

(2014) 06 MAD CK 0205

In the Madras High Court

Case No : W.P. (MD) Nos. 14682 and 14683 of 2012

G.S. Moganavalli

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 06 MAD CK 0205

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Mahadevan, J.—As the issues involved in both the Writ Petitions are common with a challenge to the very same impugned Order, they have been taken up together and dealt with by a Common Order.

2. The case of the petitioner in W.P.[MD]. No. 14682 of 2012 is that he was appointed as Lab Assistant, on 30.07.1993, under the second respondent department at Alagappa Arts College, Karaikudi. In the year 2003, he was given promotion as Typist and in the year 2010, he was again promoted as Assistant. Thereafter, he was transferred to the Government Ladies Arts College at Pudukkottai, as Assistant.

3. The case of the petitioner in W.P. [MD]. No. 14683 of 2012 is that he was appointed as Junior Assistant under the second respondent department at Sethupathi Government Arts College, Ramanathapuram, on 03.10.1996. Thereafter, he was given promotion as Assistant. Subsequently, he was transferred and posted in the Office of the Joint Director of Collegiate Education.

4. The petitioners, after possessing all requisite qualifications, made representations before the respondents with a request to consider their claim for appointment as College Librarian. As the said representations of the petitioners were not considered, they filed W.P. Nos. 25173 and 25172 of 2008, seeking a

Writ of Mandamus, directing the respondents to implement the ratio of 1:2 to the post of Librarian in Government Colleges, as per the Special Rules and appoint them as Librarian on regular time scale of pay. This Court, by order, dated 21.10.2008, while disposing of the said Writ Petitions, directed the respondents to consider the claim of the petitioners and pass appropriate orders. Similarly placed persons, like that of the petitioners herein, filed Writ Petitions and obtained orders. The correctness of the said orders was questioned before the Division Bench and the same was also dismissed. As against the same, the State preferred Special Leave Petition, which was dismissed, on 05.11.2009 with cost of Rs. 25,000/-.

5. As the claim of the petitioners was not considered, in pursuance of the order of this Court, dated 21.10.2008, they filed Contempt Petitions. Thereafter, by proceedings, dated 01.02.2011, the petitioners were appointed as Graduate Librarian. Since the post of Graduate Librarian was abolished, vide G.O. Ms. No. 103, Higher Education Department, dated 18.05.2009, several representations were made to the respondents to re-classify the appointment as that of College Librarian and fix the time scale of pay, as per the norms fixed by the University Grants Commission. As the said representations were not considered, Contempt Petition Nos. 1748 and 1757 of 2011 came to be filed, and thereafter, their claim was considered by the first respondent, appointing them as College Librarian, by issuing G.O. Ms. No. 11/F2, Higher Education Department, dated 03.02.2012. However, the claim of the petitioners was not considered and the first respondent, by the impugned order, dated 02.11.2012, retained the petitioners as Graduate Librarian. Aggrieved over the same, the petitioners are now before this Court with the present Writ Petitions.

6. The learned counsel appearing for the petitioners contends that the claim of similarly placed persons, like that of the petitioners, was considered and they were appointed as College Librarian, by issuing G.O. Ms. No. 11/F2, Higher Education Department, dated 03.02.2012. Even though the petitioners possessed all the necessary qualifications to re-classify the appointment of Graduate Librarian as College Librarian, for the reasons best known to the first respondent, the petitioners alone were singled out, despite the fact that the post of Graduate Librarian was abolished, vide G.O. Ms. No. 103, Higher Education Department, dated 18.05.2009. Hence, the learned counsel has prayed for setting aside of the order impugned.

7. The Learned Additional Government pleader appearing for the respondents would submit that the appointment to other Graduate Librarians as College Librarian was granted after the Government took a policy decision to relax the Rule 6(a) of the Special Rules. The learned Additional Government Pleader also contended that the pay has been fixed as per the post occupied by them. He also contended that the existing vacancies have been filled, on 24.02.2014, and therefore nothing survives for consideration in the Writ Petitions and hence the same may be dismissed.

8. I have considered the above submissions and perused the records carefully.

9. The appointment of 19 other persons, who were similarly placed, was made, after relaxing the Rule 6(a) of the Special Rules by issuing Government Orders in G.O. Ms. No. 11, Higher Education Department, dated 03.02.2012 and G.O. Ms. No. 27, Higher Education Department, dated 29.02.2012. The reason given for relaxing the Rule is to avoid contempt proceedings. Obviously, the demand for posting the Graduate Librarians" as College Librarians" arose after the post was abolished. The petitioners, in both the cases, are fully qualified to occupy the post, but for the relaxation of the Rule. Just because the petitioners, who had also obtained orders, did not move Contempt Petitions, they cannot be singled out. The act of the respondents would clearly amount to discrimination and violation of Articles 14 and 16 of the constitution of India.

