

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.07.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.No.17385 of 2010

and

MP.No.1/2015

M.Prabha Punniavathi

.... Petitioner

Versus

1.The Government of Tamilnadu,
Rep. by its Secretary,
Higher Education Department,
Fort St. George,
Chennai-9.

2.The Director of Collegiate Education,
Chennai-6.

3.M/s. Nesamony Memorial Christian College,
Rep.by its Correspondent,
Marthandam,
Kanyakumari District-629 165.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus to issue direction, directing the respondents to consider the petitioner's representations consequently approve the petitioner's appointment from 21.06.1999 and pay the monthly salary from 01.01.2003 as per the order issued by the 2nd respondent Pa.Mu.No.5305/E2/2008, dated 06.11.2008 with all attended benefits from the date of petitioner's appointment.

For Petitioner : Mr.N.Rajan
For RR1&2 : Mr.R.Vijayakumar, AGP
For R3 : No appearance

ORDER

With the consent of the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 2, this Writ petition is taken up for final disposal.

2.Heard Mr.N.Rajan, learned counsel appearing for the petitioner and Mr.R.Vijayakumar, Learned Additional Government Pleader appearing on behalf of the respondents 1 &2. The third respondent having been served and their name is also printed in the cause list, none appears for the third respondent.

3.The petitioner seeks for issuance of a writ of Mandamus, to consider her representations and approve her appointment as Lecturer in English in the third respondent college with effect from 17.06.1999.

4. The petitioner holds Post Graduate degree in English and she completed her M.Phil during the year 1993. The petitioner was appointed as a Lecturer in English in the third respondent College vide order of appointment dated 17.06.1999 in a retirement vacancy caused on account of the retirement of one Dr.Adeline F. Selvaraj. The order of appointment issued to the petitioner states that she will start with the basic scale of pay of Rs.8,000/- in the scale of pay of Rs.8000-325-14000 with usual allowances permissible under the Rules and the Conditions of the University and the Management subject to the approval of the Joint Director of Collegiate Education, Tirunelveli. Further, it is stated that the petitioner shall not be eligible to claim for salary or any other remuneration from the Management in the event of non approval of her appointment by the Department. The petitioner accepted the terms and conditions of the appointment and joined service. Thereafter, the petitioner submitted a representation dated 15.02.2007 through proper channel i.e., College Management, to approve her appointment and grant salary from the date of joining service i.e., 21.06.1999. Since, her representation was not considered, the petitioner approached this Court by filing WP.No.20269 of 2007, for a direction to the respondents to consider her representation and approve her appointment as a Lecturer in English. The said writ petition was disposed of directing the petitioner's representation to be considered within a period of 8 weeks. The petitioner thereafter submitted another representation on 18.07.2007, enclosing the service certificate given by the Management to substantiate that she is working as a Lecturer in the Department of English from 21.06.1999. The said representation was not considered in spite of the direction issued by this Court in the earlier writ petition, wherein a time frame fixed to the official respondents to consider the representation. It appears that during 2007, the Director of Collegiate Education issued directions to all College Managements to fill up all vacancies. Pursuant thereto another order of appointment was issued to the petitioner by the third respondent dated 28.07.2007 appointing the petitioner as a Lecturer in English with effect from 30.07.2007. This order of appointment was approved by the Joint Director of Collegiate Education, Tirunelveli, vide proceedings dated 06.11.2008 and pursuant to which the petitioner has been receiving salary. Thereafter, the petitioner submitted a representation through her lawyer claiming salary from the date of her appointment i.e.,

21.06.1999. However, in the legal notice, she has claimed a salary from January 2003, as per the order passed by the Director of Collegiate Education dated 06.11.2008. On perusal of the order dated 06.11.2008, it is seen that there is no approval or permission granted for payment of salary from the year 2003 and the salary was directed to be paid only from the year 2007. When this factual position was pointed out to the learned counsel for the petitioner, the learned counsel submitted that a mistake has occurred while issuing lawyer notice and the petitioner's consistent claim for salary is from the date of her initial appointment dated 21.06.1999. Therefore, the only issue to be considered is whether the respondents could refuse to consider the petitioner's claim for payment of salary from the year 1999 onwards. The order of appointment dated 17.06.1999 states that the petitioner was accommodated in a retirement vacancy. If that be the case, it goes without saying that the petitioner was accommodated in a sanctioned post. If the petitioner was accommodated in a sanctioned post and if she possessed the requisite qualification then she is entitled for salary from the date of her appointment. In fact in the case of one S. Arul John Bennet, the Government vide G.O.(2D) No.4 Higher Education (E2) Department dated 19.01.2006, regularized the services of the said person, who was appointed as a Lecturer in the third respondent College with retrospective effect from 01.03.2001. However, the Government Order states that it should not be quoted as a precedent. In the said Government order there is a reference to an order passed by this Court dated 21.09.2005 in W.P.No.30618 of 2005. Though, the Government order states that it should not be quoted as a precedent, if the petitioner is a similar placed person, there is no reason as to why the petitioner alone should be discriminated. Further, as already pointed out that the respondents have not complied with the direction issued by this Court in W.P.No.20269 of 2007 dated 13.06.2007, wherein, a specific direction was issued to consider the petitioner's representation dated 15.02.2007 within a time frame.

5. Thus considering the entire facts and circumstances, this Court is of the view that the second respondent should consider the petitioner's representation claiming salary from the year 1999 onwards and while doing so, shall take into consideration that the petitioner was appointed in a retirement vacancy consequent upon the retirement of Dr. Adeline F. Selvaraj with effect from 21.06.1999 and in respect of another Lecturer in the same third respondent College, the Government has regularized the appointment vide G.O.(2D) No.4 Higher Education (E2) Department dated 19.01.2006. The above direction shall be complied by the 2nd respondent within a period of three months from the date of receipt of a copy of this order.

With the above direction, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

dn/vsm

To

1. The Secretary,
The Government of Tamilnadu,
Higher Education Department,
Fort St. George,
Chennai-9.
- 2.The Director of Collegiate Education,
Chennai-6.
3. The Correspondent,
M/s. Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District-629 165.

1 cc to Government Pleader.Sr.No.37405

1 cc to Mr.N.Rajan , Advocate Sr.No.37214

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svi(co)
pmk.10.8.2015

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