



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30-04-2009

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

AND

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.A.(MD) Nos.785 to 787 of 2008

T.Bhaskar

.. Appellant in all the appeals

Versus

1.The State of Tamil Nadu

Rep. by its Secretary to Government,
Higher Education Department,
Fort St. George, Chennai-600 009.

2.The Director of Collegiate Education
College Road, Chennai-600 006.

3.The Joint Director of Collegiate Education,
Tirunelveli Range,
Tirunelveli-627 003.

4.The Secretary,
St.Xavier's College,
Palayamkottai,
Tirunelveli-627 002.

.. Respondents in all the appeals

For Appellants : Mr.A.Thirumurthy

For Respondents : Mr.Gandhi Rajan (R1 to R3)
Mr.Isaac Mohanlal (R4)

PRAYER in W.A.No.785 of 2008: Appeal filed to set aside the order, dated 18.11.2008, made in W.P.(MD)No.6310 of 2008, on the file of this Hon'ble Court.

PRAYER in W.A.No.786 of 2008: Appeal filed to set aside the order, dated 18.11.2008, made in W.P.(MD)No.9317 of 2007, on the file of this Hon'ble Court.

PRAYER in W.A.No.787 of 2008: Appeal filed to set aside the order, dated 18.11.2008, made in W.P.(MD)No.5237 of 2007, on the file of this Hon'ble Court.

COMMON JUDGMENT

M. JAICHANDREN, J.

Heard Mr.A.Thirumurthy, the learned counsel appearing for the appellant and Mr.Gandhi Rajan, the learned Government Advocate for respondents 1 to 3 and Mr.Isaac Mohanlal, the learned counsel for the fourth respondent.



2. Inasmuch as the issue involved in all the writ appeals are one and the same, a common judgment is being passed.

3. The writ appeals have been filed against the order, dated 18.11.2008, made in W.P.(MD).No.6310 of 2008, W.P.(MD).No.9317 of 2007, W.P.(MD).No.5237 of 2007.

4. The petitioner in Writ Petition No.6310 of 2008, who is the appellant in the present writ appeal, had prayed for the issuance of a writ of mandamus to direct the fourth respondent therein to submit the proposal of appointment of 13 lecturers, including the petitioner, for the approval of the third respondent, in compliance with the order, dated 18.6.2006, passed in W.P.(MD) No.2140 of 2005 and to further direct the fourth respondent to regularise the petitioner's services from 17.6.2002, which is the date of his initial appointment, with all service and monetary benefits.

5. In the said order, it has been observed that the petitioner-appellant had claimed that, on 17.6.2002, he had been appointed as a lecturer in Chemistry by the first respondent college, as against a retirement vacancy. However, his appointment had not been approved by the Directorate of Collegiate Education. While so, the fourth respondent had filed a writ petition in W.P.No.2140 of 2005, praying for the disbursement of the salaries for 13 lecturers, including the petitioner. This Court by an order, dated 18.10.2006, had issued a direction to the second respondent to consider the work load available in each department, as well as the sanction of posts through the staff fixation order, dated 28.10.1999 and to pass appropriate orders, on the basis of the proposals submitted by the petitioner, dated 5.2.2004, before the third respondent, within a period of six weeks from the date of receipt of the said order. Since the fourth respondent had not submitted any proposal in respect of the appointment of 13 lecturers, including the petitioner-appellant, for the grant of approval, the petitioner had filed W.P.(MD)No.6310 of 2008, praying for the reliefs as stated therein.

6. In the counter affidavit filed by the third respondent in the writ petition it had been stated that as per the order of this Court, dated 18.10.2006, made in W.P.No.2140 of 2005, the workload for the year 2003-2004, submitted by the management of St.Xavier's College, Palayamkottai, on 5.2.2004, had been reviewed and the staff strength had been fixed as per the staff fixation order, dated 28.10.1999, and specific orders had been issued, vide proceedings No.16333/F4/2006, dated 9.2.2007, of the Directorate of Collegiate Education, Chennai. Recording the said statement, this Court had passed the order, dated 18.11.2008, in W.P.(MD)No.6310 of 2008, stating that in view of the proceedings, dated 9.2.2007, issued by the Directorate of Collegiate Education, Chennai, the petitioner cannot have any further grievance. It had been further held that in respect of the regularisation of the petitioner-appellant's services he could work out his remedies in the



other writ petitions filed by the petitioner before this Court in W.P.Nos.9317 and 5237 of 2007.

