

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2015

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
W.P.Nos.35584 to 35587 of 2015

Dr.S.Stella .. Petitioner in W.P.No.35584 of 2015
Dr.N.Rexin Alphonse .. Petitioner in W.P.No.35585 of 2015
Dr.I.Jayakumari .. Petitioner in W.P.No.35586 of 2015
Dr.A.N.Shanthi Nirmala .. Petitioner in W.P.No.35587 of 2015

Vs.

1. Director of Collegiate Education,
College Road,
Chennai 600 006.
2. The Joint Director of College Education,
Thirunelveli Region,
Thirunelveli 627 007.
3. The Secretary,
Sarah Tucker College,
Tirunelveli District. Respondents in all W.Ps.

Prayer in W.P.No.35584 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent herein to approve the petitioner appointment as Assistant Professor in Chemistry in the 3rd respondent Sarah Tucker College, Tirunelveli, in the sanctioned retirement vacancy of Dr.Pushpa Rajagopalan with effect from 30.10.2014 in the light of approval given by the 1st respondent to the similarly placed persons like Dr.D.Thampi Dharmaraj Kurupatham in Na.Ka.No.24810/F2/2015 dated 20.10.2015 in W.P.No.16897 of 2015, Dr.S.Mehalin Chandra in Na.Ka.No.24811/F2/2015 dated 20.10.2015 in W.P.No.16898 of 2015 and C.Anuba & 10 others, in W.P.Nos.11004 to 11014 of 2005 dated 29.06.2015 with monetary and all other attendant and service benefits.

Prayer in W.P.No.35585 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent herein to approve the petitioner appointment as Assistant Professor in Chemistry in the 3rd respondent Sarah Tucker College, Tirunelveli, in the sanctioned retirement vacancy of Mrs.Chandra Karunaharan with effect from 24.10.2014 in the light of approval given by the 1st respondent to the similarly placed persons like Dr.D.Thampi Dharmaraj Kurupatham in Na.Ka.No.24810/F2/2015 dated 20.10.2015 in W.P.No.16897 of 2015, Dr.S.Mehalin Chandra in Na.Ka.No.24811/F2/2015 dated 20.10.2015 in W.P.No.16898 of 2015 and C.Anuba & 10 others, in W.P.Nos.11004 to 11014 of 2005 dated 29.06.2015 with monetary and all other attendant and service benefits.

Prayer in W.P.No.35586 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent herein to approve the petitioner appointment as Assistant Professor in History in the 3rd respondent Sarah Tucker College, Tirunelveli, in the sanctioned retirement vacancy of Mrs.Augustina Shadrach with effect from 03.12.2014 in the light of approval given by the 1st respondent to the similarly placed persons like Dr.D.Thampi Dharmaraj Kurupatham in Na.Ka.No.24810/F2/2015 dated 20.10.2015 in W.P.No.16897 of 2015, Dr.S.Mehalin Chandra in Na.Ka.No.24811/F2/2015 dated 20.10.2015 in W.P.No.16898 of 2015 and C.Anuba & 10 others, in W.P.Nos.11004 to 11014 of 2005 dated 29.06.2015 with monetary and all other attendant and service benefits.

Prayer in W.P.No.35587 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent herein to approve the petitioner appointment as Assistant Professor in Economics in the 3rd respondent Sarah Tucker College, Tirunelveli, in the sanctioned retirement vacancy of Mrs.D.Helan Ebenezer with effect from 12.12.2014 in the light of approval given by the 1st respondent to the similarly placed persons like C.Anuba & 10 others in his proceedings Na.Ka.No.15146/F2/2015 dated 16.10.2015 based on the common order passed in W.P.Nos.11004 to 11014 of 2005 dated 29.06.2015 with monetary and all other attendant and service benefits.

For Petitioners : Mr.E.Martin Jeya Kumar
For R1 & R2 : Mr.N.Srinivasan
Addl.Govt.Pleader
For R3 : Mr.G.Sam Edwin Raj .

COMMON ORDER

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

2.The petitioners are appointed as an Assistant Professor in Chemistry, History and Economics respectively in the third respondent Aided College, affiliated to Manonmaniam Sundaranar University. The petitioners were appointed on 30.10.2014, 24.10.2014, 03.12.2014 and 12.12.2014 respectively in the retirement vacancies. The qualification of the petitioners 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.The petitioners would state that they were appointed in the sanctioned post that fell vacant due to retirement of the Assistant Professors, the Joint Director of Collegiate Education, Tirunelveli Region ought to have sanctioned the grant for the posts and prior approval from the Director of Collegiate for the already sanctioned post in minority institutions is not at all necessary.

4.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.

5.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.

6. Accordingly, the Writ Petition is allowed and the first and second respondents are directed to grant approval to the appointment of the petitioners as Assistant Professors in Chemistry, History and Economics respectively in the third respondent College. No costs.

Sd/-
Assistant Registrar (CS-VIII)

True Copy

Sub Assistant Registrar

To

1. Director of Collegiate Education,
College Road,
Chennai 600 006.
2. The Joint Director of College Education,
Thirunelveli Region,
Thirunelveli 627 007.
3. The Secretary,
Sarah Tucker College,
Tirunelveli District.

+4cc to Mr.E.Martin Jayakumar, Advocate Sr.62149,150,151,152
+1cc to The Government Pleader Sr.62052
+1cc to The Government Pleader Sr.62001

W.P.No.35584 to 35587 of 2015

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srg 23/11/2015