

(2017) 04 MAD CK 0235

In the Madras High Court

Case No : 36 of 2017 & 37 of 2017 ?and ?W M P (MD) Nos 438 & 439 of 2017 respectively

The State of Tamil Nadu

APPELLANT

Vs

G.Subramanian

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Tamil Nadu Private Colleges (Regulation) Act, 1976, Section 5

Citation : (2017) 04 MAD CK 0235

Hon'ble Judges : T.S.Sivagnanam, P.Velmurugan

Bench : DIVISION BENCH

Advocate : T.S.Sivagnanam, P.Velmurugan

Final Decision : Dismissed

Judgement

1. All these writ appeals are directed against the common order, dated 18.09.2014, made in W.P.(MD) Nos.3151 and 3152 of 2009, filed by one Mr.G.Subramanian, who is the first respondent herein.

2. W.A.(MD) Nos.36 & 37 of 2017 have been preferred by the Government. Whereas, W.A.(MD) Nos.1453 and 1454 of 2014 have been preferred by the Management of Sri.S.Ramasamy Naidu Memorial College, Sattur / fourth respondent in the writ petitions. Similarly, W.A.(MD) Nos.1433 and 1434 of 2014 have been preferred by one A.Rajesh Khanna / fifth respondent in the writ petitions.

3. For the sake of convenience, the parties shall be referred to as per their ranking in the writ petitions.

4. The issue involved in these writ appeals is with regard to the approval of appointment to the post of Lecturer in Computer Science in the fourth respondent - College. The writ petitioner, namely, G.Subramanian was appointed as a Lecturer in Computer Science on contract basis in self- financed post in the

fourth respondent - College, during 1991. While he was working as such in the fourth respondent - College, he met with an accident during September, 1992, resulting in permanent disability and as of now, both his lower limbs have been amputated.

5. During 1993, two posts of Lecturer in Computer Science was sanctioned for the fourth respondent - College. The petitioner made a request to the fourth respondent - College to appoint him in one of the newly sanctioned posts by considering his candidature as a person suffering from disability. The fourth respondent - College accepted his request and sought for permission from the third respondent - Joint Director of Collegiate Education. However, this request was rejected by the third respondent, by order, dated 18.03.1994, stating that the said vacancy falls in Most Backward Community Category and the petitioner being a Backward Community candidate cannot be accommodated.

6. On 19.03.1996, the fourth respondent - College invited applications for selection to the post of Lecturer in Computer Science from and out of the candidates, whose names were sponsored by the Tamil Nadu State Professional and Executive Employment Exchange, Madras. On 08.04.1996, the writ petitioner was selected and appointed as a Lecturer in Computer Science in the fourth respondent - College. On such appointment, the qualification obtained by the petitioner has to be approved by the Affiliating University, which is the sixth respondent in the writ petition. Therefore, the fourth respondent - College sent a proposal to the sixth respondent - University for approval, who in turn vide proceedings, dated 16.10.1996, approved the petitioner's qualification.

7. It appears that though the petitioner's qualification was approved by the sixth respondent - University, the Management of the fourth respondent - College did not take immediate steps to forward the petitioner's appointment for approval by the third respondent - Joint Director of Collegiate Education, as only after approval, salary would be released from the Government grant.

8. During January, 2000, the fourth respondent - College sent the petitioner's appointment for approval to the third respondent - Joint Director of Collegiate Education, for which a clarification was sought for by the third respondent with regard to the communal roster. On clarification being given by the fourth respondent - College, the second respondent - Director of Collegiate Education, vide communication, dated 01.08.2001, requested the first respondent - Government to ratify the action of the Management of the fourth respondent - College as the petitioner was working since 1991 in a self-financed post. This proposal for ratification submitted by the second respondent - Director of Collegiate Education was not accepted by the first respondent - Government and by order, dated 21.12.2001, the same was rejected for a different reason that the petitioner did not fulfill the requisite qualification, i.e., NET / SLET qualification, as per the norms laid down by the Anna University. As a consequence, the second respondent - Director of Collegiate Education returned the proposal to the fourth respondent - College. Once again, the fourth

respondent - College re- submitted the proposal, on 05.06.2002, explaining that the second respondent - Director of Collegiate Education himself in his proceedings, dated 01.08.2001, found that the petitioner has possessed requisite qualification as on the date of his appointment i.e., on 08.04.1996. Based on the said proposal, the second respondent - Director of Collegiate Education sought for clarification from the sixth respondent - University with regard to the petitioner's qualification.

