

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.26820 of 2016

Dr.N.Austin John Manohar
S/o.Mr.Nalamudayan
Jeya Garden, Mangarai Post
Karungal via,
Kanyakumari District - 629 157. ... Petitioner

...Vs...

- 1.The Director of Collegiate Education
College Road
Chennai - 600 006.
- 2.The Secretary
Nesamony Memorial Christian College
Marthandam. ... Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st respondent herein to approve and regularize the petitioner's appointment as Assistant Professor in History in the Nesamony Memorial Christian College, Marthandam in the sanctioned retirement vacancy of Dr.V.Ebanisor with effect from 16.06.2005 to 06.07.2014 in the light of the approval given by the 1st Respondent to the similarly placed persons in Na.Ka.No.4593/F2/2016 dated 15.04.2016, Na.Ka.No.19837/F2/2007 dated 14.03.2014 and Na.Ka.No.33733/F2/2005 dated 01.09.2014 in W.P.No.17368 of 2005 dated 29.06.2005, W.A.Nos.140, 811 of 2006 and 809 of 2007 dated 21.10.2010 and in SLP.No.19526 to 19528 of 2013, dated 29.11.2013 with monetary and service and all other benefits for the said period based on the representation dated 18.08.2015 given by the petitioner.

For Petitioner : Mr.E.Martin Jayakumar

For Respondents: Mr.S.Gunasekaran, G.A., for R1

Mr.S.Bharathi Rajan, for R2

ORDER

Heard Mr.E.Martin Jayakumar, learned counsel appearing for the petitioner, Mr.S.Gunasekaran, learned Government Advocate who has taken notice for the first respondent and Mr.S.Bharathi Rajan, learned counsel who has taken notice for the second respondent and with the consent of either side, the writ petition itself is taken up for final disposal.

2.This Writ Petition has been filed by the petitioner, seeking for a mandamus, to direct the first respondent herein to approve and regularize the petitioner's appointment as Assistant Professor in History in the Nesamony Memorial Christian College, Marthandam, in the sanctioned retirement vacancy of Dr.V.Ebanisor with effect from 16.06.2005 to 06.07.2014 in the light of the approval given by the first Respondent to the similarly placed persons in Na.Ka.No.4593/F2/2016, dated 15.04.2016, Na.Ka.No.19837/F2/2007, dated 14.03.2014 and Na.Ka.No.33733/F2/2005, dated 01.09.2014 in W.P.No.17368 of 2005, dated 29.06.2005, W.A.Nos.140, 811 of 2006 and 809 of 2007, dated 21.10.2010, and in S.L.P.Nos. 19526 to 19528 of 2013, dated 29.11.2013, with monetary and service and all other benefits for the said period based on the representation given by the petitioner dated 18.08.2015.

3.The learned counsel for the petitioner submitted that the petitioner who is possessing the qualification of M.A., M.Ed., Ph.D was appointed as an Assistant Professor in History in the Nesamony Memorial Christian College, Marthandam, with effect from 16.06.2005 in the retirement vacancy of one Dr.V.Ebanisor. The said post is a sanctioned post, which was approved by the first respondent vide his proceedings dated 29.02.2015. According to the petitioner, by the proceedings of the first respondent, dated 28.10.1999, permission has been granted to fill up the vacancies that arose in the vacant posts of the year 1999-2000 on or before 31.03.2000. According to the petitioner, there is no provision either in the Tamil Nadu Private Colleges (Regulation) Act, 1976 or in the Tamil Nadu Private Colleges (Regulation) Rules, 1976, which says that prior permission has to be obtained from the Director of Collegiate Education before filling up a vacant sanctioned post. The grievance of the petitioner is that till date he is working without any salary being paid from the date of his appointment, viz., 16.06.2005 to 06.07.2014. It is his further contention that as he was appointed in the sanctioned post from 16.06.2005, the first respondent ought to have issued the approval order with effect from the said date, in the light of the approval given by him to the similarly placed persons in

Na.Ka.No.4593/F2/2016, dated 15.04.2016, Na.Ka.No.19837/F2/2007 dated 14.03.2014 and Na.Ka.No.33733/F2/2005 dated 01.09.2014 in W.P.No.17368 of 2005 dated 29.06.2005, W.A. Nos. 140, 811 of 2006 and 809 of 2007 dated 21.10.2010 and in SLP. Nos.19526 to 19528 of 2013 and to pay him salary with effect from 16.06.2005 with all monetary and service and all other benefits for the said period by considering his representation dated 18.08.2015.

