
(2011) 01 MAD CK 0247

In the Madras High Court

Case No : Writ Petition No. 45261 of 2006 (O.A. No. 3280 of 2000)

S. Thirunavukarasu

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 309

Citation : (2011) 01 MAD CK 0247

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Thiyagarajan, SC for S. Balamurugan, for the Appellant; R. Murali, GA for RR1 and 2 and for R 3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioners in O.A. Nos. 3280 to 3283 of 2000 were employed as part time Lecturers in the Government Law

Colleges functioning under the control of the second Respondent the Director of Legal Studies, Chennai. They moved the Tamil Nadu

Administrative Tribunal with different original applications seeking for a direction to regularise their services on par with full time Lecturers who are

appointed along with the Petitioners on contract basis and whose services were regularised and confirmed by virtue of the G.O. Ms. No. 193,

Law Department, dated 8.5.1996.

2. These O. As. were admitted by the Tribunal on 3.5.2000. Pending the O. As, the Tribunal granted an interim order on the same day. The

Respondents were directed not to terminate the services of the Petitioners from the posts of part time Lecturers in the Government Law Colleges

after the end of the academic year 1999-2000. The said interim order which was

initially granted for a period of two weeks was subsequently extended by a further order, dated 8.6.2000 without specifying any outer time limit. Though applications were filed by the Director of Legal Studies, Chennai in M.A. Nos. 460, 339, 461 and 459 of 2003 for early hearing of original applications, no orders were passed by the Tribunal.

3. On notice from the Tribunal, the second Respondent has filed a reply affidavit, dated 27.12.2001 in O.A. Nos. 3281 of 2000 and also reply affidavits, dated 27.3.2002 in O.A. Nos. 3283 and 3280 of 2000 respectively. In view of the abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P. Nos. 45261 to 45264 of 2006.

4. The Petitioner in W.P. No. 47371 of 2006 has filed O.A. No. 2987 of 2000 seeking for a direction to absorb the Petitioner as part time lecturer with effect from 26.8.1997 without giving break in service. The said O.A was admitted on 26.4.2000. The Tribunal granted an interim injunction from terminating the service of the Petitioner as part time lecturer, pending disposal of the O.A. The said order which was initially granted for five weeks was continued without specifying any outer time limit by a further order, dated 7.6.2000. The second Respondent has filed an application for fixing an early hearing of the O.A. But, however, the Tribunal did not take up the O.A. In view of the abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P. No. 47371 of 2006.

5. The Petitioners in W.P. Nos. 47985 to 47987 of 2006 have filed O.A. Nos. 2984 to 2986 of 2000 before the Tribunal for regularising their services in the posts of part time lecturers from the date of their initial appointment in 1997, August, 1988 as was done in the case of full time lecturers by G.O. Ms. No. 193, Law Department, dated 8.5.1996. The O. As were admitted on 26.4.2000. Pending the O. As, the Tribunal had granted an interim direction not to terminate the services of the Petitioners and the order was also further continued by a further order, dated 7.6.2000. On notice from the Tribunal, the second Respondent has filed a reply affidavits, dated 11.2.2002, 27.12.2001 and 7.1.2002 respectively. In view of the abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P. Nos. 47985 to 47987 of 2006.

6. The following table will show the name of the Petitioners, O.A filed by them, the corresponding writ petition number and the date on which they

have joined as part time lecturers, which is as follows:

Name of the O.A. No. W.P. No. Initial dates on

Petitioner which they have

joined as Part

Time Lecturers

S. OA. No. 3280 ofW.P. No.

1989-90

Thirunavukarasu 2000 45261/2006

O.A. No. 3281 ofW.P. No.

V. Rajangam 1988-89

2000 45262/2006

O.A. No. 3282 ofW.P. No.

R. Kalpana 1998-99

2000 45263/2006

O.A. No. 3283 ofW.P. No.

G. Ramapandian 1997-98

2000 45264/2006

O.A. No. 2987 ofW.P. No.

R. Selvakumar 26.08.1997

2000 47371/2006

O.A. No. 2984 ofW.P. No.

S. John Kennedy 1997-1998

2000 47985/2006

O.A. No. 2985 ofW.P. No.

Muthuramalingam 1988-89

2000 47986/2006

O.A. No. 2986 ofW.P. No.

Muthiah 1988-89

2000 47987/2006

7. The post of full time lecturers and part time lecturers teaching in Law colleges comes under the Tamil Nadu Legal Education Services. Initially, the posts were filled up by the Tamil Nadu Public Service Commission. However, by G.O. Ms. No. 1357, Education, dated 26.09.1990, the recruitment of teachers was brought under the purview of Teachers' Recruitment Board. The Bar Council of India by its resolution No. 68/1999 directed the Legal Education should be done only by the whole time course and that all the colleges which are running evening sessions should switch over to Day sessions from the academic year 2000-01, failing which their affiliation will be canceled. In case, there is evening session during the academic year 1999-2000, only those batch of students should be allowed to complete their courses in the evening session. The Bar Council of India also defined the term ""Day Sessions"" to mean continuous teaching for five hours with maximum break of one hour during the period from 7.00 a.m. to 7.00 p.m. When this resolution was brought to the notice of the State Government, the Government by an order, dated 26.6.2000 discontinued three year evening Law course from the academic year 2000-01 and that no new admissions should be made from the academic year 2000-01. In view of the discontinuance of the evening law course, 1/3rd students strength got reduced. It also resulted in number of teachers who were engaged for teaching such courses became surplus.

8. In the meanwhile, the University Grants Commission in its meeting held on 27.1.2000 considered draft guidelines and resolved that there should not be any separate cadre of part time teachers. In future, no part time teachers should be appointed and that when necessity, Guest faculty can be appointed on the basis of payment per lecture basis. Therefore, the Director of Legal Studies in view of the decision taken wanted to scrap the posts of part time lecturers and to appoint lecturers on the basis of per lecture basis in case of exigencies.

9. Most of the Petitioners herein were appointed as part time lecturers on contract basis. The contract was to last on the last working day of the academic year or till they were replaced by the candidates selected by the Teachers' Recruitment Board whichever is earlier. The re-appointment of such contract lecturers for the next academic year should be done after

getting permission from the Government for their re-appointment. It transpires that the full time lecturers were also appointed on contract basis during the relevant time. The Government on the earlier occasion by G.O. Ms. No. 1840, Education, dated 16.12.1988 regularised the lecturers working on contract basis. Similarly, Junior Professors who were working on contract basis were also regularised by G.O. Ms. No. 1733, Education, dated 28.12.1990. But, when Teachers' Recruitment Board issued notification in the year 1991 calling for applications to fill up the posts of full time/part time lecturers in Law Colleges on regular basis, the part time lecturers appointed on contract basis in the Dr. Ambedkar Government Law College for the year 1991-1992 filed O.A. No. 4101 of 1991 before the Tribunal, seeking for regularisation of their services from the date of their appointment. The Tribunal dismissed their case and held that they cannot compare themselves with full time lecturers and that as they were practicing Advocates in various courses of law, their work in the college is purely on part time basis. Subsequently, it is stated that one V. Dhanapalan, working as part time lecturer filed O.A. No. 1970 of 1997 before the Tribunal, seeking for a direction to regularise his service and not to terminate the service on the last working day of the academic year. The tribunal rejected the prayer and passed the following order:

There is one basic fundamental difference between the Assistant professors, working in the Government Arts Colleges and the applicant herein.

Likewise, there is a basis and fundamental difference between the Assistant Professors, in non-law subjects in Government Law Colleges and the applicant herein. In those case, they are full-time Assistant Professors. They are whole time professors. But the applicant herein is an advocate by profession. He is appointed as Part-time Lecturer in Law, on a contract basis. There is no provision in law or in rules or by any case law on precedent, where under the service of a person who is doing a part-time job, while he is having a regular profession being regularised in that part-time job. So, there is no comparison in between the Assistant Professors in Arts colleges or Law colleges on one hand and the part-time Lecturer in law on the other hand. They are totally different categories. While that be the position, the submission that the part-time Lecturer in Law should be taken on par with a full-time Assistant professors of Law or of any other

college is not tenable. We are clear that there is no discrimination.

Only in the case of equals, the question of discrimination and offending of Article 14 of the Constitution of India would arise. Such is not the case here.