9. By reply, dated 14.03.2005, the sixth respondent - University clarified that in its Syndicate Meeting held on 06.07.1996, it had resolved to follow the existing Rules regarding qualification of Lecturers in Computer Science, since candidates with NET qualification in the relevant subject were not available and seldom found during that period and in the absence of NET qualified candidates, the sixth respondent - University prescribed the qualification of M.Sc., Maths / Physics in PBDCSA for appointment of Lecturers in Computer Science and that the post B.Sc., Diploma in Computer Science and Applications Course run by the sixth respondent - University was an UGC sponsored course.

10. The petitioner was hospitalized during June, 2007 and his left leg below the knee was amputated on 03.07.2007. In the meantime, the Management of the fourth respondent - College had requested the second respondent - Director of Collegiate Education to permit them to appoint one more Lecturer in Computer Science and accordingly, permission was granted and pursuant to which, an advertisement was issued in the Dailies on 03.08.2007 calling for applications from the eligible candidates to fill up the said post. Pursuant to the said advertisement, the fifth respondent - Mr.Rajesh Khanna, who infact was a student of the petitioner, applied for the said post and he was appointed as a Lecturer in Computer Science on 16.08.2007.

11. After the amputation and discharge from the Hospital, the petitioner is stated to have reported for duty on 28.08.2007, but was not allowed to join duty stating that the fifth respondent - Mr.Rajesh Khanna has already been appointed. Therefore, the petitioner submitted a representation to the second respondent - Director of Collegiate Education stating that his service cannot be dispensed with without any valid termination and the appointment of the fifth respondent - Rajesh Khanna is not tenable. Since the said representation was not considered, the petitioner moved this Court by filing W.P.(MD) No.33025 of 2007, in which a direction was given to the second respondent - Director of Collegiate Education to consider the matter on merits within a time frame, after hearing the petitioner and the fifth respondent - Rajesh Khanna.

12. The second respondent- Director of Collegiate Education is stated to have conducted an enquiry, but no orders were passed and therefore, a contempt petition was filed by the petitioner and at that juncture, the third respondent - Joint Director of Collegiate Education approved the appointment of the fifth respondent - Rajesh Khanna, by order, dated 08.04.2008.

13. After about four months, i.e., on 11.08.2008, the second respondent - Director of Collegiate Education disposed of the petitioner's representation holding that the appointment of the fifth respondent - Rajesh Khanna was valid. It was further stated that the fourth respondent - College required two additional posts of Lecturer in Computer Science as per the available work load and that one existing post of Lecturer in Commerce, which was identified as surplus, was transferred to the Department of Computer Science, so as to facilitate the appointment of the petitioner. However, on account of the amended qualification with effect from 14.06.2006, the petitioner could not be accommodated in the said post, which was created by conversion. Therefore, the petitioner represented to the official respondents to approve his appointment based on the approval of qualification by the sixth respondent - University, vide their proceedings, dated 16.10.1996.

14. It is thereafter, the petitioner filed two writ petitions, namely, W.P.(MD) Nos.3151 and 3152 of 2009 and in W.P.(MD) No.3151 of 2009 he had challenged the appointment of the fifth respondent - Rajesh Khanna and the approval of his appointment and in W.P.(MD) No.3152 of 2009, he had challenged the order, dated 17.01.2002 and the consequential proceedings, dated 23.02.2004, refusing to approve the petitioner's appointment.

15. By proceedings, dated 06.07.2009, the third respondent - Joint Director of Collegiate Education directed the fourth respondent - College to appoint the petitioner against the post transferred as per the order of the second respondent - Director of Collegiate Education, dated 11.08.2008. Pursuant to which, the petitioner was asked to take fresh appointment. The petitioner did not accept the same, because he would be deemed to be not qualified as per the amended qualification.

16. During September, 2011, one post of Lecturer in Computer Science fell vacant on account of the demise of Head of the Department. However, this vacancy was not filled up and only during 2013, the second respondent permitted the fourth respondent - College to fill up 11 vacant teaching posts and one non-teaching post including two posts in the Commerce Department. The fourth respondent - College issued an advertisement inviting applications from eligible candidates and at that juncture, the Court protected the interest of the petitioner by granting an interim order to keep vacant one sanctioned post of Lecturer in the Department of Commerce until further orders.