5.In support of his contention, the learned counsel for the petitioner cited the order passed by this Court in W.P.No.3311 of 2016 dated 22.02.2016 in identical circumstances, wherein this Court has held as follows:

"4.The learned counsel for the petitioner submitted that petitioner has sent a representation to the first respondent dated 04.11.2015 in regard to regularization of her service from 26.12.2007 and to pay her salary with effect from 26.12.2007. In support of his contention, the learned counsel for the petitioner also placed two reported judgments of this Court namely, W.P.No.664 of 2016 [V.Bena Jothy V. The Director of Collegiate Education, Chennai & Others, CDJ 2016 MHC 551] and in W.P.No.3244 of 2011 [C.Sundara Raj V. The State of Tamil Nadu rep. by its Secretary, Department of Higher Education, Chennai & Others, CDJ 2015 MHC 8188]. The learned counsel, also taking aid of the orders passed by this Court, contended that when a teacher is appointed in any sanctioned vacancy, then refusal to approve the said appointment, which is made in the sanctioned post, is contrary to the decisions of this Court dated 10.04.1995 in W.P.No.2093 of 1994 and in another order dated 13.09.1996 in W.P.No.6758 of 1998. Further, the learned counsel for the petitioner, reiterating the ratio, submitted that if any teaching faculty is appointed in any Minority Institution receiving aid from the Government, the Director of Collegiate Education cannot insist Private Aided College Managements to get prior permission to fill up the vacant posts available in the sanctioned posts, by issuing circulars. A perusal of the above ratio clearly shows that the Hon'ble Division Bench of this Court has answered clearly that no prior approval is necessary for filling up of any vacant post in any Private College, if it is already a sanctioned post in the same school. It is pertinent to extract the relevant portion of the decision of the Hon'ble Division Bench of this Court in P.Ravichandran V. State of Tamil Nadu, rep. by Secretary to Government, Department of Higher Education, Chennai and others [2013 (7) MLJ 641], which reads 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.#

5. The learned Additional Government Pleader, also taking instructions from the Director of Collegiate Education (F.A.C.), Chennai, by letter in R.C.No.4594/F2/2016 dated 15.02.2016, submitted that petitioner's representation would be considered in accordance with the Tamil Nadu Private College Regulations and Rules, 1976. He also sought time to consider and dispose of the petitioner's representation dated 04.11.2015.

6. On mere perusal of the above observation it clearly shows that the first respondent, while granting approval to the petitioner's appointment, in my considered view, ought to have approved her appointment with effect from 26.12.2007. Since in the present case, the order of approval has been given only from 07.07.2014, this Court hereby directs the first respondent to consider and dispose of the petitioner's representation dated 04.11.2015 and regularise the service of the petitioner from 26.12.2007 and to pay the salary and other benefits with effect from 26.12.2007, within a period of six weeks from the date of receipt of a copy of this order."

6.The learned Government Advocate appearing for the first respondent as well as the learned counsel appearing for the second respondent submitted that the College had already submitted its report to the first respondent and therefore, the petitioner's representation dated 18.08.2015 would be considered in accordance with the Tamil Nadu Private College Regulations and Rules, 1976 and prayed that a time limit may be fixed by this Court.

7.Following the earlier orders passed by this Court as stated supra and in the light of the approval granted by the first respondent in similar circumstances, this Court is of the view that the respondent ought to have considered the case of the petitioner from the date of his appointment, viz., 16.06.2005 and paid him salary with all other benefits.

8. In view of the above, the first respondent is directed to consider and dispose of the petitioner's representation dated 18.08.2015 for regularizing his service from the date of his appointment, viz., 16.06.2005 to 06.07.2014 and to pay him salary and other applicable benefits for the said period, within a period of six weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is disposed of. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Director of Collegiate Education
College Road
Chennai - 600 006.

+1 cc to Mr.E.Martin Jayakumar Advocate sr.43855
+1 cc to Mr.S.Bharathi Rajan Advocate sr.43762
+1 cc to Government Pleader sr43914

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