7. In W.P.(MD)No.9317 of 2007, the petitioner had prayed that this Court may be pleased to issue a writ of certiorarified Mandamus, to call for the records of the fourth respondent management, relating to his proceedings, dated 1.9.2007, and to quash the same and to direct the fourth respondent to allow the petitioner to continue in service.

8. By an order, dated 18.11.2008, made in W.P.(MD)No.9317 of 2007, this Court had observed that the petitioner had been appointed as a lecturer in the Department of Chemistry, on a consolidated pay, on a temporary basis subject to the terms and conditions of service in the management category. Such appointment orders had been issued to the petitioner, on 16.6.2003, 16.6.2004, 16.6.2005 and 14.6.2006 for the various periods. Since the petitioner had undertaken to abide by the regulations and the conditions, while accepting the appointment orders issued on a temporary basis, he cannot claim permanency in a sanctioned post. Relevant rules were available for the appointment of permanent lecturers. Accordingly, the appointments on a permanent basis could be made, either by means of promotion or by direct recruitment by calling for applications from qualified persons by paper publication or by calling for a list of candidates from the employment exchange. Since the petitioner had not been appointed in accordance with the relevant rules, applicable to the appointment of a lecturer, on a permanent basis, he cannot claim for regularisation of his service. Further, the prayer in the writ petition was not for regularisation of the service of the petitioner and it was only the termination notice that had been challenged. It had been further observed that the records placed before the Court would reveal that subsequent to the staff fixation order made by the Government, a proper paper publication had been made calling for applications from qualified persons. Thereafter, the interviews were held and the selections were made, which were approved by the Directorate of Collegiate Education. Since there was no vacancy as against a sanctioned post the petitioner cannot claim that he is entitled to work in the college in a sanctioned post. Since the petitioner's appointment is purely on a temporary basis the college is at liberty to terminate him by issuing a notice, as per the terms and conditions of the appointment order. Hence, this Court had held that there was no reason to interfere with the termination order issued against the petitioner.

9. In W.P.No.5237 of 2007, the petitioner had prayed for issuance of a writ of mandamus to direct the officials of the respondents 1 and 3 to ratify the petitioner's appointment as a lecturer in Chemistry in the fourth respondent college by regularising the petitioner's service from his initial appointment, from 17.6.2002, with all attendant service and monetary benefits.



10. This Court by an order, dated 18.11.2008, had recorded the submission of the learned counsel appearing on behalf of the respondents 1 to 3 that there was no proposal submitted by the fourth respondent college seeking for the approval of the petitioner. It was held that there was no scope for issuing a direction to the Directorate of Collegiate Education, either to ratify the appointment of the petitioner or to regularise his services, when it is the stand of the fourth respondent college that the petitioner had not been appointed on a permanent basis and when the fourth respondent college has not submitted any proposal to the Directorate of Collegiate Education. Since the petitioner had not been appointed by following the procedures contemplated under Rule-11 of The Tamil Nadu Private Colleges (Regulation) Rules, 1976, the question of ratifying the petitioner's appointment does not arise.

11. In the additional affidavit filed by the petitioner it has been stated that the petitioner had been initially appointed, on 17.6.2002, in the fourth respondent college, in the retirement vacancy, in a sanctioned post. Even though the fourth respondent had filed a writ petition in W.P.(MD).No.2140 of 2005, to approve the proposals submitted by the fourth respondent, the matter was not pursued by the fourth respondent, as no proposal had been sent. It has been further stated that at present there are three vacancies in the Department of Chemistry in the fourth respondent college which are yet to be approved by the third respondent. It is open to the fourth respondent to send a proposal for the approval of the petitioner's appointment, even at this stage. The meagre amounts paid as salary to the petitioner by the fourth respondent college could be adjusted from the amounts that would be sanctioned by the Government once the approval is granted. Therefore, no prejudice would be caused to the fourth respondent college by forwarding the proposal to the third respondent for the approval of the appointment of the petitioner as a lecturer in Chemistry in the fourth respondent college.

12. In the written submissions of the fourth respondent it has been stated that the relationship of master and servant between the petitioner and the fourth respondent is based on a contract of personal service and it is not specifically enforceable in view of Section 14 of the Specific Relief Act, 1953. If the termination of the contract of employment is found to be illegal the remedy for the employee would be only by way of certain damages and not by specific performance. The petitioner in the writ petitions, who is the appellant in the present appeals, had been appointed, temporarily, as a lecturer in Chemistry, with effect from 17.6.2002, subject to the terms and conditions of service. As such he had served till 16.4.2003. Subsequently, he was permitted to work in the college and he is continuing as such in view of the interim orders granted by this Court.

13. It has been further stated that since the appointment of



the appellant is based on a contract, it is not in accordance with the statutory provisions applicable to such appointments. The appointment was made under the management category, on a temporary basis. After three posts of lecturer in Chemistry had been sanctioned in the year, 2007, the fourth respondent college had followed the procedure contemplated under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the rules framed thereunder, to fill up the vacancies. The management of the fourth respondent college had issued an advertisement in the newspaper 'The Hindu', on 23.8.2007, inviting applications from eligible candidates for the said posts. Twenty-six candidates had applied pursuant to the said advertisement. Further, the appellant had not submitted his application in spite of the suggestions made by the fourth respondent. The selection committee selected Mr. Stanley, Ms. S. Mary Jelastin Kala and Ms. C. Maria Magdalene, on 14.9.2006. All the three candidates had joined in service, on 22.10.2007 and they are continuing to work in the fourth respondent college, till date. As the petitioner had not opted to apply for the regular appointment the selection committee was not able to consider his candidature. Since all the three regular vacancies had been filled up there is no vacancy existing in the fourth respondent college. The appellant had not challenged the appointment of the other candidates as being irregular or illegal. It has been further stated that as per the work load in the fourth respondent college during the current academic year 2008-2009, the college is entitled to have one more post of lecturer in Chemistry.

14. From the materials on record, it is apparent that the fourth respondent College itself had earlier filed W.P.(MD)No.2140 of 2005 praying for a direction to the present respondents 1 to 3 for the disbursement of the salary of 13 lecturers, including the present appellant. In such writ petition, it was the categorical stand of the present fourth respondent that the appellant had been initially appointed against the vacancy which was existent at that time. It is of course true that such initial appointment was only for a temporary period, but it cannot be said that there was no justification for filling up the temporary vacancy, which had occurred on account of retirement of a person appointed against the sanctioned post. It is true that the College had not followed the procedure for filling up the permanent post, but, at any rate, it cannot be said that for filling up the post on temporary basis any irregularity has been committed. It is also not in dispute that thereafter the appellant continued for all these years, though with temporary breaks in service, obviously on account of intervening summer vacations during those periods.

15. When the fourth respondent intended to fill up the approved vacancy in a regular manner, possibly, it would have been more prudent on the part of the present appellant to appear at the interview to be selected on regular basis. However, it can be easily concluded that the appellant must have thought that since he had



continued in service without interruption for a long period, even though on a temporary basis with artificial breaks, he need not appear for the regular selection. However, on that score it would be unjust to deprive the petitioner the benefit of employment for all times to come.

16. Under these peculiar circumstances, we feel interest of justice would be served by directing the fourth respondent to allow the appellant to continue on temporary basis till the selection for filling up the vacancy on regular basis is made. We further direct the fourth respondent to propose the name of the appellant for the approval of the third respondent to continue him as a lecturer in Chemistry, in view of the additional workload in the fourth respondent college, for the academic year 2008-2009. Once such proposal has been sent it is for the third respondent to consider the granting of approval, based on the proposal made by the fourth respondent college, in accordance with the procedures established by law. This exercise has to be undertaken and completed by the fourth respondent college, as well as the third respondent, as expeditiously as possible, within a period not later than three months from the date of receipt of a copy of this order. It is made clear that the appellant would be allowed to apply for such regular selection and if the appellant has become over-aged, there shall be relaxation of such age. It goes without saying that, while considering, the appropriate authority would obviously keep in view the rich experience gained by the appellant having successfully completed about seven years of service as a Lecturer, though with artificial breaks. The order of termination issued against the appellant is accordingly quashed and all the writ appeals are disposed of subject to the above directions and observations. Connected M.P.No.1 of 2008 in W.A.No.786/2008 is closed.

Sd/-

Assistant Registrar (R)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to the Government, Higher Education Department,
Fort St. George, Chennai-600 009.
- 2.The Director of Collegiate Education, College Road, Chennai-600 006.
- 3.The Joint Director of Collegiate Education, Tirunelveli Range,
Tirunelveli-627 003.

+1 LR Copy

KS 29.05.2009 (5C/6P)

W.P.Nos.785 to 787 of 2008

30-04-2009