17. The Writ Court, after elaborately considering the factual matrix balanced the interest of the petitioner, fifth respondent - Rajesh Khanna as well as the fourth respondent - College and disposed of the writ petition by issuing ten directions. At this juncture, it would be worthwhile to quote Paragraph No.33 of the order passed in the writ petitions:

33. In the result, both the writ petitions are disposed of in the following terms:

i. The order declining approval of the appointment of the petitioner with effect

from 08.04.1996 passed by the Government followed by the Joint Director of Collegiate Education is hereby set aside. The official respondents are directed to approve the appointment of the petitioner as Lecturer in the Department of Computer Science with effect from 08.04.1996. Such consequential order shall be issued within a period of four weeks from the date of receipt of a copy of this order.

ii. It is directed that the Education Department shall pay salary arrears for the petitioner for the period between 08.04.1996 to 16.08.2007. The said exercise shall be completed within a period of six months from the date of receipt of a copy of this order;

iii. It is further directed that the service of the petitioner shall be treated as continuous from 08.04.1996 till 30.09.2014 without any break. It is further clarified that the period between 16.08.2007 till the date of reporting for duty as per direction No.1, shall be treated as a duty period and the same shall not be treated as a break in service period.

iv. It is further directed that for the period between 16.08.2007 and the date of reporting for duty as per direction No.1, the pay scale and other monetary benefits of the petitioner shall be notionally calculated for the purpose of fixing the future salary and for this period, the petitioner shall not be entitled for arrears of salary and other monetary benefits.

v. The appointment of the 5th respondent shall be approved with effect from 11.08.2008 and the official respondents shall pass consequential order modifying the earlier order of approval thereby approving his appointment from 11.08.2008.

vi. It is further directed that though the appointment of the 5th respondent shall take effect from 11.08.2008, the salary and other monetary benefits already paid to the 5th respondent from 16.08.2007 till 11.08.2008 shall not be recovered from him;

vii. It is directed that the seniority of the petitioner shall be fixed with effect from 08.04.1996 whereas the seniority of the 5th respondent shall be fixed with effect from 11.08.2008;

viii. The respondent College is at liberty to submit a proposal to the Education Department for conversion of the post of Lecturer in the Department of Computer Science, which remains vacant on account of the demise of Mr.Dhanapalan to the Department of Commerce. If any such proposal is submitted, I am hopeful that Education Department shall consider the same in accordance with the rules and norms prescribed for the said purpose;

ix. The interim orders passed earlier in these writ petitions shall stand hereby vacated;

x. If any amount has been paid from and out of the Management funds to the petitioner towards his salary, the same shall be repaid by the petitioner to the

Management, after arrears are paid by the Government to him. No costs. Consequently connected Miscellaneous Petitions are closed.

18. The appellants are aggrieved by the directions aforementioned. The Management of the fourth respondent - College has now taken a stand that the petitioner lacks the requisite qualification and the vacancy in which, he was appointed, on 08.04.1996, as a Lecturer in Computer Science was reserved for Most Backward Community Category and he should not have been accommodated in the said post and the fifth respondent - Rajesh Khanna has been subsequently appointed and therefore, the directions issued by the Writ Court are not tenable. It needs to be pointed out at this juncture that this stand taken by the Management appears to have been a changed-stand because until 2009- 2010, the Management was supporting the case of the petitioner.

19. The Government, which is also on appeal against the directions issued in the writ petitions, reiterates the same contentions laying emphasis on the roster and qualification. The sixth respondent - University, though makes a feeble attempt to state about primacy of the U.G.C.Regulations over its own circular, yet having approved the petitioner's qualification, by proceedings dated 16.10.1996, have placed all the relevant facts before this Court. The other teacher, namely fifth respondent - Rajesh Khanna is not fully aggrieved by the directions issued by the Writ Court and all that he seeks before this Court that his past service i.e., from the date of his appointment, namely, 16.08.2007, should be protected as already the Writ Court has protected his interest and ordered that no recovery should be effected.