10. In the Judgment in C. Eswaran, K. Rajamanickam, V. Velayutham and K. Lakshmi Kanthan Vs. The Secretary to Government Agricultural Department and The Director of Agriculture , this Court has held as follows:

5. The learned Counsel also submitted that in the decision reported in N.S. Balasubramanian and Others Vs. Food Corporation of India, , this Court has taken a similar decision following the judgment of the Hon"ble Supreme Court in para Nos. 13 to 16 and the said judgment reads as follows:

13. Here in this case, the claim of the Petitioners are that they are entitled to be treated like similarly placed persons, who are the Petitioners before the Kerala High Court and who are paid the recovered amount. In effect, the contention of the Petitioners is that they shall be treated equally and if any discrimination is made on the ground that Petitioners 1 to 16 have received Voluntary Retirement Scheme benefits and therefore they are not entitled to get the recovered amount, the same will be violative of Article 14 of the Constitution of India.

14. Article 14 of the Constitution of India clearly prohibits discrimination and if any discrimination without any intelligible differentia, certainly violation will be hit by Article 14 of the Constitution of India, which is a guaranteed fundamental right available to any person. The said right being the fundamental to treat equally among equals, cannot be negated on the plea of waiver or estoppel as rightly held by the Honourable Supreme Court and this Court.

11. In the judgment in A. Balasubramaniam Environmental Scientist, Tamil Nadu Pollution Control Board (TNPCB) AEL, Cuddalore and Others Vs. The State of Tamil Nadu and The Tamil Nadu Pollution Control Board, , this Court has held as follows:

11. It cannot be gainsaid that in respect of the similarly placed persons, if an earlier order has been passed (based on the same set of facts and circumstances of the case), then the same yardstick/bar/measures will have to be applied in administrative action by the authorities concerned. In fact, the authorities concerned cannot apply a different yardstick or show any kind of discrimination,

thereby challenging Articles 14 and 16 of the Constitution of India. To put it differently, similarly placed persons are to be treated alike whether they have approached this Court to secure orders in their favour or not. However, on going through the impugned order of the second respondent 1/6/2012 (in respect of 23 persons mentioned therein) indicates latently and patently that a specific mention was made to the effect that for the persons, who have obtained orders from the High Court in their favour as regards the regularisation of their services with retrospective effect alone, appointment orders have been issued with retrospective date.

12. In the instant case on hand, although the petitioners have sought for a Writ of Mandamus praying for issuance of an order in directing the respondents to regularise their services in their respective posts with retrospective effect from the date of their initial appointment and to provide them with all consequential benefits including monetary benefits, this Court is of the considered view that the second respondent ought to have considered the representation of the petitioners dated 1.5.2012 by taking into account the order of this Court in W.P. No. 9969/2010 dated 18.4.2011 in the case of S.Arul Doss v. Government of Tamil Nadu and another. However, the second respondent through the impugned order dated 1.6.2012 has stated that only those employees, who secured orders from the High Court in their favour, with regard to regularisation of their services with retrospective effect from the date of their initial appointment, were given appointment orders. This kind of observation in the impugned order of the second respondent dated 1.6.2012 does not fit within the parameters of law in the considered opinion of this Court. As such, this Court is left with no option, but to interfere with the said impugned order of the second respondent dated 1.6.2012 and to set aside the same in the interest of substantial cause of justice.

12. From the above Judgments, it is clear that even if all the persons aggrieved do not approach the Court, the authorities cannot deny them the benefit of the order, when they are similarly placed. Therefore, this Court is of the view that the impugned order retaining the petitioners as Graduate Librarians and fixing their pay at Rs. 9300-34800+4600 is arbitrary and discriminatory. The petitioners, who are also similarly placed, are entitled to the relaxation and reposting as College Librarians in the pay scale of Rs. 15600- 39100+ 6000. Hence, the impugned order, dated 02.11.2012, passed by the first respondent is struck down. The contention of the learned Additional Government Pleader that there are no vacancies is also rejected, because in G.O. Ms. No. 31, Higher Education [F2] Department, dated 24.02.2014, it is clearly mentioned in Paragraph No. 12 as follows:-

The appointment as College Librarians by direct recruitment is purely provisional and also subject to final outcome of any case/Writ Petitions relating to this recruitment if any pending before the Hon'ble High Court of Judicature at Madras or Madurai Bench of Madras High Court.

13. Therefore, the first respondent is directed to pass appropriate orders by

relaxing the Rule 6(a) and repost the petitioners as College Librarians in the pay scale of Rs. 15600-39100+ 6000 within a period of six weeks from the date of receipt of a copy of this order.

14. In the result, the Writ Petitions are allowed. No costs