

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.2739 of 2016

Dr.R.Anitha Helan ... Petitioner

Vs.

1.The Directorate of Collegiate Education,
College Road,
Chennai-600 006.

2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli-627 007.

3.The Registrar,
Manonmanium Sundaranar University,
Tirunelveli District.

4.The Secretary,
Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District.

... Respondents

Prayer:Petition filed under Article 226 of The Constitution of India praying to issue a writ of Mandamus, directing the first respondent herein to approve and regularize the petitioner appointment as Assistant Professor in Tamil in the Nesamony Memorial Christian College, Marthandam, in the sanctioned retirement vacancy of Mr.M.Rajadhas with effect from 12.08.2010 to 06.07.2014 based on the approval given by the first respondent to the similarly placed person in Na.Ka.No.33733/F2/2005 dated 01.09.2014 and Na.Ka.No.19837/F2/2007 dated 14.03.2014 with monetary and service and all other benefits for the said period.

For Petitioner

: Mrs.A.V.Bharathi
for Mr.E.Martin Jayakumar

For Respondent : Mr.R.Vijayakumar,
Nos.1 & 2 Additional Government Pleader

For Respondent : Mr.S.Nambi Arooran
No.3 for M/s.Ajmal Ass.

For Respondent : Mr.S.Bharathirajan
No.4

O R D E R

This Writ Petition has been filed by the petitioner seeking a Writ of Mandamus, directing the first respondent herein to approve and regularize her appointment as Assistant Professor in Tamil in the Nesamony Memorial Christian College, Marthandam, in the sanctioned retirement vacancy of Mr.M.Rajadhas with effect from 12.08.2010 to 06.07.2014 based on the approval given by the first respondent to the similarly placed person in Na.Ka.No.33733/F2/2005 dated 01.09.2014 and Na.Ka.No.19837/F2/2007 dated 14.03.2014 with monetary and service and all other benefits for the said period.

2.Heard the learned counsel appearing for the parties.

3.The learned counsel for the petitioner submitted that petitioner who is possessing the qualification of M.A., M.Phil & Ph.D in Tamil, was appointed as Assistant Professor temporarily in Tamil in Nesamony Memorial College, Marthandam, on 12.08.2010 by virtue of the appointment order issued by the Secretary of the Nesamony Memorial College, Marthandam in a sanctioned post. Subsequently, when vacancy arose, her appointment was sanctioned by the second respondent in his proceedings vide Na.Ka.No.13286/E2/2014 dated 29.05.2015, with effect from 07.07.2014. Considering the fact that the petitioner has been working continuously, based on the Government Order, the first respondent, vide order bearing Na.Ka.No.21663/G3/2011 dated 04.07.2014, approved the petitioner's appointment and thereupon, she was paid with salary. But the grievance of the petitioner is that although she was appointed in the sanctioned vacancy on 12.08.2010, the first respondent while regularising her appointment, ought to have issued the approval order with effect from 12.08.2010 and therefore, pleaded to regularise her service from 12.08.2010 and pay her with salary and other benefits with effect from 12.08.2010.

4.The learned counsel for the petitioner submitted that petitioner has sent a representation to the first respondent

dated 13.11.2015 in regard to regularisation of her service from 12.08.2010 and to pay her salary with effect from 12.08.2010. 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 13.11.2015.

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 12.08.2010. 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 13.11.2015 and regularise the service of the petitioner from 12.08.2010 and to pay the salary and other benefits with effect from 12.08.2010, within a period of six weeks from the date of receipt of a copy of this order.

7.The Writ Petition is disposed of accordingly. No costs.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar.

DP

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To

1.The Directorate of Collegiate Education,
College Road,
Chennai-600 006.

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3.The Registrar,
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Tirunelveli District.

4.The Secretary,
Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District.

+1cc to M/s.Ajmal Associates,Advocate SR.No.11096

+1cc to Mr.Martin Jayakumar, Advocate SR.No.10978

+1cc to Mr.S.Bharathirajan, Advocate SR.No.10841

W.P.No.2739 of 2016

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gp/7.3.



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