20. We have elaborately heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants in W.A.(MD) Nos.36 and 37 of 2017, Mr.M.Ajmal Khan, learned Senior Counsel appearing for Mr.C.Venkatesh Kumar, learned counsel on record for the appellant in W.A.(MD) Nos.1453 and 1454 of 2014, Mr.R.Subramanian, learned counsel appearing for the appellant in W.A.(MD) Nos.1433 and 1434 of 2014, Mr.Isaac Mohanlal, learned Senior Counsel appearing for Mr.T.Cibi Chakraborty, learned counsel on record for the writ petitioner / first respondent in W.A.(MD) Nos.36 & 37 of 2017, 1453, 1454, 1433 and 1434 of 2014 and Mr.M.Muthu Geethayan, learned counsel appearing for the fourth respondent - University in W.A.(MD) Nos.36 and 37 of 2017 and fifth respondent in W.A.(MD) Nos.1453, 1454, 1433 and 1434 of 2014 and carefully perused the materials placed on record.

21. The first contention raised is with regard to the qualification of the writ petitioner. In terms of U.G.C.Regulations, which came into force during September, 1991, the qualification for the appointment to the post of Lecturer in Arts, Sciences etc., is that the candidate should have a good academic record with atleast 55% marks or an equivalent grade at Master's Degree Level in the relevant subject from an Indian University or an equivalent Degree from a Foreign University. Candidates besides fulfilling the above qualifications should have cleared the eligibility test for lecturers conducted by UGC, CSIR or similar

test accredited by the UGC.

22. The contention of the Management and the Government is that the regulations framed by the U.G.C., would bind the sixth respondent - University, fourth respondent - College and the writ petitioner and any circular or Rules framed by the sixth respondent - University, which is inconsistent with the U.G.C.Regulations is not enforceable and the U.G.C., Regulations will prevail over the circular of the sixth respondent - University. Under normal circumstances, this Court would have had no hesitation to hold that if there is any inconsistency between the Rules framed by an Institution or University and the Regulations of the U.G.C., with regard to the qualification, then the Regulations of the U.G.C., will hold the field. But, in the instant case, we are inclined to take a slight departure on account of the peculiar facts and circumstances and in particular that the sixth respondent - University has approved the petitioner's qualification as early as on 16.10.1996. It is pertinent to note that the said order has not been questioned till date by any of the parties. We further hold that the Management can never question such an order passed by the sixth respondent - University as they acted upon based on such approval.

23. The sixth respondent - University had sent a circular, dated 05.02.1991, to all the affiliated Colleges fixing the qualification for the post of Lecturer in Computer Science with effect from 24.11.1990 and the qualification prescribed is M.Sc., Computer Science Degree Course or M.Sc., Mathematics / M.Sc., Physics with Post Graduate Diploma in Computer applications / Computer Science subject to the condition that the Diploma is to be awarded by a recognized University. The existing qualifications already communicated includes M.Sc., Mathematics / M.Sc., Physics with Post B.Sc., Diploma in Computer Science and applications. Thus, on the date when the petitioner was appointed, the affiliated Colleges of the sixth respondent - University were directed to follow the Circular, dated 05.02.1991.

24. It may be true that at that relevant point of time, U.G.C.Guidelines were in force, but nevertheless, the sixth respondent - University did not amend the qualification. Based on the qualification prescribed in the Circular, dated 05.02.1991, appointments have been made and the petitioner is not the solitary case as there were as many as ten other similar appointments in various affiliated Colleges, which were also approved by the Department and this information has been secured by the petitioner under the Right to Information Act and furnished by the Information Officer vide proceedings, dated 02.09.2008. Thus, the petitioner's case is not a solitary case and if a different stand is taken, it would amount to discrimination. In any event, when the fourth respondent - College sent the petitioner's qualification for approval, the sixth respondent - University has approved the same on 16.10.1996. The said order has attained finality. The petitioner was appointed and joined duty. In terms of Section 5 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, the sixth respondent - University is the only competent authority to approve the

qualification. Therefore, the second respondent - Director of Collegiate Education cannot be permitted to sit-in - Judgment over the decision of the sixth respondent - University as the statute prohibits such action. After the repeated representations given by the fourth respondent - College, the second respondent - Director of Collegiate Education appears to have been prima facie convinced and addressed the sixth respondent - University seeking appropriate clarification. The sixth respondent - University, vide their reply, dated 14.03.2005, sustained their earlier stand approving the petitioner's qualification and justified their action in issuing the proceedings, dated 16.10.1996. For better appreciation, the said communication is quoted herein below.

-MADURAI KAMARAJ UNIVERSITY

Dr.V.Alagappan, M.Com., Ph.D.

