
(2011) 01 MAD CK 0045

In the Madras High Court

Case No : Writ Petition (MD) No. 11654 of 2008, M.P. (MD) No's. 2 of 2008 and M.P. No's. 2 and 3 of 2009

M. Umadevi

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0045

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : Isaac Mohanlal, for the Appellant; Special Government Pleader for RR1 to 3, Row and Reddy, for R4, D. Hari and Saravanakumar for R5 and K.N. Thampi, for R6, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The Petitioner is working as Lecturer in Tamil in the fifth Respondent college and according to the Petitioner, she was

appointed on consolidated basis against two posts for Tamil Lecturers on the basis of G.O. Ms. No. 220 (Higher Education E2Department) dated

12.6.2003 as modified by the Government letter dated 5.9.2006. The Petitioner is working on consolidated salary and there are two sanctioned

posts for Tamil Lecturers and the Petitioner and another person by name Latha Maheswari were reappointed on consolidated basis for those two

posts and later, the second Respondent reduced the number of Tamil Lecturer post to one and therefore, the Petitioner was not given approval by

the third Respondent. While the Petitioner is working as Tamil Lecturer in the fifth Respondent college, the Government sanctioned one more post

for Tamil Lecturer vide Government letter dated 3.4.2007. Though the Petitioner

was working in the fifth Respondent college and was eligible to be considered for the newly sanctioned post for Tamil Lecturer, the fifth Respondent college invited candidates for the post of Tamil Lecturer by advertisement dated 3.10.2007 and the last date for submitting the applications was 12.10.2007. According to the Petitioner, the fifth Respondent should not have issued the advertisement and ought to have appointed the Petitioner in that post. Nevertheless, by way of abundant caution, she submitted her application as she apprehended that the fifth Respondent may appoint an outsider under the guise of conducting interview. The Petitioner also filed W.P.(MD) No. 8776 of 2007 seeking for issuance of a writ of mandamus directing the Respondents to regularise the Petitioner's appointment as Lecturer in Tamil in the fifth Respondent college with effect from 3.7.2002 and that petition was disposed of by directing the fifth Respondent to consider the representation of the Petitioner and the fifth Respondent, by proceedings dated 5.9.2008, informed the Petitioner that the claim of the Petitioner for regularization cannot be considered as there was only one approved post vacant and that was filled by Latha Maheswari and her name was approved by the Joint Director of Collegiate Education. This order of the fifth Respondent dated 5.9.2008 is challenged in this writ petition.

2. Respondents 1 to 3 filed counter contending that they are unnecessary parties to the proceedings as no relief is claimed as against them. It is further stated that there is one regular post of Lecturer in Tamil in the fifth Respondent college from 30.6.2000 and the appointment has to be made only by the fifth Respondent and thereafter, the third Respondent has to grant approval on the basis of the merits and in the absence of any relief against Respondents 1 to 3, they are unnecessary parties.

3. The fifth Respondent filed detailed counter contending that by G.O. Ms. No. 220 (Higher Education E2 Department) dated 12.6.2003, permission was granted to fill up six posts in the college on payment of consolidated salary and out of six posts, two posts were allotted for Tamil Lecturers and the Petitioner and another by name Latha Maheswari were appointed in those two posts on consolidated salary and Latha Maheswari was senior to the Petitioner. It is further stated that the third Respondent Joint Director sanctioned only one post for Tamil Lecturer and

therefore, for that post, Latha Maheswari, who was senior to the Petitioner, was appointed even though the fifth Respondent recommended the name of the Petitioner and Latha Maheswari. As the sanctioned post was only one, that was filled up by appointing Latha Maheswari and thereafter, another post was created for Tamil Lecturer and for filling that post, publication was made in the Daily Thanthi on 3.10.2007 inviting applications to fill up the vacancy and the Petitioner and others have applied for that post and the Petitioner also filed W.P. No. 8776 of 2007 challenging the paper publication calling for applications for the post of Tamil Lecturer and as per the direction of this Court, the Petitioner was informed that against one sanctioned post, Latha Maheswari was appointed and therefore, the request of the Petitioner to regularise her candidature cannot be considered and the Petitioner is working in the unsanctioned post temporarily on contract basis and she has no right to seek for regularization.

