

(2010) 02 MAD CK 0087

Madras High Court

Case No: W.A. No. 325 of 2001

M. Kuruvammal

APPELLANT

Vs

The Registrar,
Gandhigram Rural
Institute, (Deemed
University), The
Vice-Chancellor,
Gandhigram Rural
Institute (Deemed
University) and Dr.
Pitchai, Senior Lecturer
Dept. of Tamil
Gandhigram Rural
Institute (Deemed
University)

RESPONDENT

Date of Decision: Feb. 8, 2010

Hon'ble Judges: R. Banumathi, J; M.M. Sundresh, J

Bench: Division Bench

Advocate: AR. L. Sundaresan for AL. Ganthimathi, for the Appellant; S. Gopalaratnam, for Respondents-1 and 2 and C. Chinnasamy for Respondent-3, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Sundresh, J.

The writ appeal has been preferred by the appellant challenging the order of dismissal of the writ petition passed by the

learned single Judge wherein the impugned order dated 20.11.1992 has been upheld.

2. The brief facts of the case in a nutshell are as follows:

i. The appellant was working as a Lecturer with the 1st respondent University from 1977. The 3rd respondent was working with the 1st

respondent University as Lecturer from 01.08.1984. The appellant was given senior grade in the cadre of Lecturer with effect from 01.01.1986

and the 3rd respondent was given the senior grade with effect from 01.08.1989.

ii. Thereafter an order was passed by the 1st respondent dated 20.11.1992 to the effect that the services rendered by the 3rd respondent at State

Resource Centre, Madras from 01.07.1980 to 31.07.1984 would also be taken into account as qualifying service for placement as Senior Grade

Lecturer under the Career Advancement Scheme of the University Grant Commission. Challenging the above said order, the appellant filed the

writ petition contending that the services of the 3rd respondent rendered at State Resource Centre, Madras from 01.07.1980 to 31.07.1984

cannot be taken into account as qualifying service. The learned single Judge has dismissed the writ petition by stating that the said impugned letter

dated 20.11.1992 being a communication between the 1st respondent and the 3rd respondent, the same cannot be challenged by the appellant.

Being aggrieved against the said order, the appellant has preferred the present appeal.

3. Mr. AR. L. Sundaresan, learned senior counsel appearing for the appellant submitted that at the time of appointment of the 3rd respondent, the

appellant was already working. The 1st respondent ought not to have taken into consideration of the services rendered by the 3rd respondent at

State Resource Centre, Madras from 01.07.1980 to 31.07.1984 as qualifying service for placement as Senior Grade Lecturer. The learned senior

counsel further submitted that even assuming such a service can be taken into account as per the letter of the University Grants Commission dated

27.11.1990, the services of the 3rd respondent ought not to have been taken into account, since the 1st respondent has not verified as to whether

the conditions stipulated in the said letter have been complied with or not.

4. According to the learned senior counsel, a perusal of the order impugned and the resolution of the syndicate do not indicate the application of

mind by the respondents 1 and 2. It is the further submissions of the learned senior counsel that the learned single Judge has committed an error in

dismissing the writ petition on the ground that the impugned order is the communication between the 1st respondent and the 3rd respondent and

therefore the same cannot be challenged by the appellant. Hence the learned senior counsel prayed for the allowing of the appeal.

5. Mr. S. Gopalaratnam, learned Counsel appearing for the respondents 1 and 2 submitted that the respondents 1 and 2 have verified the entire

records and satisfied that the conditions stipulated by the University Grants Commission in the letter dated 27.11.1990 have been complied with

by the 3rd respondent and only after the said verification, the services rendered by the 3rd respondent was taken into consideration. It is further

submitted that the State Resource Centre was established by the approval of the Parliament to promote Literacy Programmes in every State. The

said Centre is an autonomous body founded by the Ministry of Human Resource Development, Government of India and the Government of Tamil

Nadu on the basis of grant-in-aid 80:15:5. It was also recognised for the Ph.D. Programmes by the University of Madras.

6. The learned Counsel further submitted that inasmuch as the post held by the 3rd respondent was a teaching post and the pay scale drawn by the

3rd respondent in the Fourth Pay Commission scale being equivalent to that of Lecturer in the UGC pay scale. The conditions stipulated by the

UGC have been complied with. The 4th respondent was also working at the State Resource Centre continuously without any break of service. It is

further stated that there was a precedent in the case of one Dr. Mrs. Naseem Akthar in whose case also the services rendered at State Resource

Centre were taken into consideration. Hence the learned Counsel prayed for dismissal of the appeal.