10. It is claimed that earlier full time lecturers got their services regularised by G.O. Ms. No. 193, Law Department, dated 8.5.1996. In that G.O,

the State Government considered the representation of such teachers working on contract basis sent to the Teachers' Recruitment Board for

conducting an interview so as to assign rank on the basis of marks obtained by them during interview and after following rule of reservation,

regularised 27 persons as full time lecturers. It is claimed that full time lecturers were appointed in the year 1988-89, 1989-90 and 1990-91. They

made a representation with the Government for extending their services till regular appointments were made. They have also filed O.A before the

Tribunal against terminating their services on the last day of academic year 1998 99. The Tribunal granted an interim stay. Subsequently, the

Government on considering their representations allowed their continuance beyond 30.4.1999 and also to pay vacation salary during summer

vacation by G.O. Ms. No. 102, Law Department, dated 25.6.1999. The Government also further issued G.O. Ms. No. 99, Law Department,

dated 28.4.2000 to continue the full time lecturers beyond 30.4.2000 and to pay vacation salary.

11. Insofar as the Petitioners are concerned, they were never appointed as full time lecturers, and were appointed only as part time lecturers and

that too on contract basis. They were also informed that their services are liable to be terminated at the end of the academic year or at the time

when regularly recruited candidates joined service.

12. The contentions of the Petitioners as set out in the O. As was that they are similar to the teachers whose services were regularised by G.O.

Ms. No. 193, Law Department, dated 8.5.1996. While those candidates were regularised, there is no reason why the Petitioners should not be

preferred for regular appointment. The action of the Respondents were arbitrary and violative of Article 14 of the Constitution.

13. In the reply affidavit, it was stated that the Petitioners cannot compare themselves with the full time teachers. The persons who are working as

part time lecturers are also lawyers practicing in various law courts and they are not entirely depending upon the part time lecturers' post for their livelihood. They have not gone through the process of selection through the Teachers' Recruitment Board. Since the University Grants Commission itself had directed that there should not be any part time lecturers in Law colleges, it was decided to scrap such appointments. Hence there was no right on the part of the Petitioners to continue in employment.

14. Mr. A. Thiyagarajan, learned Senior Counsel appearing for the Petitioners contended that inasmuch as the full time lecturers were regularised, the Petitioners cannot be edged out. On the strength of the interim order, they have been working from the academic year 1997-98 and as more than 12 years had elapsed, they should be regularised in their posts on par with full time lecturers.

15. Heavy reliance was placed upon a judgment of the division bench of this Court in *S. Srinivasan v. Union of India* and Ors. 2008 WL.R. 872.

In that case, the Petitioner therein was appointed as part time lecturer on the basis of an old recruitment rule. When subsequently an action was initiated to fill up the post by recruitment through UPSC, he filed O.A before the Central Administrative Tribunal. The UPSC was directed to consider his case. But the said person was not selected. Thereafter, a further direction was given to give one more opportunity. It is as against the said order of Central Administrative Tribunal, both the Petitioner and the UPSC came before this Court. It was contended that the part time lecturer who was appointed on fortuitous circumstances cannot seek for regularisation as he had not come through the mode of recruitment rule.

Therefore, the regularisation sought for is contrary to the judgment of the Supreme Court in *Secretary, State of Karnataka and Others Vs.*

Umadevi and Others, . The division bench found that the Petitioner therein was recruited on the basis of old recruitment rules and hence, there was

no illegality in his appointment. Heavy reliance was also placed upon a judgment of the Supreme Court in *U.P. State Electricity Board Vs. Pooran*

Chandra Pandey and Others, . It was felt that the Petitioner therein will be over-aged for any employment. Since the Petitioner who was working

for more than 25 years and relief was to be given to him, the division bench allowed the writ petition.

16. But, in the present case, the Petitioners were not appointed either by TNPSC or by TRB and not in terms of the recruitment rules for the Tamil Nadu Legal Education Services. On the other hand, they were appointed on adhoc basis and that too on yearly contract. Further, the term of appointment itself is indicated that it is liable to be terminated at the end of the academic year or at the time when permanent incumbent recruited by selection authority takes charge. Therefore, it cannot be said that they were recruited through proper recruitment rules and by competent selection authority. It is only because of stay obtained by them, they were able to continue in service. Though an early hearing date application was filed by the Respondents, the Tribunal did not think it fit to take up the case for deciding the matter. The Respondents were also right in contending that part time lecturers' posts is no longer required in view of the decision of the University Grants Commission to have only regular day time course. Further, in view of the abolition of the evening classes, there was also surplus of part time lecturers engaged by the Director of Legal Studies in various Government Law Colleges.

17. As on date, recruitment to teaching posts in Law colleges is governed by the special rules framed under Article 309 of the Constitution known as Tamil Nadu Legal Education Services. The recruitment will have to be made only as per the norms evolved by the State Government. The State Government had issued G.O. Ms. No. 111, Higher Education Department, dated 24.3.1999. The qualification prescribed for the post of Lecturers as per the Government Order is that Master's Degree in the relevant subject with 55% marks or its equivalent grade and good academic record.