Registrar

Palkalai Nagar

Madurai-625 021

Date : 14.3.2005

Ref.No.CDC-8/A/EQA/EXP/SRNMC/2004

To

The Director of Collegiate Education,

Chennai 600 006.

Sir,

Sub : Aided Colleges - Sri.S.Ramasamy Naidu Memorial College, Sattur - Appointment of Thiru G.Subramanian as Lecturer in the department of Computer Science - Educational qualifications - Approval - Reg.

Ref : Your letter Na.Ka.No.21666/G.2/2004, dated 31.12.2004.

***** With reference to your letter cited, I am to inform you that the Syndicate at its meeting held on 06.7.1996 resolved to follow the existing rules regarding the qualifications for the appointment of Lecturers in Computer Science, since candidates with NET qualifications in the relevant subject were seldom found during that period. In the absence of NET qualified candidates, the University prescribed the qualification of M.Sc. Maths/Physics with PBDCSA for the appointment of Lecturers in Computer Science, as the Electronics and Microprocessor lab were to be delat with by them. Moreover, the Post B.Sc. Diploma in Computer Science and Applications course (PBDCSA), run the University at that time, was a U.G.C., sponsored course.

Hence, the educational qualifications of Thiru.G.Subramanian, Lecturer in Computer Science, Sri.S.Ramasamy Naidu Memorial College, Sattur was

approved by the University as per the norms prevailed at the time of the appointment of the incumbent, vide this Office letter No.A.2/Q.A/96, dated 16.10.1996. A copy of the circular No.A.1/256/89, dated 05.2.1991 of the University regarding the qualifications prescribed for the appointment of Lecturers in Computer Science, based on which the educational qualifications of Thiru.G.Subramanian, Lecturer in Computer Science was approved, is enclosed herewith.

Yours faithfully,

REGISTRAR-

25. Thus, this Court is fully convinced that at this distance of time, the petitioner's qualification cannot be questioned and the Management is estopped from questioning the petitioner's qualification on account of their earlier action and in particular, with regard to the stand taken by them in the letter, dated 05.06.2002, addressed to the second respondent - Director of Collegiate Education. Thus, having held that the petitioner possessed the requisite qualification and the same was approved by the University / competent authority, the result that has to follow is that the petitioner would be entitled for approval of his appointment.

26. With regard to the roster issue, which has been raised by the Government and the Management now is concerned, we hold that the Management cannot raise such an issue and they are estopped from doing so. So far as the stand taken by the Government is concerned, the second respondent - Director of Collegiate Education was convinced that ratification needs to be given and accordingly, sent a representation to the Government, vide proceedings dated 01.08.2001. The operative portion of the said proceedings reads as follows: "VERNACULAR MATTER OMITTED"

27. Thus, the Government, while considering the proposal, ought to have accepted or rejected the proposal with regard to the roster issue. But, unfortunately, the Government took a different stand and stated that the petitioner has not fulfilled the norms prescribed by Anna University and he does not possess NET qualification. This stand taken by the State Government that too while considering the proposal of the second respondent - Director of Collegiate Education, dated 01.08.2001, seeking ratification of the petitioner's appointment was totally uncalled for and not relevant to the recommendation made by the second respondent - Director of Collegiate Education, vide his proceedings, dated 01.08.2001. Therefore, the petitioner cannot be non-suited on the ground that the Management did not adhere to the roster point. Thus, both the legal issues raised by the appellants i.e., College and the Government deserve to be rejected.

28. So far as the appeal filed by the fifth respondent - Rajesh Khanna is concerned, in our considered view, the Writ Court has taken great efforts to protect his interest by ensuring that he is not put into financial loss or difficult.

As mentioned earlier, the order of the Writ Court has balanced the interest of all concerned and the official respondent, Management as well as the fifth respondent can seek for no better direction from this Court as directed by the Writ Court. In fact, the Government as well as the Management should have graciously accepted the directions issued in the writ petitions. As noticed above, the Management has taken a volte-face for the reasons best known to them, when they had earlier supported the case of the petitioner to the hilt by representing to the Department and other hierarchy of authorities. Change of guard in the College cannot change the position or stand taken as an Institution. Thus, for all these reasons, we find no good ground to interfere with the reasoned order passed in the writ petitions.

29. In the result, all the writ appeals fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed..