

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20880 of 2013

and

M.P.No.1 of 2013

C.Nija

... Petitioner

Vs

- 1.The State of Tamil Nadu,
rep. by its Secretary,
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 Women's Christian College,
rep. by its Secretary-cum-Correspondent,
Nagercoil,
Kanyakumari District-629 001.

.... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to approve the appointment of the petitioner as Assistant Professor of Zoology in the 4th respondent college, with effect from 29.07.2010 on the basis of her representation dated 02.12.2012 with all monetary benefits.

For Petitioner : Mr.N.Rajan
For Respondents : Mr.R.Lakshminarayanan
Addl. Govt. Pleader for R1toR3

No Appearance for R4

O R D E R

The petitioner seeks for issuance of writ of mandamus to direct respondent No.2 to approve her appointment as Assistant Professor of Zoology in 4th respondent College with effect from 29.07.2010 by considering her representation dated 02.12.2012 with all monetary benefits.

2. The petitioner has completed her B.Sc. degree in Zoology from Manonmaniam Sundaranar University during 1993 and obtained first class degree. The petitioner has passed M.Sc. degree during 1995 from the same University and obtained M.Phil degree in 1996 and in the Post Graduate degree also she had secured first class. The petitioner is stated to be the first rank holder, secured highest mark in the said examination. The petitioner also obtained Ph.d degree from University of Kerala during 2010 and has passed SLET examination, conducted by the Bharathidhasan University in the year 1997. The petitioner was initially appointed as Lecturer in the Self Financing Wing of Nesamony Memorial Christian College, Marthandam and she worked from 05.10.1998 to 18.10.2004. Thereafter, she was appointed as Lecturer in the UG Department of the same College in the sanctioned vacancy and continued to work for the period from 19.10.2004 to 18.10.2006. Her services was further extended since the vacancy continued and she worked in the said post from 19.10.2006 to 31.03.2007. Thereafter, the petitioner was permitted to work in the said vacancy from 01.04.2010 to 28.07.2010. Thus, the petitioner claims that she got 11 years and 9 months teaching experience.

3. The petitioner was appointed as Assistant Professor of Zoology in 4th respondent College on 29.07.2010 against the retirement vacancy consequent upon the retirement of Dr.Mrs.Lily Pramila. The fact that retirement vacancy is to occur was also intimated by the College to the 2nd respondent. After the petitioner was appointed, the 4th respondent College by its letter dated 14.02.2012 forwarded the petitioner's educational qualification for approval to Manonmaniam Sundaranar University. Along with the proposal, copy of the appointment order, attendance report, copies of SSLC, Higher Secondary certificates, B.Sc., M.Sc., M.Phil and Ph.d degree certificates and copy of Governing Board Minutes were forwarded to the University. By reply dated 11.06.2012, the University directed the Management to send copy of the proceedings of the Director of Collegiate Education that the post being sanctioned for appointment of Lecturer in their College. Particulars regarding 5 such candidates were also called for. Thereafter, it appears that 4th respondent Management did not take any further steps and therefore, the petitioner was compelled to send representation on 02.12.2012 and since no orders have been passed, the petitioner has filed the present writ petition.

4. Heard Mr.N.Rajan, learned counsel for the petitioner and Mr.R.Lakshminarayanan, learned Additional Government Pleader for respondent Nos.1 to 3. Though, 4th respondent was served and their name was printed in the cause list, none appears for 4th respondent.

5. The short issue, which falls for consideration is whether the petitioner's appointment has to be approved by the 2nd respondent Department. Admittedly, the petitioner was appointed

in a minority institution and therefore, the question obtaining prior approval from the 2nd respondent Department does not arise. It is to be noted that the petitioner was appointed in a sanctioned post. The specific case of the petitioner is that she was appointed in a retirement vacancy caused on account of the retirement of Dr.Mrs.Lily Pramila. This aspect was duly intimated to the 2nd respondent Department. The 4th respondent Management has followed the procedure and the Governing Board has also passed a resolution and appointment order has been issued to the petitioner. The certificates were forwarded to the University for approval of the qualification of the petitioner, but the University requires approval of the Department. Therefore, there is a stalemate in the matter.

