

(2007) 06 MAD CK 0116

In the Madras High Court

Case No : Writ Petition (MD) No. 53 of 2007 and M.P. (MD) No's. 1, 2 and 3 of 2007

Dr. K. Ramanathan

APPELLANT

Vs

Assistant Director, The Secretary, Sri Paramakalyani College
and The Registrar, Manonmaniam Sundaranar University

RESPONDENT

Date of Decision : 28-06-2007

Acts Referred:

Tamil Nadu Private Colleges (Regulation) Rules, 1976 — Rule 11(1), 11(3), 11(4)

Citation : (2007) 06 MAD CK 0116

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : H. Velavadas, for the Appellant; Krishna Srinivas for Rama Subramaniam and Associates for Respondent No. 2 in W.P.(MD) No. 53/2007 and for Respondent No. 3 in W.P.(MD) No. 3160/2007, M. Suresh Kumar, in W.P.(MD) No. 53/2007 and Respondent No. 4 in W.P.(MD) No. 3160/2007 and R. Manoharan, Government Advocate for Respondent No. 1 in W.P.(MD) No. 53/2007 and Respondent Nos. 1 and 2 in W.P.(MD) No. 3160 of 2007, for the Respondent

Judgement

K. Chandru, J.—Both these Writ Petitions are filed by the same person. In W.P. (MD) No. 53 of 2007, the prayer is to issue a direction to

the first respondent/Assistant Director, Professional and Executive Employment Office, Chennai to sponsor the name of the petitioner to the

second respondent/Secretary to include his name in the list in accordance with the seniority and qualification and forward the same for selection to

the permanent post of Lecturer in Microbiology in the second respondent College.

2. Subsequently, the petitioner has filed the other Writ Petition in W.P. (MD) No. 3160 of 2007 seeking for a direction to the third respondent in

the said Writ Petition to regularise the service of the petitioner in the permanent

post of lecturer in Microbiology Department of the third respondent College in that Writ Petition.

3. The prayer of these two Writ Petitions cannot be granted for the simple reason that the petitioner was not appointed against any permanent vacancy. The petitioner was appointed as a leave substitute when one Gowri Shankar, a lecturer in Microbiology in the said private college went on leave from 1.8.2003 to 31.8.2004. In fact, the appointment of the writ petitioner itself was not intimated to any authority for any approval. On the contrary, on a private arrangement, the lecturer was asked to pay the petitioner by post dated cheques and the petitioner's salary was only paid as provided by the said lecturer, Gowri Shankar. However, when Gowri Shankar resigned from his post, the petitioner continued in his service as an interim arrangement from 16.6.2007 till the end of the academic 2006-2007.

4. It was only when the College sought for filling up of post of one permanent lecturer in the Microbiology Department to the Director of Collegiate Education, the request of the college was granted by the Director by proceedings dated 19.7.2006. They also addressed the Professional and Executive Employment Office by a communication dated 14.6.2006 calling for names of candidates. It is at that stage, Writ Petition (MD) No. 53 of 2007 was filed and this Court by interim order dated 3.1.2007 in M.P. (MD) No. 1 of 2007 while permitting the selection process to go on, directed the college to withhold the results. Since the petitioner's name has not been received, he could not be considered. Therefore, it is clear that the petitioner was working in the respondent college only on ad hoc basis and that too against a leave vacancy and in a non-sanctioned post.

5. Reliance placed on by the petitioner's counsel under Rule 11(3) of the T.N. Private College (Regulation) Rules, 1976 is misconceived and only when there is a regular vacancy, a qualified candidate can be appointed on a regular basis but on a temporary vacancy, arising on account of leave, deputation for training or suspension, a qualified candidate may be appointed temporarily for a specified period. So far as the appointment of regular teacher is concerned, a permission of the department is required to fill up the post under Rule 11(1).

6. In the present case, it is contended by the learned Counsel Mr. Krishna

Srinivas, Senior Counsel for M/s. Ramasubramaniam and Associates

that permission to fill up the post was communicated by a communication dated 19.7.2006 and thereafter, the selection process has been started

and the same has been stalled by the petitioner in W.P. (MD) No. 3160 of 2007.

7. Since the service of the petitioner was not in a permanent post, it is not possible to regularise the service of the petitioner and he will have to

compete with others in the selection for the permanent post of lecturer. Therefore, the Writ Petition (MD) No. 3 160 of 2007 is liable to be

dismissed.

8. However, W.P. (MD) No. 53 of 2007 in which the grievance of the petitioner is that his name was not sent for being considered against the

permanent vacancy. Insofar as the petitioner claims that though he has sufficient seniority, his name was not sent by the Employment Exchange, the

College cannot be found fault with if the Employment Exchange did not sponsor the candidate.

9. The first respondent in this Writ Petition is also the Assistant Director of Employment Exchange. Without giving any direction to the said officer

to sponsor the name of the petitioner for the respondent College to fill up the vacancy in the post of permanent lecturer in the Department of

Microbiology, this Court is of the view that a direction can be directly given to the College to consider his name as he has already worked under

leave vacancy and there is no legal bar in considering his name along with other candidates.

10. In this context, it is necessary to refer to Rule 11(4)(ii) of the Private Colleges (Regulations) Rules, 1976 which is as follows:

11. Conditions of service, etc. of teachers and other persons in college-

(1) ...omitted....

(2) ...omitted....

(3) ...omitted....

(4) (i) ...omitted....

(ii) The committee shall fill up the posts by promotion or by direct recruitment. The committee shall, while making promotion, consider the claims of

all the qualified teachers in that college. If, however, none of the qualified teachers in the college is found suitable for promotion, the vacancy shall

be filled up by direct recruitment by calling for applications from qualified persons through the Press or by calling for a list of candidates from the

Employment Exchange by following the rule of reservation ordered by the Government from time to time for direct recruitment.

11. This Rule came to be considered by this Court. In the judgment reported in 2001 (4) CTC 121 PSG College of Arts and Science rep. by its

Secretary, Peelamedu, Coimbatore v. University Grants Commission rep. by its Secretary, New Delhi and two Ors., this Court has held that

calling for candidates from the Employment Exchange is one of sources of recruitment and there is no bar for calling candidates through public

advertisement through papers. Paragraph 9 of the said judgment reads as follows:

9. In the present case, the approval has been rejected mainly on the basis that the petitioner has not selected the candidates only from the list sent

by the Employment Exchange, and so it is contrary to the Tamil Nadu Private Colleges (Regulation) Act and the rules. I am not able to understand

as to how the 3rd respondent has come to such conclusion. When the Rule extracted above, clearly contemplates the procedure, according to

which, the petitioner is entitled to call for applications through press from the open market also. In the present case, not only the Rule gives option

to the petitioner-college to call for such applications through the press, but also the procedure followed by the petitioner, in accordance with the

decisions of the Apex Court, and such a procedure cannot be held as unfair.

12. In any event, the University Grants Commission recommendation has been accepted by the State Government and implemented by G.O.Ms.

No. 1786 dated 5.12.1998 wherein the UGC scales of pay have been prescribed. In that order, it has been made clear that in order to fill up any

post of lecturer, the College must give an all India advertisement in the press.

13. Therefore, in order to give a quietus to the issue the stay granted in W.P. (MD) No. 53 of 2007 is hereby vacated. The second respondent

College is directed to complete the selection process and also send notice to the petitioner calling for interview and consider his claim along with

other candidates and thereafter, make a selection on merits and in accordance with law. Therefore, W.P. (MD) No. 53 of 07 is disposed of

accordingly while W.P. (MD) No. 3160 of 2007 will stand dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.