7. Mr. C. Chinnasamy, learned senior counsel appearing for the 3rd respondent submitted that the appellant has not questioned the power of the

respondents 1 and 2 in taking into consideration of the services rendered by the 3rd respondent at State Resource Centre, Madras. The appellant

has not even challenged the relevant rules which provide for such a procedure as well as the letter of the University Grants Commission dated

27.11.1990. Therefore the learned senior counsel submitted that it is not open to the appellant to challenge the order passed by the 1st respondent

which was made after consideration of the entire materials available on record.

8. We have heard the submissions of Mr. AR. L. Sundaresan, learned senior counsel appearing for the appellant and Mr. S. Gopalaratnam,

learned Counsel appearing for the respondents 1 and 2 as well as Mr. C. Chinnasamy, learned senior counsel appearing for the 3rd respondent.

9. As submitted by the learned Counsel for the respondents, the letter of the University Grants Commission dated 27.11.1990 provides for

consideration of the services rendered by the 3rd respondent at the State Resource Centre, Madras for taking into account as qualifying service for

placement as Senior Grade Lecturer under the Career Advancement Scheme. It is seen that the State Resource Centre has been created by the

approval of the Parliament to promote Literacy Programmes in every state. The said centre is an autonomous body founded by the Ministry of

Human Resource Development, Government of India and Government of Tamil Nadu on the basis of grant-in-aid 80:15:5. It was also recognised

for the Ph. D programmes by the University of Madras. Therefore the contention of the learned senior counsel for the appellant that the State

Resource Centre is a private body cannot be accepted.

10. The appellant has not questioned the power of the respondents 1 and 2 in taking into consideration of the services rendered by the 3rd

respondent at the State Resource Centre. According to the appellant, the conditions stipulated by the University Grants Commission in and by his

letter dated 27.11.1990 has not been complied with. In order to appreciate the said conditions mentioned in the letter dated 27.11.1990 are

extracted hereunder:

1. Previous service without any break as a Lecturer or equivalent in a university, college, national laboratory or other scientific organisations

(CSIR, ICAR, DRDO, UGC etc) and as a UGC Research Scientist should be counted for placement of Lecturers in Senior Scale/Selection

Grade provided that:

- a. the post was in an equivalent grade/scale of pay as the post of a Lecturer;
- b. the qualifications for the post were not lower than the qualifications prescribed by UGC for the post of Lecturer;
- c. the Lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as Lecturers;
- d. the post was filled in accordance with the prescribed selection procedure as laid down by the university/State Government;
- e. the appointment was not adhoc or in a leave vacancy of less than one year duration.

11. A detailed counter affidavit has been filed by the 1st respondent clearly stating that all the conditions mentioned therein have been complied

with after thorough verification. Therefore the contention of the appellant that the order passed by the 1st respondent does not make any mention

of the compliance of the conditions by the 3rd respondent cannot be accepted in the absence of any contra material. The impugned order is a

communication between the 1st respondent and the 3rd respondent intimating the 3rd respondent that he has become eligible to include the

services rendered by him at State Resource Centre. For passing such an order, there is no necessity to make a specific reference about the

compliance of the conditions imposed by the University Grants Commission. If it is the specific case of the appellant that the said conditions are not

complied with, then it is for the appellant to prove the same. The appellant cannot seek a direction from this Hon"ble Court to conduct a roving

enquiry and find out as to whether the 3rd respondent has complied with the conditions or not. Therefore in the absence of any materials produced

by the appellant to substantiate that the conditions imposed by the UGC have not been complied with by the respondents. The contentions of the

appellant cannot be accepted.

12. It is a well settled principle of law that no one has got a vested right for promotion. If a person comes to the Court seeking denial of promotion

or challenging the fixation of seniority then onus is on him to prove that the other person has been placed over and above him contrary to the rules

and procedures. Therefore in the absence of any such materials in support of the contention of the appellant, the writ appeal is liable to be

dismissed.

13. The power of the High Court to interfere with the powers of the authorities regarding the mode of recruitment and qualifications, criteria of

selection and evaluation of service records is very limited, since it is the exclusive domain of the employer concerned. Therefore the power of

judicial review can be exercised only when it is shown that the action of the employer concerned is contrary to any constitutional or statutory

provision or is patently arbitrary.

14. In this connection, it is useful to refer the judgment of the Hon"ble Supreme Court reported in (2008) 9 SCC 242 [Union of India v. Pushpa

Rani] wherein it has observed as follows:

37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and

abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of

selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for

improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if

it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala

fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion

or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the

court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure

or restructure the cadres for the purpose of improving efficiency of administration.

15. Therefore on a consideration of the above said legal principle and also on a consideration of the material facts involved in the appeal, we do

not find any ground to allow the appeal and accordingly the writ appeal is dismissed. No costs.