefits including the career advancement by means have been made only as an Asst.

Professor/Lecturer of the Mathematics department alone. Therefore, this Court is of the view that the Petitioner cannot claim as a matter of right

that his qualification will have to be approved as a Computer Science Lecturer. It is not the case of the Petitioner himself that he was appointed as

a Lecturer of Computer Science as contended by the learned Counsel for the Respondent college. The very appointment order dated 30.10.1985

and the subsequent order passed by the Respondent University on 07.03.1986 would clearly exemplify the said fact. Even the certificate dated

03.02.2000 issued by the Respondent college as found in the typed set of papers filed by the Petitioner would clearly indicate that the Petitioner

was appointed as an Asst. Professor of Mathematics alone. Therefore, the mere fact that he has been taking classes for the Computer Science

cannot be a ground to hold that he is entitled to be considered as a Lecturer/Asst. Professor of Computer Science. The Petitioner has taken the

said stand only for the reason that he would have a chance of becoming the head of the department of Computer Science after bifurcation whereas

he would stand below others in the list of seniority in the department of Mathematics.

21 Further, it has been seen that in the information produced by the Respondent University to the Petitioner in W.P. No. 6862 of 2010, it has been

stated that separate seniority has been maintained for both the department of Mathematics and Computer Science. It is further seen that the

University has also resolved in the year 2001 in the syndicate meeting held on 23.11.2001 that the Petitioner will have to be engaged to deal with

the Mathematics subject alone. The relevant portion of the decision of the finding of the syndicate meeting is extracted hereunder:

The failure of the college to adhere to the regulation of the University to engage teachers whose qualification are approved for specific subject (i.e.)

Mathematics and allowing a person to handle classes for which the qualifications are not approved by the University (i.e. Computer Science) has

created disputes and disturbance or peace in the institution.

The following course of action may alleviate the problems in the college. Mr. C. Rajagopal whose qualifications are approved to handle

Mathematics subjects by the University may be engaged only to deal with Mathematics subjects.

22. It is further to be seen that even from the information given by the Respondent college dated 17.03.2009, it has been clearly stated that there are separate posts for the department of Mathematics and Computer Science. Therefore, the above said facts would indicate that the Petitioner cannot claim the relief sought for.

23. As submitted by the learned Counsel for the Respondent University, there is a specific procedure contemplated in a case where two departments were clubbed into one which were specifically bifurcated. In the letter dated 03.06.2002, the Registrar of the Respondent University has clearly spelt out the procedure to be followed which is extracted hereunder: Resolved further that if an individual desires to obtain qualification approval for another discipline, he/she should surrender his/her previous qualification approval and obtain a letter of appointment from his/her employer and then the University will consider his/her qualification approval from the date of his/her being qualified in the new discipline. With regard to the Aided Colleges, they must get the approval of appointment from the Director Collegiate Education. The date of Director of Collegiate Education's approval will be the date of effect for the new Qualification approval.

24. A perusal of the above said procedure would indicate that the approval will have to be prospective and the past services cannot be taken into consideration.

25. In so far as the contention regarding the relief granted to the similarly placed person by name K. Natarajan is concerned, the same also cannot be countenanced. It is seen from the counter affidavit filed by the Respondent university that the said K. Natarajan was appointed originally as a Lecturer in Computer Science. Thereafter, approval has been sought for. The dispute involved therein was between the said person and another person who did not have the basic qualification, who by merely possesses a M. Sc. Mathematics obtained from the Madras University which does not deal with the subject of Computer Science in any manner whatsoever. The facts on hand would indicate that the Petitioner was admittedly appointed as a Lecturer/Assistant Professor in Mathematics.

26. Further, even assuming an order was passed in an earlier case in favour of some other person, the same cannot be a ground to allow it in

favour of the Petitioner as well in view of the settled position of law that illegality cannot be a ground for seeking relief on the basis of violation of

Article 14 of the Constitution of India. Article 14 of the Constitution of India is positive in nature and therefore it cannot be extended otherwise.

The Petitioner has not substantiated his case that he is identically placed like the person by name K. Natarajan. Moreover, it is not known as to

whether any other persons were available who were appointed directly as a Lecturer in Computer Science as against the said K. Natarajan.

27. A perusal of the information furnished by the Respondent University would indicate that the said K. Natarajan was having the qualification at

the time of having passed M. Phil. Hence, the contention of the learned Counsel for the Petitioner making reliance upon the decision made by the

Respondent University in favour of the said K. Natarajan also cannot be countenanced.

28. A perusal of the order impugned would show that merely the Respondent University has sought for certain informations from the deputy

Director of Collegiate Education. Admittedly, the order has been passed by exercising the power u/s 15 of the Tamil Nadu Private Colleges

Regulation Act. What has been done by the Respondent University was to verify certain facts. Based upon those facts, a decision has been made

by the Respondent University. Therefore, it cannot be said that the power u/s 15 of the Act has not been exercised by the Respondent.

29. Further, as contended by the learned Counsel for the Respondent University, the Government Authorities are competent to give clarifications.

In fact, in this case, clarifications have been given on more than one occasion clearly indicating that the Petitioner cannot be approved as a Lecturer

in the Computer Science course.

30. A decision to approve the qualification of a Lecturer is the discretion of the authority concerned. Unless the said decision is contrary to the

Rules, Regulations and Statute, this Court cannot act as a Appellate forum and evaluate the qualifications obtained by the person concerned.

Therefore, considering the scope of the judicial review, this Court is of the opinion that the order impugned cannot be interfered with. Further, even

assuming the Petitioner's qualifications can be approved as a Lecturer of Computer Science, then as per the procedure stipulated by the

Respondents, he cannot be allowed to count his erstwhile seniority. The only reason the Petitioner has filed the present writ petition is to have his

seniority over the Petitioner in WP No. 6862 of 2010. In as much as the posts held by the Petitioners in all the writ petitions are distinct and

different, operating in separate field, the contention of the learned Counsel for the Petitioner in WP No. 19908 of 2001 cannot be accepted.

31. The relief sought for in the writ petitions filed in WP No. 23461, 24577 of 2007 and 6862 of 2010 are consequential in nature. In as much as

this Court is of the considered opinion that the writ petition filed in WP No. 19908 of 2001 is liable to be dismissed, the relief sought for in WP

No. 23461 also cannot be granted. As a consequence to the dismissal of the above said two writ petitions, the other two writ petitions filed by the

Petitioner in WP No. 24577 of 2007 and 6862 of 2010 will have to be allowed.

32. Accordingly, the writ petitions filed in WP No. 19908 of 2001 and 23461 of 2001 are dismissed and writ petitions filed in WP No. 24577 of

2007 and 6862 of 2010 are allowed.