

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.06.2015

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THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.No.16897 OF 2015 &
M.P.No.1 of 2015

Dr.D.Thampi Dharmaraj
Kurupatham

[PETITIONER]

Vs

- 1 The State of Tamilnadu
rep. by its Secretary
Department of Higher Education
Fort St. George, Chennai-9.
- 2 Director of Collegiate Education,
College Road, Chennai-6.
- 3 The Joint Director of College Education
Thirunelveli Region,
Thirunelveli 627 007.
- 4 The Secretary
Nesamony Memorial Christian College
Marthandam, Kanyakumari District.

[RESPONDENTS]

Writ petition is filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records on the files of the 2nd respondent bearing Na.Ka. No.69501/F2/2014 dated 26.3.2015 and quash the same and consequently direct the 1st and 2nd respondents to approve petitioner appointment as Assistant Professor in History in the 4th respondent Nesamony Memorial Chirstian College Marthandam in the sanctioned retirement vacancy of Dr.R.Issac Jeyadhas with effect from 3.7.2014 with monetary and all other attendant benefits in the light of similarly placed persons appointment which were approved by vide G.O.(D) No.138 Higher Education (E2) Department dated 2.6.2015 based on the Honourable Court Order in W.P.(MD) No.5486 of 2014 dated 3.9.2014.

For Petitioner : Mrs.A.V.Bharathi

For Respondents : Mr.K.V.Dhanapalan-R1 to R3
Addl.Govt.Pleader

Mr.Godson Swaminathan - R4

O R D E R

With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal at the admission stage itself.

2.The petitioner was appointed as an Assistant Professor in History, in the fourth respondent Aided College, affiliated to Manonmaniam Sundaranar University. He was appointed on 3.7.2014 in the retirement vacancy. The qualification of the petitioner to hold the post of Assistant Professor of the concerned University was governed under section 15 of the Tamil Nadu Private Colleges Regulation Act.

3.Since the petitioner was appointed in the sanctioned post that fell vacant due to retirement of a Teacher, the Regional Joint Director of Collegiate Education, Tirunelveli Region ought to have sanctioned the grant for the post. But the Director of Collegiate Education passed the impugned order dated 26.3.2015, stating that the vacancy that arose between 2011 and 2014 could not be approved, since the Government has refused to sanction grant for the said post.

4.In an identical matter, this Court passed an order dated 3.9.2014 in W.P.(MD) No.5486 of 2014, directing to sanction grant to the post of a College Teacher who was appointed in the regular vacancy. For better appreciation, paragraph 8 of the order is extracted hereunder:

"8.The third respondent, without considering the application on merits, returned it on the ground that the Commissioner is now seized of the matter. The impugned order is bereft of particulars. The third respondent failed to indicate as to why such a Commission was appointed by the Government. Even if a Commission was appointed, still the third respondent has no authority to keep the application for approval pending or to return it, without forwarding it to the Government. I am, therefore, not in a position to support the order passed by the third respondent."

5.It is a well settled law by catena of decisions that whenever sanctioned posts are there and any vacancy arises due to retirement, death or resignation of the persons holding those posts, the same should be filled up by the concerned aided Institution without loss of time, so that the education of the students would not be affected and the education of the students is a paramount consideration in these matters. It is a different matter if a Teacher is appointed beyond the sanctioned strength. In this case, it is not in dispute that the petitioner was appointed by the fourth respondent College in the sanctioned post. Furthermore, the fourth respondent is a Minority Institution governed by Article 30 of the Constitution of India.

6.In fact, the Hon'ble Division Bench of this Court in the case of P. Ravichandran Vs State of Tamil Nadu, [2013 (7) MLJ 641], in paragraph No.20, held as follows:

"20. In the light of the above findings as well as the decisions, we conclude this Judgment in the following manner:

(1) There is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976, to seek prior permission to fill up any vacant post in an aided college, which has already been sanctioned for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules.

(2) If the appointment made by the College Committee in the sanctioned vacant post is in violation of any of the statutory provision, it is open to the Regional Joint Director of Collegiate Education to deny grant-in-aid to the said person appointed in the vacant post.

(3) The teaching staff appointed must be fully qualified, whose qualification is approved by the University to which the college is affiliated. Insofar as the non-teaching staff are concerned, the candidate must possess the qualification prescribed by the Government.

(4) The College Committee while filling up the vacant post, should follow the procedures stated in Rule 11(1A) to 11(4) (ii).

(5) If there is no rival candidate for any post, the appointment is bound to be approved for the purpose of payment of pay and allowances, by the Regional Joint Director of Collegiate Education.

The writ appeal is disposed of with the above directions. No costs."

Further, in various Judgments, this Court interfered with the action of the Government in refusing to approve the appointment of Teachers in the post sanctioned by stating one reason or another, since those action would ultimately seriously affect the poor students who will seek admission in various courses in Aided Colleges, wherein no fee or nominal fee is collected. In these circumstances, whenever a post is vacant on account of resignation, retirement or death, the concerned College shall fill up the post by a qualified Teacher, in the interest of the students.

7.In view of the same, I have no hesitation to quash the order impugned in this Writ Petition. Accordingly, the Writ Petition is allowed and the first and second respondents are directed to grant approval to the appointment of the petitioner as Assistant Professor in History in the fourth respondent College. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

- 1 The Secretary to Government
Department of Higher Education
Fort St. George, Chennai-9.
- 2 Director of Collegiate Education,
College Road, Chennai-6.
- 3 The Joint Director of College Education
Thirunelveli Region,
Thirunelveli 627 007.
- 4 The Secretary
Nesamony Memorial Christian College
Marthandam, Kanyakumari District.

+ 1 cc to Mr.Isaac Mohanlal, Advocate Sr.29290
+ 1 cc to Mrs.A.V.Bharathi, Advocate Sr.29099
+ 1 cc to Government Pleader Sr.29257

W.P.No.16897 of 2015

GJ(CO)
Eu 23.06.15

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