4. The sixth Respondent was impleaded by order dated 7.9.2009 in M.P. No. 1 of 2009. The sixth Respondent also applied for the post of Tamil Lecturer and by virtue of interim order passed by this Court in this writ petition, the fifth Respondent was permitted to conduct interview, but, prohibited from announcing the results and therefore, the sixth Respondent filed application to impeal herself and that petition was allowed. The sixth Respondent also disputed the claim of the Petitioner by contending that she cannot have any right to that post as she was appointed temporarily on consolidated pay and having participated in the interview, she cannot question the selection process.

5. The points for consideration that arise in this writ petition is whether the Petitioner was appointed against the sanctioned post; and whether the Petitioner is entitled to be considered for appointment to the post of Tamil Lecturer.

6. Mr. Isaac Mohanlal, learned Counsel for the Petitioner submitted that in the year 2002, the Petitioner was appointed on temporary basis as per G.O. Ms. No. 220 (Higher Education E2 Department) dated 12.6.2003 and by virtue of the Government letter dated 5.9.2006, the sanctioned post for Tamil Lecturer was two and the Petitioner and Latha Maheswari were the two persons appointed on consolidated pay and against the

two sanctioned posts, those two persons were appointed and therefore, it cannot be contended now that there was only one sanctioned post and

in that post, Latha Maheswari was appointed and only thereafter, another sanctioned post was created and for that applications were called for

from the public. He further submitted that even assuming that another post was created subsequently, having regard to the fact that the Petitioner is

working in the college for more than five years, the Petitioner ought to have been considered for that post and it cannot be stated that the

Petitioner's request for regularization cannot be considered as she was not appointed against sanctioned post. Mr. Isaac Mohanlal, reiterated that

the contention of the fifth Respondent that the Petitioner was not appointed against any sanctioned post is erroneous and as per G.O. Ms. No. 220

(Higher Education E2 Department) dated 12.6.2003, against two vacancies for the post of Tamil Lecturer, the Petitioner and Latha Maheswari

were appointed and therefore, the Petitioner was initially appointed against sanctioned post and therefore, when a vacancy arose subsequently, the

Petitioner ought to have been considered and the fifth Respondent should not have called for applications from the outsiders.

7. Learned Counsel for the fifth Respondent submitted that the Petitioner and Latha Maheswari were appointed as per G.O. Ms. No. 220 (Higher

Education E2 Department) dated 12.6.2003 and there was only one sanctioned post for Tamil Lecturer and Latha Maheswari, being senior, was

appointed in that post and subsequently one sanctioned post became vacant and for filling up that post, applications were called for by issuing

advertisement and that is the usual procedure for appointing any person for that post and even on earlier occasion when the Petitioner and Latha

Maheswari were appointed, it was done only after inviting applications from public and therefore, it cannot be contended now by the Petitioner

that the fifth Respondent should not consider the applications from outsiders and consider the Petitioner and appoint her in the new post.

8. Mr. K.N. Thampi, learned Counsel for the sixth Respondent submitted that the Petitioner has no locus stand to maintain the writ petition and she

is stopped from challenging the advertisement or the impugned order as she has participated in the interview in response to the advertisement dated

3.10.2007 and having applied for the post, she has filed the writ petition and got injunction order and therefore, the conduct of the Petitioner would

make it clear that she is stopped from questioning the impugned order or the publication and in support of his contention, he relied upon the

judgments reported in

1. I.L. Honnegouda v. State of Karnataka AIR 1978 SC 28

2. Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others,

3. Dr. R. Murali Vs. Dr. R. Kamalakkannan and three others,

9. It is seen from the affidavit filed in support of the petition that the Petitioner was appointed as Lecturer in Tamil on 3.7.2002 and according to the