6. At this juncture, it is useful to refer the decision of the Hon'ble Division Bench of this Court relied on by the petitioner in the case of The Government of Tamil Nadu, rep. by its Secretary, High Education Department and others v. Dr.C.Selvaraj and another in W.A.No.2345 of 2011, decided on 05.03.2012. The said appeal was preferred by the Government of Tamil Nadu as against the order passed in W.P.No.6901 of 2001, dated 05.8.2009, wherein a direction was issued to the Department to approve the appointment of 1st respondent therein. The Hon'ble Division Bench, pointed out that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission is required and he is eligible to get salary. Relying the said decision of the Hon'ble Division Bench, cited supra, the learned counsel for the petitioner submitted that the petitioner's case is also similarly couched and her appointment is liable to be approved.

7. Reliance is also placed by the learned counsel for the petitioner on the order passed by this Court in W.P.No.5467 of 2010, decided on 19.08.2014 (R.Stephenson v. State of Tamil Nadu, rep. by its Secretary, Higher Education and others), wherein a direction was issued to the College viz., Nesamony Memorial Christian College, Marthandam, Kanyakumari District to forward the proposal to the Director of Collegiate Education for approval in respect of the petitioner therein, who was appointed as Lecturer in Tamil in a sanctioned post.

8. In the light of the above, the following directions will meet the ends of justice.

9. In the result, the writ petition is disposed of by directing 4th respondent to submit appropriate proposal for approval of the petitioner's appointment, to the 2nd respondent, through the 3rd respondent. The proposal shall be sent by the 4th respondent within a period of four weeks from the date of receipt of a copy of this order and on receipt of such proposal, 3rd respondent shall also send appropriate recommendations/remarks and forward the same to the 2nd respondent to enable the 2nd respondent to take a decision in

the matter, in the light of the above observations, within a period of six weeks from the date on which the proposal is received through the 3rd respondent. No costs. Consequently, M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

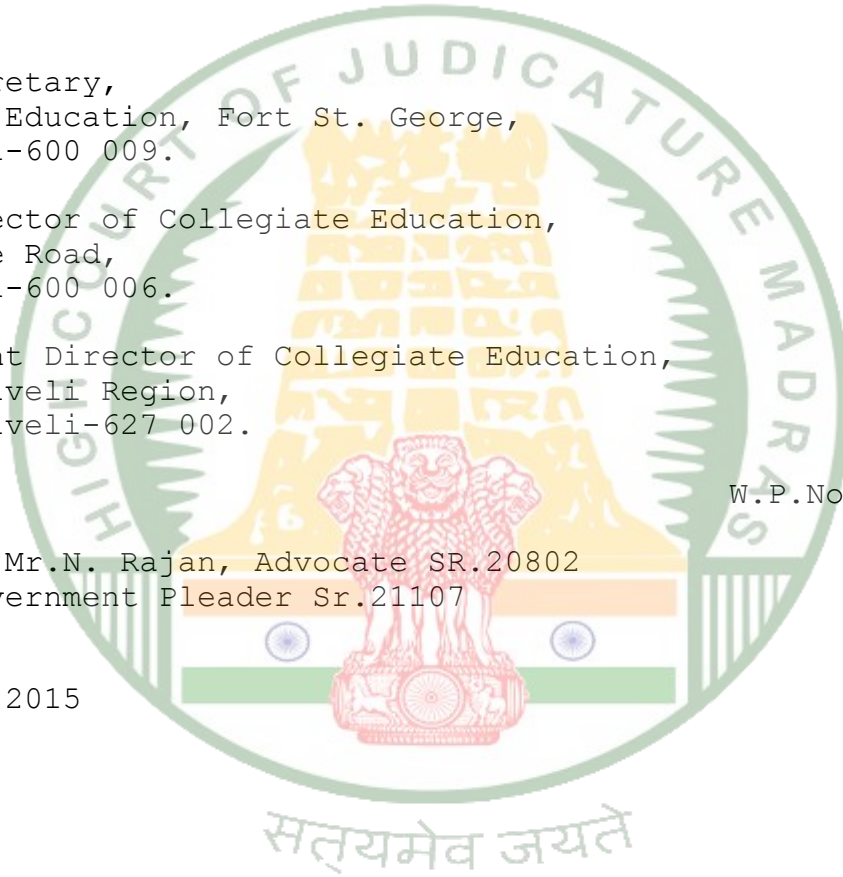
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To

- 1.The Secretary,
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.

W.P.No.20880 of 2013

+ 1 cc to Mr.N. Rajan, Advocate SR.20802
+ 1 cc Government Pleader Sr.21107

BVR(CO)
EU 29.04.2015



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