

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32962 of 2016

Dr.E.Jasmin Viji

... Petitioner

Vs.

The Director of Collegiate Education,
College Road,
Chennai – 600 006.

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent herein to approve and regularize the petitioner's appointment as Assistant Professor in Tamil in the Nesamony Memorial Christian College, Marthandam, in the sanctioned retirement vacancy of Dr.M.Deva Prasanna Kumari with effect from 12.08.2010 to 06.07.2014 based on the approval given by the respondent to the similarly placed persons in Na.Ka.No.4950/F2/2016 dated 21.06.2016 in W.P.No.2739 of 2016 dated 22.02.2016, 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, in W.A.Nos.140, 811 of 2006 and 809 of 2007, and in SLP.Nos.19526 of 19528 of 2013 with monetary and service and all other benefits for the said period based on the representation dated 13.11.2015 given by the petitioner.

For Petitioner : Mr.E.Martin Jaya Kumar
For Respondent : Mr.C.Jagadish
Special Government Pleader

ORDER

By consent, the writ petition is taken up for final disposal.

2.The petitioner has come up with the present writ petition for a Mandamus, directing the respondent herein to approve and regularize the petitioner's appointment as Assistant Professor in Tamil in the Nesamony Memorial Christian College, Marthandam, in the sanctioned retirement vacancy of Dr.M.Deva Prasanna Kumari with effect from 12.08.2010 to 06.07.2014 based on the approval given by the respondent to the similarly placed persons in Na.Ka.No.4950/F2/2016 dated 21.06.2016 in W.P.No.2739 of 2016 dated 22.02.2016, 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, in W.A.Nos.140, 811 of 2006 and 809 of 2007, and in SLP.Nos.19526 of 19528 of 2013 with monetary and service and all other benefits for the said period based on the representation dated 13.11.2015 given by the petitioner.

3.It is the case of the petitioner that she is a Post Graduate in

Tamil possessing the qualification of M.A., M.Phil., Ph.D. Originally, she was appointed as Assistant Professor in Tamil in Nesamony Memorial Christian College, Marthandam, with effect from 12.08.2010 in the sanctioned retirement vacancy of Dr.M.Deva Prasanna Kumari and she has not been paid salary from the management funds. Subsequently, the post was approved by the respondent vide proceedings dated 29.05.2015, with effect from 07.07.2014.

4.It is the further case of the petitioner that by the proceedings of the Director of Collegiate Education, Chennai, dated 28.10.1999, permission has been granted to fill up the vacancies that arose in the vacant post of the year 1999-2000 on or before 31.03.2000. In the said proceedings, the number of sanctioned posts of Assistant Professor in Tamil for the year 1999-2000 has been set out as 10 and the petitioner has been appointed with effect from 12.08.2010 in the 10th sanctioned post.

5.It is the further case of the petitioner that from the proceedings dated 28.10.1999, it is clear that there are 10 sanctioned posts of Assistant Processor in Tamil in the Nesamony Memorial Christian College. Thereafter, in and by the Government Order No.79,

Higher Education (E2) Department, dated 28.05.2012, orders were issued by the Government to fill up the 3120 vacant posts that arose in various Colleges aided by the Government and it was also made clear by the Government that the sanctioned and approved post which fell vacant from 01.06.2008 to 31.05.2011 have to be filled up by year wise and subject wise.

6.The Nesamony Memorial Christian College has sent a communication about the workload to the respondent herein and sought approval of the retirement of vacancies of the Assistant Professors, which arose in the year 2010, including the retirement vacancy of Dr.M.Deva Prasanna Kumari which arose on 31.05.2010.

7.It is the further case of the petitioner that there is no provision either in the Tamil Nadu Private Colleges (Regulation) Act, 1976 or in the Tamil Nadu Private Colleges (Regulation) Rules, 1976, that prior permission has to be obtained from the Director of Collegiate Education before filling up a vacant sanctioned post. Therefore, it is not necessary to obtain prior approval from the Director of Collegiate Education in respect of filling up vacancy arising out of an already sanctioned post. The petitioner has been working without salary from

the date of her appointment in the retirement vacancy arising out of a sanctioned post. In this regard, the petitioner sent a representation dated 13.11.2015 to the respondent requesting to approve her appointment from the initial date of appointment. But, the same was not considered so far. Hence, left with no other alternative, the petitioner has come up with the present writ petition for the relief set out earlier.

8.The learned counsel appearing for the petitioner, in support of his contentions, also relied upon the order of this Court dated 12.07.2016 made in W.P.No.23718 of 2016 (Dr.A.Jepa Malar Vs.The Director of Collegiate Education, College Road, Chennai – 600 006.), wherein, this Court relying upon the order passed by this Court in W.P.No.3311 of 2016 dated 22.02.2016, directed the respondent to consider and dispose of the petitioner's representation for regularizing the service from the date of appointment and to pay the salary and other applicable benefits for the said period within a time frame.

9.I have heard the learned counsel appearing for the petitioner and the learned Special Government Pleader who takes notice for the respondent.

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

11.In view of the above, this Court directs the respondent to consider the representation of the petitioner dated 13.11.2015 seeking to approve and regularize the petitioner's appointment as Assistant Professor in Tamil in the Nesamony Memorial Christian College, Marthandam, in the sanctioned retirement vacancy of Dr.M.Deva Prasanna Kumari with effect from 12.08.2010 to 06.07.2014, based on the approval given by the respondent to the similarly placed persons in Na.Ka.No.4950/F2/2016 dated 21.06.2016 in W.P.No.2739 of 2016 dated 22.02.2016, 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, in W.A.Nos.140, 811 of 2006 and 809 of 2007, and in SLP.Nos.19526 of 19528 of 2013 and pass appropriate orders with regard to the payment of her salary and other applicable benefits for the said period, on merits and in

accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

12.The writ petition is disposed of accordingly. No costs.

21.09.2016

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Index: Yes/ No

Internet: Yes/ No

To

The Director of Collegiate Education,
College Road,
Chennai – 600 006.

R.SUBBIAH,J.
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