

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.21271 of 2015

D.Henry Raja

.. Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St.George, Chennai-600 009.
 2. Director of Collegiate Education,
College Road,
Chennai-600 006.
 3. The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli-627 001.
 4. The Secretary,
Scott Christian College,
Nagercoil,
Kanyakumari District.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the second respondent to approve and sanction the appointment of petitioner as Lecturer in Physics in the Scott Christian College, Nagercoil with effect from 04.08.1988 to 03.05.1995 in the light of approval given by the first respondent to the similarly placed persons like Mr.Gabriel Jalastin and Mr.George Winston and whose appointments were approved by the first respondent in Government Order (1D) No.125, School Education (VE), dated 13.04.2010, based on the orders passed by the Supreme Court in SLP(Civil).CC.3969 and 3970 of 2010, dated 22.03.2010 with fixation of salary, service upgradation, seniority in service, pensionary benefits and other attendant service benefits for the period from 04.08.1988 to 03.05.1995.

For Petitioner : Mrs.A.V.Bharathi
For Respondents : Mr.K.Dhananjayan, Spl.G.P. for RR-1 to 3
Mr.S.Bharathirajan for R-4

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the second respondent to approve and sanction the appointment of petitioner as Lecturer in Physics in the Scott Christian College, Nagercoil with effect from 04.08.1988 to 03.05.1995 in the light of the approval given by the first respondent to the similarly placed persons like Mr.Gabriel Jalastin and Mr.George Winston and whose appointments were approved by the first respondent in Government Order (1D) No.125, School Education (VE) Department, dated 13.04.2010, based on the orders passed by the Supreme Court in S.L.P.(Civil).CC.3969 and 3970 of 2010, dated 22.03.2010, with fixation of salary, service upgradation, seniority in service, pensionary benefits and other attendant service benefits for the period from 04.08.1988 to 03.05.1995.

2. It is the case of the petitioner that he was selected and appointed as Assistant Professor in Physics in Scott Christian College, Nagercoil on 04.08.1988 and the appointment order was made by the Management of the Scott Christian College, Nagercoil and it was issued by the Secretary of the College/fourth respondent herein and the said appointment. As the Madurai Kamaraj University had approved the petitioner's qualification, the fourth respondent appointed the petitioner on 04.08.1988. At the time of appointment as Lecturer in 1988, the petitioner was qualified in Master's Degree in Physics with First Class, having 72% as per UGC norms and after appointment, he cleared the State Level Screening Test. By the proceedings of the second respondent bearing Na.Ka.No.55782/A5/88, dated 09.09.1988, permission was granted to fill up the vacancies that arose in the year 1988-1989 on or before 31.03.1989 and in the proceedings, the number of sanctioned posts of Lecturer in Physics for the year 1989-1989 had been set out as 11 instead of 13. It is further stated by the petitioner that for the academic year 1988-89, only 11 posts were sanctioned for the fourth respondent-College, whereas, the other similarly placed colleges like Nesamony Memorial Christian College, Marthandam, with the same work-load and same student strength, 13 posts were sanctioned, vide proceedings in Na.Ka.No.D2/8016/88, dated 13.09.1988. Hence, according to the petitioner, it is a clear case of discrimination against colleges functioning in the same District.

3. It is the further case of the petitioner that due to

shortage in sanctioning 13 posts in the fourth respondent-College, there was heavy work-load / pressure, which affected the students' academic performance. Further, the Management of the fourth respondent-College duly made representations, vide letters, dated 03.10.1988, 28.08.1990, 25.10.1991, 11.09.1991, 30.07.1992 and 28.09.1995, stating that every year, the work-load increased and the third respondent requested for increase in the staff strength in the Department of Physics in the fourth respondent-College and that 13 posts should have been sanctioned, but not even a single post over and above 11, was sanctioned for the Department of Physics. It is the further case of the petitioner that he had worked in the fourth respondent-College for more than 9 years without approval and the work-load was similar to a regular Lecturer done by the petitioner. Hence, the petitioner filed W.P.No.23967 of 2014 before this Court for a direction to the second respondent to approve the appointment of the petitioner as Lecturer in Physics in the fourth respondent-College with effect from 04.08.1988 to 24.01.1997 in the light of the approval given to others. By order dated 24.09.2014, this Court disposed of the said Writ Petition by directing the second respondent to consider the petitioner's representation, dated 12.06.2014 within eight weeks. It is the grievance of the petitioner that though he was appointed on 04.08.1988, the petitioner's post was approved only from 04.05.1995 in the vacancy that arose on the death vacancy of one Mr.Appa Samuvel Jacob Ponnuraj. Six years from the date of appointment, his approval in the post had not been taken into account with respect to fixation of salary, seniority, service upgradation, pension, promotion and other benefits, and hence, the petitioner is seeking to approve the period of service from 04.08.1988 to 03.05.1995 with the above said benefits of fixation of salary, etc.

4. It is the further case of the petitioner that similarly placed persons like Mr.Gabriel Jalastin and Mr.George Winston, who sought for the service benefits alone in respect of the particular period, though their services were approved in subsequent dates, have filed W.P.Nos.10758 and 10759 of 2008 challenging G.O.Ms.No.314, School Education Department, dated 12.11.1999 and prayed for a direction to the respondents to consider their service period in work-load vacancy for service upgradation, pay fixation and pensionary benefits with effect from the date of initial appointment. Though this Court dismissed those Writ Petitions, on appeal in W.A.Nos.291 and 292 of 2008 and further appeal in S.L.P.(Civil).CC.Nos.3969 and 3970 of 2010, the Courts allowed their claim to consider their service period for upgradation, fixation of salary and pensionary benefits with effect from the date of initial appointment. Based on this order, dated 26.06.2008 (Division

Bench order of this Court) and 22.03.2010 (order of the Supreme Court), the first respondent passed G.O.(1D).No.125, School Education Department, dated 13.04.2010 and permission was granted to consider their service period with effect from the date of initial appointment for service upgradation, fixation of pay, pensionary benefits and other benefits, except monetary benefits. The petitioner had been singled out, while similarly placed persons' service had been approved from the very date of initial appointment, thereby there has been discrimination.

5. It is further stated by the petitioner that after repeated representations, he once again sent a representation, dated 10.06.2015 to the second respondent seeking approval of his appointment as Lecturer in Physics in the fourth respondent-College with effect from 04.08.1988 to 03.05.1995 regarding service benefits alone. Since the said representation had not been considered, the petitioner has filed the present Writ Petition for the relief stated supra.

6. Without going into the merits of the case and taking into consideration the prayer sought for by the petitioner, the respondents are directed to consider the said representation of the petitioner, dated 10.06.2015 and pass appropriate orders on merits and in accordance with law, with regard to the approval of his service period from 04.08.1988 to 03.05.1995 and also for consequential benefits like fixation of salary, seniority, service upgradation, pensionary benefits, promotion and other attendant benefits, in the light of the approval given by the first respondent to the similarly placed persons like Mr.Gabriel Jalastin and Mr.George Winston, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner and it is for the respondents to decide the same while disposing of the said representation.

7. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Copy to

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St.George, Chennai-600 009.
2. Director of Collegiate Education,
College Road,
Chennai-600 006.
3. The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli-627 001.
4. The Secretary,
Scott Christian College,
Nagercoil,
Kanyakumari District.

+lcc to Mr.S. Bharathi Rajan, Advocate, S.R.No.65142
+lcc to Mr.A.V. Bharathi, Advocate, S.R.No.65243
+lcc to the Government Pleader, S.R.No.65296

nr(CO)
md(24/11/2016)

W.P.No.21271 of 2015

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