18. With reference to the recruitment of teachers and the qualification, the said G.O. reads as follows:

RECRUITMENT AND QUALIFICATIONS:

Direct recruitment to the posts of Lecturers in Government Colleges shall be on the basis of merit through All India Advertisement and Selection by the duly constituted Selection Committee to be set up under statutes.

Explanation:

For the above purpose, the duly constituted State Teachers Recruitment Board will be the agency to undertake the selection of candidates through

prescribed procedures and to prepare a panel of candidates. At the time of recruitment, other things being equal, preference will be given to

candidates who possess adequate knowledge in Tamil. (i)The minimum qualification required for appointment to the posts of Lecturers will be

those prescribed by the University Grants Commission from time to time. The educational qualification for the posts of Lecturers, Readers and

Principals in colleges are given in Annexure - II.

(Emphasis added)

19. Further, the UGC had also directed that apart from educational qualification, a person must have passed either the National Eligibility Test

(NET) or its equivalent to hold the post of lecturers. The Petitioners having been appointed as part time lecturers cannot compare themselves with

full time teachers. In the absence of the G.O. Ms. No. 193, Law Department, dated 8.5.1996 being under challenge, the court cannot go into the

wisdom of Government's regularising the full time lecturers.

20.A Division Bench of this Court headed by M. Katju, C.J. (as he then was) in M. Saravanakumar and Ors. v. The Secretary to Government,

Education Department, Fort St. George, Chennai and Ors. 2005 (3) L.W. 329 dealt with the demand of the Guest Lecturers (adhoc lecturers) for

regularisation. In paragraphs 28,32 and 33, the division bench had observed as follows:

28. It may be noted that Guest Lecturers are appointed by the Principals of the Colleges. There is no guarantee that such an appointee is

competent. The Principal may have various considerations for making such an appointment, not necessarily merit. Suppose one of such appointees

is wholly incompetent and undeserving. Why can he not be replaced by a bright and deserving candidate? After all we have to see the matter from

the point of view of the students. An incompetent teacher may adversely affect the future career of the students, while a bright teacher can greatly

uplift it. Hence, in our opinion, if a deserving and competent candidate is available then he can certainly be appointed as Guest Lecturer in the place

of another Guest Lecturer, who is incompetent and undeserving....

32. It is also not in the interest of the students or the public to appoint Guest Lecturers on a large scale, because teachers who are given such

appointments are not likely to take much interest in their work. They will not be

able to work with a free mind and will feel all the time that there is a Damocles Sword hanging over their heads. Surely the students in Tamil Nadu deserve good teachers. Good education is of paramount importance for the progress of society in the modern age.

33. We fail to understand why for the past 5 years no regular recruitment has been made through the Teachers Recruitment Board, and instead this policy of appointing Guest Lecturers has been continued year after year. The teachers are the Gurus of society, and they must be given proper respect, proper status, and a secure job, so that they can function with a free mind and take interest in their work. This policy of making appointments of Guest Lecturers is not conducive to this end, and must now be revoked.

21. After rejecting similar claims, in paragraph 37, the division bench gave the following directions:

37. We therefore direct that after 31.03.2006 all appointments of lecturers, and other teaching posts, including Principals, in Government Colleges in Tamil Nadu shall be made on a regular basis by selection through the Teachers Recruitment Board or any other legally constituted selection body and not by appointing Guest Lecturers. Such regularly selected teachers will be paid the U.G.C. grade salaries and guaranteed security of tenure. They shall also be given all benefits and perquisites allowable to regularly selected teachers. No Guest Lecturers or ad hoc Lecturers will be appointed or continued after 31.03.2006.

22. Therefore, the Petitioners only on the basis of their adhoc appointment cannot claim any regularisation especially when they were appointed on part time basis with a specific condition that it is liable to be terminated at the end of the academic year or at the time when regular appointees recruited through Teachers' Recruitment Board take charge. Merely because they have secured an interim order, that cannot be made use of for the Petitioners to claim further concession from this Court. The interim orders granted will continue until final order is passed and no equity can be claimed for continuing in service with such orders.

23. In this context, it is necessary to refer to the decisions of this Court and Bombay High Court. A Division bench judgment of this Court in C.

