

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.3244 of 2011

&

M.P.No.1 of 2011

C. Sundara Raj

...Petitioner

- Vs.-

1. The State of Tamil Nadu
Rep. by its Secretary
Department of Higher Education
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 Region
Tirunelveli - 627 002.
4. The Secretary
Scott Christian College (Autonomus)
Nagercoil
Kanyakumari District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the original impugned order passed by the second respondent Director of Collegiate Education, vide proceedings Na. Ka. No. 29535/ F2/2009 dated 30 October 2009 refusing approval for the service of the petitioner for the period from 20 June 2001 to 25 July 2006 in the fourth respondent College namely, Scott Christian College, Nagercoil, Quash the same and further direct the respondents

2 and 3 herein to approve the service of the petitioner for the period as Lecturer in Zoology from 20 June 2001 to 25 July 2006 in the fourth respondent College namely Scott Christian College, Nagercoil and to disburse the salary and other benefits for the same period.

For Petitioner : Mr.S. Thanka Sivan

For Respondents : Mr.P. Sanjay Gandhi
AGP for RR1 to 3

R-4 - sd - NA.

ORDER

This writ petition is directed against the order dated 30 October 2009 whereby and whereunder the second respondent rejected the request made by the petitioner for approval of his appointment to the post of Lecturer in Zoology for the period from 20 June 2001 to 25 July 2006 on various grounds including the primary reason regarding failure on his part to sign the Attendance register for the period from 2001-2002 to 2005-2006.

Summary of facts:

2. The petitioner was appointed as Lecturer in the Department of Zoology by the fourth respondent. The appointment was with effect from 20 June 2001 against a regular vacancy caused on account of the retirement of Mrs. Ammani Navaneetham. The fourth respondent made a proposal to the second respondent requesting to approve the appointment of the petitioner. The fourth respondent very clearly stated in the proposal that there were thirteen teaching posts in the Department of Zoology and that the appointment of the petitioner was made against the said sanctioned post.

3. The third respondent approved the appointment of the petitioner with effect from 26 July 2006. The petitioner thereafter filed a writ petition before this Court in W.P.No.13094 of 2009 to approve his appointment with effect from 20 June 2001 and disburse the salary and other attendant benefits. The said writ petition was disposed of by this Court with a direction to the Education Department to consider the issue and pass orders on merits. Thereafter the second respondent issued the impugned order refusing to approve his appointment effective 20 June 2001. The said order is under challenge in this writ petition.

4. The second respondent filed a counter affidavit wherein it was contended that the qualification of the petitioner was approved by the University only with effect from 26 July 2006. According to the second respondent the petitioner signed in a separate attendance register and as such it cannot be said that he was an employee of the fourth respondent institution for the period from 20 June 2001 to 25 July 2006. It was contended that the second respondent the petitioner was not appointed through regular selection process and as such his earlier appointment cannot be approved.

Rival submissions:

5. The learned counsel for the petitioner by placing reliance on the Staff Sanction Order dated 12 October 1999 contended that appointment of the petitioner was made only against a sanctioned vacancy. According to the learned counsel, the fourth respondent was maintaining two attendance registers, one with regard to the employees whose services were approved by the Government and the other register was maintained for the purpose of obtaining signatures of those whose services were not regularised. The learned counsel further contended that another employee by name M. Reginald Appavoo, whose services were not approved by the University filed a writ petition in W.P.No.22549 of 2010 to regularise his earlier services. The said writ petition was allowed by this Court and thereafter the Government have issued an order in G.O.(3D) No.4, Higher Education (E2) Department dated 6 March 2014 regularising his earlier services and granting him monetary benefits. The learned counsel contended that the petitioner is also similarly situated and as such he should also be given the benefits of the relief given to the another employee of the very same institution.

