

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.07.2015

DATE OF DECISION: 27.07.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI

and

THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. Nos.1345 to 1347 of 2014 and M.P. Nos.1 of 2014

1 The Principal
Sir Theagaraya College
Old Washermanpet
Chennai 600 021

2 The Secretary
College Committee
Sir Theagaraya College
Chennai 600 021

Appellants in WA No.1345/2014

Sir Theagaraya College
represented by its Secretary
Old Washermanpet
Chennai 600 021

Appellant in WA No.1346/2014

The Secretary
College Committee
Sir Theagaraya College
Chennai 600 021

Appellant in WA No.1347/2014

Vs.

1 Veerappan

2 The Director of Collegiate Education
Chennai 600 006

- 3 The Regional Joint Director of Collegiate Education
Saidapet
Chennai 600 015 Respondents in WA No.1345/2014
- 1 The Joint Director of Collegiate Education
Chennai Region
Saidapet, Chennai 600 015
- 2 N. Veerappan Respondents in WA No.1346/2014
- 1 Veerappan
- 2 The Regional Joint Director of Collegiate Education
Saidapet
Chennai 600 015 Respondents in WA No.1347/2014

Writ Appeals preferred under Clause 15 of the Letters Patent challenging the common order dated 25.09.2014 passed in W.P. No.21392 of 2014, 24410 of 2014 and 24844 of 2014 respectively.

For appellants
in all WAs

Mr. B. Ravi

For R1 in
WA No.1345/2014,
For R2 in
WA No.1346/2014 &
For R1 in
WA No.1347/2014

Mr. C. Selvaraju, Sr. Counsel
for M/s. C.S. Associates

For R2 in
WA No.1345/2014,
For R1 in
WA No.1346/2014 &
For R2 in
WA No.1347/2014

Mr. K. Karthikeyan
Government Advocate

COMMON JUDGMENT**SATISH K. AGNIHOTRI, J.**

These three intra-Court appeals are directed against the common order dated 25.09.2014 passed in W.P. Nos.21392 of 2014, 24410 of 2014 and 24844 of 2014 respectively.

2 W.A. No.1345 of 2014 is directed against the order rendered in W.P. No.21392 of 2014. The said writ petition was filed by the first respondent herein seeking a direction to the third respondent herein to call for proposal from the second appellant herein in respect of the application dated 2nd July 2014 made by the first respondent herein, viz., Veerappan, (hereinafter referred to as "Veerappan) for extension of service as Associate Professor, Department of Plant Biology and Plant Bio-Technology in the appellant college from 1st October 2014 to 31st May 2015, read with his representation dated 25th July 2014.

3 The second writ appeal, being W.A. No.1346 of 2014 emanates from the order passed in W.P. No.24410 of 2014, wherein, the legality of the proceedings in Na.Ka.No.5183/C2/2014 dated 4th September 2014 issued by the first respondent herein was called in question by the appellant herein.

4 The third writ appeal being W.A. No.1347 of 2014 is preferred against the order rendered in W.P. No.24844 of 2014, filed by Veerappan, questioning the legality of the proceedings no.nil dated 1st September 2014 of the appellant and further direction to the respondents therein to give extension of service to him from 1st October 2014 to 31st May 2015 as Associate Professor, Department of Plant Biology and Plant Bio-Technology in the appellant College.

5 Since the question of law involved in all these three appeals is common, these appeals are being considered and decided by this common judgment.

6 The facts in a nutshell are that Veerappan attained the age of superannuation on 30th September 2014 working as the Head of the Department of Plant Biology and Plant Bio-Technology. Knowing that his age of superannuation is 30th September 2014, he made a representation dated 2nd July 2014 to the Secretary of Sir Theagaraya College Committee (for short "the College Committee") for extension of his service. Two other similarly situated Professors were also due to retire on 30th September 2014. They made applications for extension of their services till the end of the academic year. The College Committee forwarded their representations with approval to the Regional Joint Director of the Collegiate Education (for short "the Regional Joint Director"). However, Veerappan, without waiting for the decision, filed the writ petition being W.P. No.21392 of 2014, seeking a direction to the Regional

Joint Director to call for proposal from the College Committee in respect of his application/representation dated 2nd July 2014. During the pendency of the said writ petition, the College Committee sent a letter dated 27th August 2014 to the Joint Director of Collegiate Education, recommending not to extend the service of Veerappan on the ground that his continuation in service on re-employment would not be in the interest of institution and students. It was further stated by the College Committee that Veerappan was awarded with a punishment of stoppage of 3 increments with cumulative effect and also, he has not submitted pension papers, as required for re-employment. Thereafter, the College Committee issued proceedings dated 1st September 2014 to Veerappan, intimating the latter that his request for re-employment be rejected. Being aggrieved by the said proceedings of the College Committee, Veerappan preferred the other writ petition being W.P. No.24844 of 2014. The Regional Joint Director, vide communication dated 4th September 2014, called for the College Committee to submit its proposal for grant of re-employment to Veerappan, by way of extension of service. Sir Theagaraya College (for short "the College") questioned the legality of the said communication dated 4th September 2014 in W.P. No.24410 of 2014.

7 Veerappan's case before the learned Single Judge was that he is entitled to continue till the end of the academic year under G.O. Ms.No.281, Education Department dated 13th February 1981. The College Management has no discretion to

refuse sending the proposal for re-employment, as it is mandatory. It was further projected by Veerappan that conditions such as extension of service of a school teacher, who retires in the middle of the academic year is subject to his conduct and character being satisfactory and the teacher be medically fit and must have submitted the proposal for pension, are not applicable to the College teachers, as the College teachers are governed by the Tamil Nadu Private Colleges (Regulation) Act, 1976 (for short "the 1976 Act") and the Rules framed thereunder and also, the Government Order, as aforesated. Thus, the refusal on the part of the College to send the proposal for continuation of service is *per se* illegal, vitiated and deserves to be quashed.

8 On the other hand, the case of the College Committee and the College before the learned Single Judge was that re-employment cannot be claimed as a right, as it depends on various factors, including conduct and character of the college teacher concerned and Veerappan had also not submitted his pension papers, which was a pre-requisite for sending the proposal for re-employment. It was also contended that Veerappan was imposed with the punishment of stoppage of increment for three years with cumulative effect on the ground of moral turpitude and as such, his conduct and character were not satisfactory for continuation on re-employment till the end of the academic year.

9 The learned Single Judge, relying on a judgment rendered by a Division Bench of this Court in W.A. (MD) No.456 of 2014, directed the College Committee to send the proposal for re-employment on or before 30th September 2014, by the impugned common order dated 25th September 2014, holding as under:

“19. Therefore, I hold that in respect of re-employment of College teachers, the competent authority is the Regional Joint Director of Collegiate Education and the power is derived from G.O. Ms.No.281, 300 referred to above and the proceeding of the Commissioner of Collegiate Education dated 20.07.1976 and 06.06.2012 referred to above and the College management is bound to send the proposal for re-employment with their remarks and final authority to take decision is the Regional Joint Director of Collegiate Education and the College management cannot refuse to send the proposal for re-employment even on the basis of punishment imposed on the teacher. Hence, W.P. Nos.21392 and 24844 are allowed and W.P. No.24410 of 2014 filed by the College Committee is dismissed.
x x x x x x x x .

It was further observed by the learned Single Judge that it was open for the College Committee to state remarks for not recommending Veerappan for re-employment and it is for the the Regional Joint Director to take a decision on the matter.

10 Mr. B. Ravi, learned counsel for the appellants/College/College Committee would submit that the principles contained in G.O. Ms.No.1643, Education (U2) Department dated 27th October 1988 are not applicable to the College teachers. The object of granting re-employment is to extend the benefit of continuance of teaching from the same teacher to the students and as such, there cannot be different conditions and criteria, one for school teachers and other for college teachers, for re-

employment or extension of service till the end of the academic year. It is further contended that G.O. Ms. No.281, Education Department dated 13th February 1981 does not prescribe for grant of re-employment or continuation of employment. The said Government Order deals with reduction of retirement age of teachers of an aided college from 60 years to 58 years. G.O. Ms.No.1351, Education (F1) Department dated 28th June 1976, G.O. Ms.No.300, Higher Education (F) Department dated 8th September 2006 and G.O. Ms.No.355, Education Department dated 20th March 1989 provide for grant of re-employment, subject to certain conditions as stipulated therein, i.e., suitability, conduct, character, medical fitness and also submission of pension papers. Granting discretion to the Director of Collegiate Education without any guidelines is arbitrary and discriminatory.

11 The next contention of the learned counsel for the appellants is that satisfaction of the College Committee is to be prominently looked into. In the case on hand, Veerappan was charged with the allegation of insubordination and moral turpitude and as such, after due enquiry, the punishment of stoppage of 3 increments with cumulative effect was inflicted on him. The learned Single Judge ought to have appreciated that the interest of students would be jeopardised and at peril if Veerappan is permitted to continue in view of the serious charges of insubordination and moral turpitude levelled and proved against him.

12 *Per contra*, Mr. C. Selvaraju, learned Senior Counsel appearing for Veerappan would submit that the appellant college is an aided minority institution receiving 100% grant from the Government of Tamil Nadu and as such, the service conditions of all the employees are governed by the provisions of the 1976 Act and the Rules made thereunder. The relevant Government Order in G.O. Ms.No.281, Education Department dated 13th February 1981, prescribes for re-employment or extension of service. In the event, a teacher attains the age of superannuation, i.e., 58 years, in the middle of the academic year, he has to be permitted to continue till the end of the academic year. The said Government Order was issued with the sole purpose of not to disturb the academic atmosphere and studies of the students. If a teacher is found fit for continuance in service till he attains the age of retirement in the middle of the academic year, there is no reason to decline continuation of his service till the end of the academic year. It was not a case of removal or dismissal even, but, the imposition of punishment of stoppage of increment for 3 years with cumulative effect. Veerappan was permitted to teach students till he attained the age of superannuation. Subsequent continuance cannot be conditional and the College cannot take a decision to reject his continuance on the basis of its whims and fancies. The Director of Collegiate Education, in his proceedings dated 6th June 2012, had already instructed all aided colleges that re-employment of the teacher till the end of the academic year is mandatory. The College Committee has no other choice, except to forward the proposal for re-employment. The Regional Joint Director alone is competent to

consider the facts and pass appropriate orders for re-employment. The learned Single Judge has accordingly directed, as per law. The reliance of the appellants on other Government Orders is of no assistance, as the same are applicable only to the School Education Department and not to Collegiate Education. It is further contended that the Director of Collegiate Education, by proceedings in R.C. No.53430/G3/2011 dated 11th December 2014, had directed all the aided colleges to follow the instructions contained in the proceedings of the Commissioner of Collegiate Education in Na.Ka.No.48914/G3/1995 dated 4th September 1995. It is also stated that the Management is entitled to place all the materials in its proposal for re-employment in respect of departmental proceedings or punishment, if any.

13 Mr. K. Karthikeyan, learned Government Advocate appearing for the official respondent would submit that the Management is under an obligation to send the proposal for re-employment with all the materials, including the imposition of punishment, if any. The final decision has to be taken by the Regional Joint Director alone. Accordingly, the College Committee was directed by communication dated 4th September 2014 to send its proposal qua re-employment of Veerappan. There is no illegality or irregularity in the procedure followed by the Directorate of Collegiate Education.

14 We have given our anxious consideration to the arguments advanced by the learned counsel for the parties. We have also perused the pleadings and documents appended thereto.

15 The Grant-in-Aid Code of the Tamil Nadu Education Department (for short "the Code") prescribes the conditions and procedure for grant-in-aid to schools as well as private aided colleges. Rule 16(A) which was incorporated by G.O. Ms.No.1258, Education Department dated 16th December 1971, contemplates continuance of service of the teaching staff attaining the age of superannuation in the middle of the academic year till the date of closure of the college summer vacation, subject to the conditions that their work is satisfactory, they are physically fit to continue in service and they have put in, at least a minimum period of one year service in that particular institution. It is apt to refer to the said rule which reads as under:

"16-A No grant shall be paid on behalf of the members of the teaching staff employed in aided colleges, who have completed their 60th year of age. Increments, if any, paid by the managements to the teachers employed in aided colleges after their attaining the age of 58 years shall not be taken into account for purposes of assessment of grant:

Provided, however, that grant shall be paid on behalf of any qualified teacher in an aided college, who after attaining the age of superannuation of 60 years in the middle of the academic year, is permitted to continue in service on re-employment terms till the date of closure of the college summer vacation, subject to the conditions that their work and conduct are satisfactory and they are physically fit to continue in service, that they have put in at least a minimum period of one year service in that particular institution and that they are not fresh recruits but have been employed in the institution before they attained the age of 60."

16 It appears that, subsequently, by G.O. Ms.No.1699, Education Department dated 1st October 1973, the provision of grants to the teachers of aided college till they attain 60 years of age was reduced to 58 years of age, with a condition to re-employ upto 60 years with the permission of the Director of Collegiate Education. The age of superannuation was subsequently reduced by G.O. Ms.No.281, Education Department dated 13th February 1981 from 60 years to 58 years. Thus, the said Government Order has to be read into Rule 16-A for the purpose of reducing the age of retirement and continuation of service on re-employment, subject to the same conditions as prescribed under Rule 16-A of the Code.

17 G.O. Ms. No.1351 further amends G.O. Ms.No.1258, whereunder, Rule 16-A was added to the Code, wherein, it was provided that grant shall be paid on behalf of any qualified teacher in an aided college, who after attaining the age of superannuation of 60 years in the middle of the academic year, is permitted to continue in service on re-employment terms, till the date of closure of the college summer vacation, subject to certain conditions. It was amended to the effect that from the academic year 1975-76 onwards, the period of re-employment of the teaching staff who attain the age of superannuation in the course of the academic year shall be restricted to the 31st May of the year only, instead of, upto the last date of the summer vacation of the college. The other terms and conditions were not amended and remained intact.

18 Subsequently, G.O.Ms.No.1643 came into force which deals with continuance of school teachers in service on re-employment terms and the same shall not be applicable to the college teachers. As aforesaid, the proceedings dated 14th September 1995 of the Commissioner of the Collegiate Education provided liberty to the Management to put forward the entire details of such cases along with the proposal for re-employment to the concerned Regional Joint Director with their remarks. Subsequent G.O. Ms.No.300 dealing with Collegiate Education provides for re-introduction of re-employment system of Principals, teachers, including Librarian and Physical Education Directors, working in the Government or aided colleges, which was withdrawn earlier in G.O. Ms.No.325, subject to the conditions stipulated in the Government Orders in G.O. Ms.Nos.1351 and 355.

19 Considering the aforesaid Government Orders, in the light of Rule 16-A which is a part of the Code, it is manifest that re-employment of the qualified teachers in an aided college who attain the age of superannuation in the middle of the academic year, is subject to the conditions that their work and conduct are satisfactory and they are physically fit to continue in service and they have put in at least a minimum period of one year of service in that particular institution. Such conditions cannot be wished away as the same were neither deleted nor repealed in the subsequent Government Orders.

20 Thus, we have no hesitation in holding that re-employment or continuation of service of those college teachers who attain the age of superannuation in the middle of the academic year, is subject to the aforestated conditions.

21 The next question that arises for our consideration is as to whether it is for the Regional Joint Director to take a decision on the materials submitted by the Management or the Management, by itself, can take a decision not to recommend for continuation of service till the end of the academic year.

22 The Code prescribes for grant-in-aid to the educational institutions, i.e., schools or colleges. The Code prescribes for age limit for grant of aid, i.e., till a teacher employed in an aided college attains the age of 58 years. Even if it is in the middle of the academic year, under the provisions of the Code, the Management is not entitled to the grant-in-aid, unless the same is approved by the Director or any other officer nominated on his behalf.

23 In that view of the matter, the Regional Joint Director alone, who has been designated as the officer granting sanction, is competent to take a decision for continuation of service. It is evident from that fact that the Commissioner of College Education, vide his proceedings dated 14th September 1995, had granted liberty to the Management to put forward the entire details of such cases, along with the proposal

for re-employment to the concerned Regional Joint Director with their remarks. This is the sole purpose to examine the proposal properly, subject to the conditions prescribed under Rule 16-A of the Code for grant of approval for continuation till the end of the academic year. The aforesaid observations are confirmed by the subsequent communication dated 6th June 2012 of the Director of Collegiate Education.

24 The identical issue came into consideration before different Benches of this Court. A Single Bench, in *Dr. S. Palanisamy vs. Kongunadu Arts and Science College and another*, vide order dated 14th August 2012, held as under:

"9 G.O. Ms.No.281 is similar to that of G.O. Ms.No.1643. Applying the principles stated in the judgment of the Division bench of this Court cited supra, I have to necessarily hold that the petitioner is not entitled for re-employment since the Management, who is the appointing authority has decided not to give him re-employment based on his conduct and character. The very fact of punishment of his misconduct, in my considered opinion, is a ground to reject the request of the petitioner for re-employment."

25 In appeal against the aforesaid order of the Single Bench, a Division Bench, vide judgment dated 13.10.2014, while confirming the aforesaid decision of the Single Bench, held as under:

"6. Again a similar claim of school teacher was considered in W.A. No.106 of 2009, by order dated 31.1.2011 and by a Division Bench of this Court in *P. Ravichandran vs. State of Tamil Nadu* reported in *(2013) 7 MLJ 641 – (2013) 5 LW 514* (of which one of us (NPVJ) is a member), wherein, it was held as follows:

"The aided college teachers as well as the Government college teachers, who are attaining the age of superannuation during the

middle of the academic year are allowed to continue up to the end of the academic year, i.e., upto the end of May, if their conduct is good and they are physically fit. The same is made clear insofar as colleges are concerned, in G.O. Ms.No.281 Education Department, dated 13.02.1981. The underlying idea behind the said Government Order, which is still in force is, to ensure continuity of the benefit of teaching to students by the teachers, who attain the age of superannuation during middle of the year, for rest of the academic year."

7. In this case, charge memo was pending when the application for re-employment was submitted and ultimately punishment of censure was issued, which has not been set aside as on date. Hence, the learned Single Judge was perfectly right in dismissing the writ petition, taking note of the conduct of the appellant. There is no merit in the writ appeal and hence, the writ appeal is dismissed. No costs"

26 In another decision in *Correspondent, Secretary and Managing Trustee, Salem Sowdeswari College Committee, Salem vs. M. Rajagopalan and 2 others*, a Division Bench of this Court, vide order dated 27th September 2007, held as under:

"5. We are therefore of the considered opinion that unless the teacher is found unfit medically or on account of his or her conduct, he/she is entitled to continue till the end of the academic year."

27 In yet another decision in *G. Annamalai vs. The Joint Director (Higher Secondary) and 3 others*, a Division Bench of this Court, vide judgment dated 5th January 2007, held as under:

"8 It is well settled in law that a teacher retiring in the middle of the academic year is entitled to get re-employment till the end of the academic year on satisfying the conditions contained in the Government Orders, particularly, G.O. Ms.No.452 dated 24.03.1970, G.O. Ms.No.1712 dated 05.08.1976 and G.O. Ms.No.1653 dated 21.10.1986. In all the Government Orders, it is stated that for granting re-employment, the work of the teacher and conduct shall be satisfactory apart from physical fitness for further service."

28 The aforestated provision of Rule 16-A of the Code was not brought to the notice of the learned Single Judge. On a perusal of paragraph no.17 of the impugned order, it appears that in the judgment rendered in W.A. (MD) No.456 of 2014, there was no punishment, but, only a departmental proceedings was pending against the college teacher and as such, the same is not applicable to the facts of the instant case, wherein, the punishment of stoppage of three increments with cumulative effect was inflicted on Veerappan.

29 For the reasons and analysis made hereinabove, we are of the considered view that re-employment or continuation in service after attaining the age of superannuation in the middle of the academic year till the end of the academic year, is subject to the conditions stipulated in the proviso to Rule 16-A of the Code. Consequently, the Management is under an obligation to submit all the information/materials while recommending for continuation or non-continuation to the Regional Joint Director and it is for the Regional Joint Director alone, to take a final call in respect of continuation or not of the college teacher concerned.

30 Resultantly, W.A. Nos.1345 and 1347 of 2014 stand allowed and W.A. No.1346 of 2014 stands dismissed. Costs made easy. Connected Miscellaneous Petitions are closed.

(S.K.A.J.) (M.V.J.)
27.07.2015

cad
Index:Yes/No

To

- 1 The Director of Collegiate Education
Chennai 600 006
- 2 The Regional Joint Director of Collegiate Education
Saidapet
Chennai 600 015
- 3 The Joint Director of Collegiate Education
Chennai Region
Saidapet, Chennai 600 015

SATISH K. AGNIHOTRI, J.

and

M. VENUGOPAL, J.

cad

Pre-delivery common judgment in
W.A. Nos.1345 to 1347 of 2015

27.07.2015

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 25.09.2014

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

W.P.Nos.21392, 24844 and 24410 of 2014
and
M.P.Nos.1, 1 and 1 of 2014

W.P.No.21392 of 2014

Dr.N.Veerappan

... Petitioner

Vs.

1. Director of Collegiate Education,
Chennai – 6.

2. The Regional Joint Director of
Collegiate Education,
Saidapet, Chennai – 15.

3. The Principal,
Sir Theagaraya College,
Chennai – 600 021.

4. The Secretary,
College Committee,
Sir Theagaraya College,
Chennai – 600 021.

... Respondents

W.P.No.24844 of 2014

Dr.N.Veerappan

... Petitioner

Vs.

1. The Regional Joint Director of
Collegiate Education,
Saidapet, Chennai – 15.

2.The Secretary,
College Committee,
Sir Theagaraya College,
Chennai – 600 021.

... Respondents

W.P.No.24410 of 2014

Sir Theagaraya College,
rep. by its Secretary,
Old Washermenpet,
Chennai – 600 021.

... Petitioner

Vs.

1.The Joint Director of
Collegiate Education,
Chennai – 600 015.

2.N.Veerappan

... Respondents

[Reserved on 16.09.2014]

Writ Petition No.21392 of 2014 filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the second respondent to call for proposal from the fourth respondent college on the application submitted by the petitioner on 02.07.2014 for extention of service and consider and grant extention of service to the petitioner as Associate Professor, Department of Plant Biology and Plant Biotechnology in Sir Theagaraya College, Chennai – 21, from 01.10.2014 to 31.05.2015 by considering the representation dated 25.07.2014 made by the petitioner.

Writ Petition No.24844 of 2014 filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his Proceedings No.Nil dated 01.09.2014 and quash the same and direct the respondents to give extention of service to the petitioner from 01.10.2014 to 31.05.2015 as Associate Professor, Department of Plant Biology and Plant Biotechnology in Sir Theagaraya College, Chennai – 21 and confer all the consequential benefits.

Writ Petition No.24410 of 2014 filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari calling for the records pertaining to the proceedings in Na.Ka.No.5183/C2/2014 dt. 04.09.2014 issued by the first respondent quash the same.

- Mr.T.Chellapandian : For petitioner in W.P.Nos.21392 and 24844
for M/s.C.S.Associates of 2014 and for the second respondent in
W.P.No.24410 of 2014.
- Mrs.P.Rajalakshmi, : For first respondent in all the WPs and
Government Advocate for Second respondent in W.P.No.21392
of 2014.
- Mr.B.Ravi : For petitioner in W.P.No.24410 of 2014,
For respondents 3 and 4 in W.P.No.21392
of 2014 and for second respondent in
W.P.No.24844 of 2014.

ORDER

The petitioner in W.P.No.21392 and 24844 of 2014 is working in Sir Theagaraya College, Chennai. He is attaining superannuation on 30.09.2014. The post of Head of the Department of Plant Biology and Plant Bio-Technology Department has fallen vacant and the petitioner is the senior most person to be considered for appointment to the post of the Head of the Department. The Regional Joint Director of Collegiate Education, Chennai, directed the College to fill up the Head of the Department of the post by nominating the senior most person in the Department. As the petitioner is the senior most person, he sent a representation to the College Committee to consider his name for that post. As there was no progress, the petitioner filed W.P.No.19794 of 2014 seeking for direction directing the college committee to consider his candidature for appointment as Head of the Department and the Writ Petition is pending. As he is reaching superannuation on 30.09.2014, he applied for extension of service by representation dated 2.7.2014. According to the petitioner, the extension has to be decided by the Regional Joint Director of Collegiate Education and the Application has to be routed through the Secretary, College Committee and the petitioner followed the procedure and applied for extension of service. Two other persons, namely, Dr.S.N.Nageswara Rao, Head of the Department, Department of History and Dr.V. Natchathiram, Associate Professor,

Department of History are also due to retire on 30.09.2014 and they also applied for extension of their service till the end of the academic year. The College Committee forwarded their representations with their approval to the Regional Joint Director of Collegiate Education but did not approve that of the petitioner for extension of service and send the proposal of the petitioner. According to the petitioner, as per G.O.Ms.No.281, Education Department, dated 13.02.1981, teachers who attain the age of 58 years in the middle of the academic year shall be permitted to continue till the end of the academic year. Therefore, the petitioner is also entitled to get re-employment after attaining superannuation and the Application sent by the petitioner to the College Committee must be sent to the Regional Joint Director of Collegiate Education but the same was not sent. Hence, W.P.No.21392 of 2014 was filed seeking for direction directing the Regional Director of Collegiate Education to call for proposal from the Secretary, College Committee and the Application submitted by the petitioner on 2.7.2014 for extension of service and to grant extension of service.

2. During the pendency of the Writ Petition, the College Committee sent a letter to the Regional Joint Director of Collegiate Education, Chennai Region, dated 27.8.2014 that the Committee resolved not to extend re-employment to the petitioner, namely, Dr.N.Veerappan. The

petitioner's continuation in service on re-employment would not be in the interest of institution and the students, and his conduct and character are not found satisfactory and he was issued the charge sheet dated 01.07.2010 for the commission of misconduct involving moral turpitude and insubordination and in view of the charges proved, he was awarded punishment of stoppage of 3 increments with cumulative effect and the same was challenged by the petitioner in W.P.No.13327 and 13718 of 2012 and the same are pending. Further, he has not submitted his pension papers which is one of the requirements for re-employment and therefore, he cannot be considered for re-employment. The College Committee also informed the petitioner by proceedings dated 01.09.2014 reiterating the very same allegations that he would not be considered for re-employment. The same is challenged by the petitioner in W.P.No.24844 of 2014.

3.The Regional Joint Director of Collegiate Education by his proceedings Na.Ka.No.5183/C2/2014 dated 4.9.2014 directing the College Committee to send the proposal for re-employment of the petitioner stating that reasons stated by the College Committee for not-re-employing the petitioner cannot be accepted. The proceedings of the Regional Joint Director of Collegiate Education dated 4.9.2014 is challenged in W.P.No.2441 of 2014 by the College Committee.

4. As the issue involved in all the three Writ Petitions are one and the same, all the three Writ Petitions were heard together and a common judgment is rendered.

5. In this order, the reference to petitioner is the petitioner in W.P.No.21392 of 2014 and 24844 of 2014. The reference to College Committee is the petitioner in W.P.No.24410 of 2014 and the fourth respondent in W.P.No.21392 of 2014 and the second respondent in W.P.No.24844 of 2014.

6. The learned counsel for the petitioner submitted that as per G.O.No.281 Education Department dated 13.2.1981, every teacher who attains 58 years in the in the middle of the academic year shall be permitted to continue till the end of the academic year and no option is given to the management to refuse to send the proposal of re-employment and it is mandatory for the College Committee to send the proposal of re-employment and without appreciating the same, the College Committee refused to send the proposal of the petitioner for re-employment by quoting that his conduct and character were not satisfactory and he was imposed with the punishment of stoppage of increment. He further submitted that the conditions for extention of service of a teacher who retires in the middle of the academic year are

that the conduct and character of that teacher must be satisfactory, the teacher must be medically fit and he must have submitted the proposal for pension and those conditions cannot be applied to the College teachers and the College teachers are governed by the Tamil Nadu Private College (Regulation) Act and the Rules framed thereunder and also G.O.Ms.No.281 Education Department, dated 13.2.1981. Therefore, a proposal cannot be refused to be sent on the ground that the character and conduct of the petitioner are not satisfactory. He further submitted that the contention of the College Committee that the conduct and character of the petitioner are not satisfactory cannot also be accepted and with *mala fide* motive such stand was taken by the management for the reasons that the petitioner applied for the post of Head of the Department and also challenged the order of punishment imposed by the management for the alleged misconduct. He further submitted that even assuming that the petitioner was punished for his misconduct that punishment was over and even after the punishment, he was allowed to work in the College and therefore, that cannot be taken as a ground for denying the re-employment and every teacher is entitled to re-employment when he retires in the middle of the academic year and that was introduced in the interest of the students. Therefore, the College Committee has no right to take a decision not to send such proposal and therefore, the Writs filed by the petitioner are liable to be allowed and the

College Committee may be directed to send the proposal for the re-employment of the petitioner.

7. On the other hand, Mr.B.Ravi, learned counsel appearing for the College Committee, submitted that re-employment cannot be claimed as of right and it depends upon various circumstances and considering the conduct and character of the petitioner and the fact that he has not submitted his pension papers, the College Committee rightly refused to send the proposal of the petitioner and there is no *mala fide* intention on the part of the College Committee. He further submitted that the petitioner was guilty of misconduct and an enquiry was conducted and sufficient opportunity was given to the petitioner in that enquiry and the charges were found proved in the enquiry and he was awarded punishment of stoppage of 3 increments with cumulative effective and for that punishment, there was no need to get approval from the Regional Joint Director of Collegiate Education and the same is also challenged by the petitioner. Having regard to the misconduct, the College Committee resolved not to extend the service of the petitioner as he was found guilty of insubordination and was making sarcastic comments about the other teachers in the College and the decision was taken *bona fide*, and re-employment is subject to the following conditions, namely, (i) character and conduct should be satisfactory, (ii) teacher should be medically fit and

(iii) and the petitioner should have submitted his pension papers within a stipulated time. The petitioner has not submitted his pension papers within the stipulated time and the character and conduct of the teacher were also not satisfactory, and being the appointing authority, the College Committee has every right to deny re-employment and the same cannot be challenged and the Regional Joint Director of Collegiate Education also cannot insist upon the College Committee to send the proposal for re-employment and he has no justification to insist upon the College Committee to send the proposal for re-employment of the petitioner and therefore, the proceedings of the Regional Joint Director of Education dated 4.9.2014 is liable to be quashed and the Writ Petitions filed by the petitioner are liable to be dismissed. He also relied upon the judgments of this Court rendered in ***W.A.No.1074 of 2008 dated 16.4.2009 between E.R.Shanmugam vs. The Director of School Education, Chennai and others; W.A.No.456 of 2014 dated 24.9.2014 between the Secretary, National College, Trichy District and another Vs. T.Seshasayee and others and the judgment rendered in W.P.No.15382 of 2012 dated 14.8.2012 between Dr.S.Palanisamy Vs. Kongunadu arts and Science College, Coimbatore***, in support of his contention.

8. The learned Government Advocate appearing for the Regional

Joint Director of Collegiate Education, Mrs.P.Rajalakshmi, contended that the College authority has no right to deny re-employment and as per G.O.Ms.No.281 Education Department, dated 13.2.1981, re-employment is automatic once the College teacher retires in the middle of the academic year. Therefore, the Regional Joint Director of Collegiate Education has rightly directed the College Committee to send the proposal of the petitioner. The learned Government Advocate further submitted that punishment imposed on the petitioner by the College Committee was also not approved and therefore, it has no validity and the reasons that the petitioner has not submitted his pension papers within the stipulated time for not sending the proposal cannot also be accepted as the same has been condoned by the Regional Joint Director of Collegiate Education. She therefore submitted that the Writ Petitions filed by the petitioner are liable to be allowed and the Writ Petition filed by the College Committee is liable to be dismissed.

9. The issue for consideration in these Writ Petitions is whether the College Committee has got power to withhold the proposal for re-employment on the ground that the character and conduct of the petitioner are not satisfactory?

10. To appreciate the same, we will have to see the provisions of

the Tamil Nadu Private Colleges (Regulation) Act 1976 and the Rules framed thereunder. Section 14(b) of the Act empowers the College Committee to appoint teachers and other persons of the Private College subject to the provisions of the Act and Rules made thereunder. Section 14(c) empowers College Committee to take disciplinary action against the teacher and other persons of the Private College. Section 19 provides that subject to any Rule that may be made in that behalf, no teacher or other person employed in any private college shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise, terminated except with the prior approval of the competent authority. There is no provision in the Tamil Nadu Private Colleges (Regulation) Act 1976 and Rules regarding re-employment and Rule 13 deals with suspension. Section 17 provides that Government may make rules in consultation with the University regulating the number and conditions of service (including promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights as respects disciplinary matters but excluding qualifications) of the teachers and other persons employed in any Private College. Section 18 says every teacher and every other person employed in any Private College shall be governed by such Code of Conduct as may be prescribed and any violation of that Code of Conduct will result in disciplinary action taken against the teacher or other employee. As per Rule 12 of the Tamil Nadu Private Colleges (Regulation) Rules 1976 that

every teacher or other person employed in the College shall be governed by the Code of Conduct as set out in the Annexure I and Annexure I deals with Code of Conduct for teacher and other persons employed in the Private Colleges. Form 7-A is the form of agreement to be executed by College Committee of the College in respect of permanent teachers. Therefore, the College Committee is the authority to appoint teacher and other persons in the Private Colleges and College Committee is also empowered to dismiss, remove or reduce in rank of any teacher or other persons employed in the College subject to prior approval of the competent authority. It is stated in Section 19(1) that power to dismiss or removal can be exercised with the prior approve of the competent authority and the same is subject to any rule that may be made in this behalf. Form 7A agreement is to be executed between a College Committee and a teacher and Clause 7(a) of Form 7A also deals with the procedure for dismissing or removing of a teacher and clause 10 of Form 7A empowers College Committee to impose major punishment such dismissal, removal or reduction in rank or termination of service or any minor punishments such as censure, withholding of increment with or without cumulative effect, recovery from pay to the extent necessary of the monetary value. Therefore, reading of these various clauses in the Act and Rules makes it clear that for dismissal or removal or termination of service of a teacher, prior approval of the competent authority has to be

obtained and in the absence of such prior approval of the Government, removal, termination or dismissal is not valid.

11. In this case, it is the contention of the College Committee that it is not a case of dismissal, removal or termination and re-employment cannot be claimed as of right and depending upon the character and conduct of a teacher, the College authority can consider re-employment of a teacher for the remaining period of that particular year and it is the prerogative of the College authorities to send the proposal and that cannot be interfered with by the Regional Joint Director of Collegiate Education. It is further contended that the petitioner was found guilty of insubordination and having committed misconduct involving moral turpitude, such a person cannot be allowed to continue in employment after retirement and therefore, the College Committee cannot be directed to send the proposal for re-employment. In other words, the College Committee is the authority to consider whether the proposal can be sent or not for re-employment and if the College Committee refuses to send proposal for re-employment on valid grounds, the same cannot be interfered with by the Regional Joint Director of School Education and the decision of the College Committee is final in that aspect.

12. The judgment relied upon by the College Committee, namely,

W.A.No.1074 of 2008, is in respect of a school teacher who was not given re-employment. In that case, the school management refused to forward the proposal for re-employment on the ground that character and conduct of the teacher was not satisfactory and the same was also accepted by the educational authorities and considering the nature of misconduct levelled against the teacher, the Hon'ble Division Bench after taking into consideration of G.O.1643 Education (U2) Department, dated 27.10.1988, which prescribes certain conditions to be fulfilled for the grant of re-employment held that the school authorities were justified in not sending the proposal and that was rightly accepted by the educational authorities.

13. In the judgment rendered in W.P.No.15382 of 2012, dated 14.08.2012, the College Principal was not given extention; and the learned single Judge relied upon the judgment dated 31.01.2011 rendered in W.A.No.106 of 2009 between the Secretary, Devangar Higher Secondary School, Chinnalapatti, Dindigul District V. S.Ayyathurai and others; W.A.No.1226 of 2003 dated 5.1.2007 and W.A.No.2693 of 2007 dated 16.03.2007 upheld the contention of the management of the college held that the teacher was not entitled for re-employment as the Management which is the appointing authority decided not to give re-employment based on his conduct and character. The learned Judge held that G.O.Ms.No.281 Education Department dated 13.2.1981 is similar to

G.O.Ms.No.1643 Education U2 Department dated 27.10.1988 and also held that the College Management is the appointing authority and it has got prerogative right to take a decision whether or not the teacher is entitled to be given re-employment. In those cases, the school management and the college management refused to grant approval on the ground that the teacher was already punished for misconduct and other minor punishment was imposed having regard to the nature of misconduct; and therefore, his conduct and character were not found satisfactory and therefore, the teacher was not entitled to get extension mainly based on the criteria laid down in G.O.Ms.No.1643 Education (U2) Department, dated 27.10.1988.

14. The main contention of the learned counsel for the petitioner is that G.O.Ms.No.1643 Education (U2) Department, dated 27.10.1988 cannot be taken into consideration and the college teachers are governed by G.O.Ms.No.281 Education Department dated 13.2.1981, wherein no condition has been prescribed for granting extension and therefore, no option is given to the college authorities to refuse to send the proposal and they are bound to send the proposal when they are asked to do so by the educational authorities. It is seen from G.O.Ms.No.281 that the college teachers who attain 58 years in the middle of the academic year shall be permitted to continue till the end of the academic year. There is

no condition prescribed for giving extension as given in G.O.Ms.No.1643 referred to above which was issued in respect of school teachers. Further, it is seen from the proceedings of the Director of Collegiate Education in Na.Ka.No.53430/G3/2011 dated 6.6.2012 relying upon G.O.Ms.No.300 Higher Education (F) Department dated 8.9.2006 that the teachers who are retiring in the middle of the academic year shall be given extension till the end of the academic year. It is further stated that some college committees are refusing to send proposal for giving extension and considering the proceedings of the Directorate of Collegiate Education in Na.Ka.No.2707/S1/74 dated 20.07.1976, it was mandatory on the part of the college authorities to grant extension and the college authorities have no power to take any other decision except to send proposal for extension. It is seen from G.O.Ms.No.300 Higher Education (F) Department, dated 8.9.2006, the re-employment of principals, teachers shall be allowed subject to the conditions stipulated in the Government Orders, namely, G.O.Ms.No.1351 Education Department dated, 28.06.1976 and G.O.Ms.No.355 Education Department, dated 20.3.1989.

15. It has not been brought to my notice that in those G.Os. namely, G.O.Ms.No.1351 Education Department dated, 28.06.1976 and G.O.Ms.No.355 Education Department, dated 20.3.1989 any condition

similar to the condition imposed in G.O.Ms.No.1643 Education (U2) Department, dated 27.10.1988 are laid down. Therefore, as far as college teachers are concerned, they are governed by G.O.Ms.No.281 Education Department dated 31.03.1981, G.O.Ms.No.300 Higher Education (F) Department dated 8.9.2006 and the proceedings of the Director of Collegiate Education dated 6.6.2012 and 20.07.1976. As a matter of fact, the Commissioner of Collegiate Education, Madras, by proceedings R.C.No.48914/G/3/95 dated 14.9.1995, advised the college management to adhere to the guidelines issued by the Government in respect of teachers retiring on superannuation in the middle of the academic year without fail and the guidelines referred to are the guidelines given in G.O.Ms.No.281 Education Department dated 31.02.1981. It is further stated that when there are disciplinary proceedings against any teaching staff and final orders were issued imposing punishment, the managements are at liberty to put-forth the entire details of such cases along with proposal for re-employment to the concerned Joint Director of Collegiate Education with the remarks and the same shall be considered by the Joint Director and pass orders. It is further held in all the judgments that re-employment is not a matter of right and it is a concession taking into consideration the larger interest of the students. Though under section 14 of the Private Colleges (Regulation) Act, 1976, the College Committee is the appointing authority,

under Section 19, no teacher shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the approval of the competent authority, which is subject to any rule that may be made in this behalf. Though no rule has been provided under the Tamil Nadu Private Colleges (Regulation) Rules 1976 regarding re-employment, having regard to G.O.Ms.No.281, G.O.Ms.No.300 referred to above and the proceedings of the Director of Collegiate Education as referred to above, the College Committee has no power to decline the re-employment and it has to send the proposal to the Director of Collegiate Education giving reason for not recommending employment and the same can be considered by the Joint Director of Collegiate Education and if the Joint Director of Collegiate Education considers that the reasons cannot be accepted and directs the college committee to send the proposal, the College Committee has no other option except to send the proposal.

16. I am fortified in the above conclusion on the basis of G.O.Ms.No.281 referred to above. As stated supra, Section 19 gives power to College Committee to take disciplinary proceedings and pass punishment of dismissal, removal or termination with the prior approval of the competent authority. In this case, the petitioner is reaching superannuation on 30.09.2014. Therefore, there is no question of dismissal or termination of the petitioner from service. Neither the Tamil

Nadu Private Colleges (Regulation) Act, 1976 nor the Rules framed thereunder, dealt with re-employment and only under G.O.Ms.No.281, referred to above, a right is given by the Government for re-employment when a teacher retires in the middle of the academic year and while permitting the teacher to work till the end of the academic year, the Government has not imposed any condition. At the same time, in respect of school teachers, certain conditions are imposed under G.O.Ms.No.1643 dated 27.10.1988 referred to above. The absence of those conditions in G.O.Ms.No.281 dated 13.2.1981 referred to above, would make it clear that in respect of college teachers, the re-employment is automatic and the only condition is that they should retire in the middle of the academic year. It is further made clear in the proceedings of the Commissioner of Collegiate Education, Madras, R.C.No.48914/G3/95 dated 14.09.1995, wherever there are disciplinary proceedings against any of the teaching staff and final orders are issued imposing punishment, the managements are at liberty to put forth the entire details of such cases along with the proposal for re-employment to the concerned Joint Director of the Region, who will examine such cases and pass suitable orders. Therefore, the question of re-employment can be decided only by the Government through the Director of Collegiate Education and the College Committee can only send remarks for not giving extension for that particular teacher stating the reasons and it is for the Director of

collegiate Education to consider the same and pass orders. Further, under Sect.19 of the Act, prior approval is necessary for dismissal, termination and removal. Right of employment is given under G.O.Ms.No.281 and therefore, when the same is denied, the prior approval has to be obtained and without obtaining the prior approval, the College cannot refuse to send the proposal. In that context only, it is stated in the proceedings dated 14.9.1995 that when disciplinary proceedings are pending or punishment given, the college committee shall send the proposal with their remarks for the Joint Director of Collegiate Education to take a decision. Therefore, in my opinion, the authority to grant extension vests only with the Director of Collegiate Education and the College committee can only recommend whether or not to grant re-employment and depending upon the remarks made by the College Committee, the Director of Collegiate Education has to consider the same. Unfortunately, in the judgments referred to above, the G.O.Ms.No.300 dated 8.9.2006 referred to above, and the proceedings of the Commissioner of Collegiate Education dated 14.9.1995, 6.6.2012 were not brought to the knowledge of the Hon'ble Judges. In my opinion, had these Government Orders G.O.Ms.No.300 dated 8.9.2006 referred to above and the Proceedings of the Commissioner of Collegiate Education dated 14.9.1995, 6.6.2012, were brought to the notice of the Hon'ble Judges, decision would have been different. In my respectful opinion, the

guidelines or conditions provided in G.O.Ms.No.1643 dated 27.10.1988 referred to above, cannot be applied to the College teachers and they are governed by G.O.Ms.No.281 and 300 referred to above, wherein no conditions are imposed.

17. Further in the judgment rendered in W.A.(MD)No.456 of 2014, the Hon'ble Division Bench held that even if the college teacher was facing disciplinary proceedings, on that ground, the Director of Collegiate Education cannot refuse to grant permission and the Court can go into the merits of the disciplinary proceedings and if the charge memo did not stand in the way of getting re-employment, the teacher was entitled to get re-employment and the proceedings of the Joint Director of Collegiate Education refusing to grant re-employment was set aside.

18. According to me, the punishment imposed on the petitioner cannot stand in the way of granting re-employment. Though the College Committee contends that petitioner was guilty of insubordination and having committed misconduct involving moral turpitude, the management has given a minor punishment of withholding of 3 increments and that would also prove that the management was also not so serious about the nature of charges. If the charges were so serious in nature nothing would have prevented the management from dismissing the teacher after

getting approval from the authorities.

19. Therefore, I hold that in respect of re-employment of College teachers, the competent authority is the Regional Joint Director of Collegiate Education and the power is derived from G.O.Ms.No.281, 300 referred to above and the proceedings of the Commissioner of Collegiate Education dated 14.09.1995, Director of Collegiate Education, dated 20.07.1976 and 6.6.2012 referred to above, and the College management is bound to send the proposal for re-employment with their remarks and final authority to take decision is the Regional Joint Director of Collegiate Education and the College management cannot refuse to send the proposal for re-employment even on the basis of punishment imposed on the teacher. Hence, W.P.Nos.21392 and 24844 of 2014 are allowed and W.P.No.24410 of 2014 filed by the College Committee is dismissed. No costs. The connected Miscellaneous Petitions are closed.

The College Committee is directed to send the proposal for re-employment of the petitioner on or before 30.09.2014 and it is also open to them to state remarks for not recommending the petitioner for re-employment and it is for the Regional Joint Director of Collegiate Education concerned to take decision on the matter.

Index : Yes

25.09.2014

Internet: Yes

asvm

R.S.RAMANATHAN, J

Note to Office:

Issue order copy today

To

(asvm)

1. Director of Collegiate Education,
Chennai – 6.
2. The Regional Joint Director of
Collegiate Education,
Saidapet, Chennai – 15.
3. The Principal,
Sir Theagaraya College,
Chennai – 600 021.
4. The Secretary,
College Committee,
Sir Theagaraya College,
Chennai – 600 021.

Order in

W.P.Nos.21392, 24844
and 24410 of 2014
and
M.P.Nos.1, 1 and
1 of 2014

25.09.2014