Petitioner, she was appointed against an approved vacancy. Nevertheless, it is also admitted by the Petitioner that by G.O. Ms. No. 220 (Higher

Education E2 Department) dated 12.6.2003, the Commissioner, H.R. & C.E permitted the fifth Respondent college to fill up six Lecturer posts

consisting of two posts in Tamil and for filling up those two posts, applications were invited from all candidates by making wide publication in the

newspaper and the Petitioner and others submitted applications and on the basis of the interview conducted by the college, the Petitioner was

appointed as Lecturer in Tamil on consolidated pay from 30.12.2003. Therefore, from the admitted facts made in the affidavit, it cannot be stated

that the Petitioner was appointed against a sanctioned post and as per G.O. Ms. No. 220 dated 12.6.2003, six persons were appointed on

consolidated pay and the Petitioner and Latha Maheswari were two persons appointed for the post of Lecturer in Tamil as per the above

Government Order. Further, it has been made clear in the letter of appointment dated 30.12.2003 that the appointment is only temporary and on

contract basis and the persons cannot claim any right to that post. Therefore, it cannot be stated that the Petitioner was appointed against a

sanctioned post even in the year 2002. Further, the fifth Respondent, in his counter affidavit clearly stated that the Petitioner was not appointed

against a regular post. Respondents 1 to 3 also stated in their counter affidavit that there was only one sanctioned post for Tamil Lecturer in the

fifth Respondent college. Taking all these facts, it can easily be concluded that there was only one sanctioned post for Tamil Lecturer in the fifth

Respondent college and Latha Maheswari, being the senior to the Petitioner, was considered for that post and hence, there is no question of

regularization of the services of the Petitioner on the ground that she is working

in the college for more than five years.

10. Further, it is seen from the advertisement dated 3.10.2007 that one post for Tamil Lecturer was available to be filled up and for that post

advertisement was made. The Petitioner also applied for that post and immediately thereafter, she also filed W.P. No. 8776 of 2007 and obtained

injunction order on 17.12.2008. By reason of the injunction order granted by this court, the interview was permitted to be conducted, but, the fifth

Respondent was prohibited from publishing the result. In this connection, the judgments referred to by Mr. K.N. Thampi, learned Counsel for the

sixth Respondent have to be considered. In the judgment in I.L. Honnegouda v. State of Karnataka AIR 1978 SC 28, it has been held that a

person having applied for the post and appeared for the interview, cannot challenge the constitutionality of rules under which applications were

called for. In the judgment in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, , the Honorable Court has observed that the candidate

who had challenged the examination appeared for examination without protest and he filed the writ petition only after he realized that he would not

succeeding the examination and in such circumstances, the Honorable Supreme Court has held that the candidate cannot challenge the examination

after having participated in the interview. In the Full Bench judgment in Dr. R. Murali Vs. Dr. R. Kamalakkannan and three others, , also the same

principle has been reiterated in Para 46. Therefore, it is clear from the above judgments that a person, having participated in the interview in

response to the advertisement, cannot challenge the selection process. Though in the writ petition, the Petitioner has challenged the order of the fifth

Respondent refusing to regularise the appointment of the Petitioner, in fact, she has only challenged the advertisement dated 3.10.2007 calling for

applications and as per the Supreme Court judgments cited above, the Petitioner is not entitled to challenge the same and she is stopped from

challenging the same. Further, as held supra, the Petitioner was not originally appointed against the sanctioned post and one more post was created

only in the year 2007 and for that post, applications were called for and hence, it cannot be stated that the Petitioner is entitled to be appointed for

that post. Therefore, the two points that arose for consideration are answered against the Petitioner.

In the result, the writ petition fails and the same is dismissed. No costs. Consequently, the miscellaneous petitions are dismissed.