6. The learned Additional Government Pleader submitted that the qualification of the petitioner was approved by Manonmaniam Sundaranar University only with effect from 26 July 2006 and as such his service was regularised from the said date. According to the learned Additional Government Pleader Rule 11(3) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 provides for approval of qualification by the University. It was further contended that once it is made out that the qualification of the petitioner was approved only with effect from 26 July 2007 he is not eligible to claim the benefits prior to the date of approval.

Factual Analysis:

7. There is no dispute that the Government have sanctioned two posts of Lecturers in the Department of Zoology in Scott Christian

College (Autonomous), Nagercoil. It is also not in dispute that only against a vacancy caused on account of the retirement of Mrs. Ammani Navaneetham the petitioner was appointed on 20 June 2001. The proceedings dated 10 March 2005 on the file of Manonmaniam Sundaranar University shows that the petitioner was appointed as Examiner in Zoology Department. The said proceedings also contained the service details of the petitioner. The third respondent approved the appointment of the petitioner and other Lecturers vide proceedings dated 19 February 2007. The services of the petitioner and another officer by name Reginald Appavoo were regularised with effect from 26 July 2006. The said employee filed a writ petition before this Court in W.P.No.22549 of 2010 to approve his appointment as Lecturer with effect from his initial date of appointment. The writ petition was allowed by this Court and a Mandamus was issued to the authorities to approve his appointment retrospectively. The Government have implemented the said order by issuing G.O.(3D) No.4, Higher Education (E2) Department dated 6 March 2014. The petitioner is therefore perfectly correct in his contention that he being an employee of the very institution and similarly placed like the petitioner in W.P.No.22549 of 2010 is entitled to the benefits of the order dated 24 November 2010 and the subsequent Government Order in G.O.(3D) No.4, Higher Education (E2) Department dated 6 March 2014.

8. The second respondent has taken a contention that the qualification of the petitioner was approved by the University under Rule 11(3) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 with effect from 26 July 2006 and therefore his services were rightly regularised with effect from the said date. There is absolutely no merit in the said contention in view of the documents produced by the petitioner. The petitioner obtained M.Sc. (Zoology) Degree from Madurai Kamaraj University in April, 1984. Similarly he obtained M.Phil (Zoology) from the Madras University way back on 30 September 1987. Therefore it is very clear that the petitioner was having the required qualification as on the date on which he was appointed as Lecturer of Zoology.

9. The second respondent has also taken up a further contention that the petitioner signed in a different register and as such his earlier services cannot be regularised. There is absolutely no merit in the said contention. The petitioner has produced copies of the attendance registers maintained by the institution to show that employees whose services were not approved by the Government were made to sign in a separate register. In fact the register of employees whose appointments were not approved by the Government contained the signature of the petitioner as well as Thiru Reginald Appavoo. His appointment was subsequently regularised

retrospectively by the Government. Therefore the fact that management maintained two registers would not support the stand taken by the respondents in this writ petition.

10. Therefore on a careful consideration of the entire factual matrix, I am of the view that the order passed by the second respondent is liable to be set aside.

11. In the result, the order dated 30 October 2009 is set aside and the matter is remitted to the second respondent for fresh consideration. The second respondent is directed to consider the question of approval of appointment of the petitioner for the period from 20 June 2001 to 25 July 2006 in the light of the order dated 24 November 2010 in W.P.No.22549 of 2010 and the Government Order in G.O.(3D) No.4, Higher Education (E2) Department dated 6 March 2014. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

12. The writ petition is allowed as indicated above. Consequently, the connected MP is closed. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Tr/

To

1. The Secretary,
Department of Higher Education
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 Region
Tirunelveli - 627 002.
4. The Secretary
Scoot Christian College (Autonomus)
Nagercoil
Kanyakumari District.

1 CC to Mr.S. Thanka Sivan, Advocate SR.No. 6222

1 CC to the Government Pleader, SR.No. 6345

W.P.No.3244 of 2011

GP (CO)
PSI (24.02.2015)



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