Kamatchi Ammal Vs. Kattabomman Transport Corporation Ltd. and Others, has

held that interlocutory orders made in the course of proceedings

will necessarily lapse with the decision of the suit unless the suit is one for permanent injunction and the interim injunction is made permanent as a

part of the decretal order made by the court.

24. The Bombay High Court vide its decision reported in *Ramesh Akre and Ors. v. Smt. Mangalabai Pralhad Akre and Ors.* AIR 2002 Bom 487

has held as follows:

21. Similarly, it is also not necessary that suit should be disposed of only on merits in order to bring an end to interim order. What is contemplated

in law is that such interim order would continue to operate till suit is disposed of one way or the other and would come to an end on the day suit is

disposed of. Whether suit is disposed of for want of prosecution or on merits is not the criteria to decide existence of interim orders. These orders

by their very nature are temporary and remain in force only during the pendency of the suit and come to an end when the suit is disposed of one

way or the other.

25. The judgment of the division bench in *Srinivasan's* case (cited supra) placed heavy reliance on *Pooran Chandra Pandey's* case (cited supra).

But that judgment came to be considered subsequently by several decisions of the Supreme Court and it was specifically overruled.

26. The Supreme Court in *Official Liquidator Vs. Dayanand and Others*, , in paragraph 50 observed as follows:

50. ...Therefore, they cannot be heard to complain of the violation of Articles 14 and 16 of the Constitution on the ground that even after having

worked for more than one decade, they have not been absorbed in the regular cadres under the Government. In our opinion, after having applied

for and accepted employment/engagement as company-paid staff with fixed tenure superimposed by a stipulation that they will have no right to

continue in service or to be absorbed in the regular cadres, the Respondents are estopped from seeking a direction for their absorption against the

posts sanctioned by the Government of India and the High Courts committed a serious error in granting their prayer.

27. With reference to *Pooran Chandra Pandey's* case (cited supra), the Supreme Court in paragraphs 90 to 92 had observed as follows:

90. We are distressed to note that despite several pronouncements on the

subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions.

Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act

in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This

principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate

upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non

for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the

Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the

law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judge Bench in

U.P. SEB v. Pooran Chandra Pandey should be read as obiter and the same should neither be treated as binding by the High Courts, tribunals and

other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.

28. The judgment in Pooran Chandra Pandey's case came to be overruled by the subsequent decision of the Supreme Court in State of

Karnataka and Others Vs. Sri G.V. Chandrashekar, after referring to Dayanand's case (cited supra).

29. A similar view was taken by the Supreme Court in Harminder Kaur and Others Vs. Union of India (UOI) and Others, . Once again, the

Supreme Court in Md. Ashif and Others Vs. State of Bihar and Others, reiterated the same view.

30. Therefore, reliance placed upon the judgment of the division bench in Srinivasan's case cannot have any binding effect as the foundation of the

said judgment based on Pooran Chandra Pandey's case no longer exists.

31. Mr. A. Thiyagarajan, learned Senior Counsel for the Petitioners after referring to UGC notification on Revision of Pay Scales, minimum

Qualification for Appointments of Teachers in Universities, Colleges & other measures for the maintenance of Standards, 1998, referred to a

passage in paragraph 12 providing for part time teachers. But that question is no longer exist since the Respondents had taken a stand that they do

not have any more part time lecturers as the colleges have become full time course.

32. In this context, it is necessary to refer to a judgment of the Supreme Court in Veer Kunwar Singh University Ad hoc Teachers Association and

Ors. v. Bihar State University (C.C.) Service Commission and Ors. 2007 (4) SC 376. In paragraph 35, the Supreme Court held as follows:

35. Creation of sanctioned posts is a sine qua non for recruitment to the post of lecturers. Adherence to the statutory provisions therefore is

imperative in character. No doubt the qualification for holding the post of lecturer has since been changed in terms of the ordinance promulgated in

the year 1993, but then the same was done as per the directions of the University Grants Commission. The colleges whether constituent or

recognized must have lecturers who are qualified to hold the post. Qualification to hold the post of lecturer is fixed by the University Grants

Commission. A University can ignore the directions of the University Grants Commission in this behalf only at its own peril and risk of

derecognition. Neither it is permissible for a University to contravene the directions of the University Grant Commission nor, in our opinion, is it

permissible for a court of law to issue a direction contrary thereto....

(Emphasis added)

33. In view of the factual matrix and the legal precedents set out above, there is no case made out to entertain the writ petitions. Hence all writ petitions will stand dismissed. However, there will be no order as to costs.