

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.37526 of 2016

Dr.Sheila Yesudas

... Petitioner

Vs.

The Director of Collegiate Education
College Road
Chennai-600 006

... Respondent

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the Respondent herein to approve the petitioner's appointment as Assistant Professor in Commerce in the Women's Christian College, Nagercoil, in the sanctioned retirement vacancy of Dr.N.Lalitha with effect from 13.07.2015 in the light of approval given by the Respondent to the similarly placed persons like Dr.N.Santhy in W.P. No.35715 of 2015 dated 16.11.2015 in Na.Ka. No.50256/ F2/ 2015 dated 2.3.2016 with monetary and all other attendant and service benefits based on the representation given by the petitioner dated 20.7.2015.

For Petitioner : Mr.E.Martin Jayakumar

For Respondents : Mr.V.Anandamoorthy,
Add. Govt. Pleader (Education)

ORDER

By consent, the main writ petition itself 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 her appointment as Assistant Professor in Commerce in the Women's Christian College, Nagercoil, in the sanctioned retirement vacancy of Dr.N.Lalitha with effect from 13.07.2015 in the light of approval given by the Respondent to the

similarly placed persons like Dr.N.Santhy in W.P. No.35715 of 2015 dated 16.11.2015 in Na.Ka. No.50256/ F2/ 2015 dated 2.3.2016 with monetary and all other attendant and service benefits based on the representation given by her dated 20.7.2015.

3. Today, when the matter was taken up for consideration, learned counsel appearing for the petitioner submitted that in similar circumstances, this Court, in W.P.No.35715 of 2015 dated 16.11.2015 (Dr.N.Santhy vs. The Director of Collegiate Education, College Road, Chennai and others), by relying upon the judgment of the Division Bench of this Court in the case of P.Ravichandran v. State of Tamil Nadu reported in 2013 (7) MLJ 641, directed the respondents therein to grant approval to the appointment of the petitioner therein as she was appointed against the regular vacancy due retirement / death. Since the petitioner is similarly placed person, following the same, similar order could be passed in this writ petition also.

4. I have also heard the learned Additional Government Pleader, who has taken notice on behalf of the respondent.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

6. The relevant portion of the order dated 16.11.2015 passed by this Court in W.P.No.35715 of 2015, is usefully extracted hereunder:-

" 7. In an identical matter, this Court passed an order dated 03.09.2014 in W.P.(MD) No.5486 of 2014, directing to sanction grant to the post of a College Teacher who was appointed in the regular vacancy. For better appreciation, paragraph 8 of the order is extracted hereunder:

" 8. The third respondent, without considering the application on merits, returned it on the ground that the Commissioner is now seized of the matter. The impugned order is bereft of particulars. The third respondent failed to indicate as to why such a Commission was appointed by the Government. Even if a Commission was appointed, still the third respondent has no authority to keep the application for approval pending or to return it, without forwarding it to the Government. I am,

therefore, not in a position to support the order passed by the third respondent."

8. It is a well settled law by catena of decisions that whenever sanctioned posts are there and any vacancy arises due to retirement, death or resignation of the persons holding those posts, the same should be filled up by the concerned aided Institution without loss of time, so that the education of the students would not be affected and the education of the students is a paramount consideration in these matters. It is a different matter if a Teacher is appointed beyond the sanctioned strength. In this case, it is not in dispute that the petitioners were appointed by the third respondent College in the sanctioned post. Furthermore, the third respondent is a Minority Institution governed by Article 30 of the Constitution of India.

9. It is also useful to refer to paragraph No.20 of the order of the Hon'ble Division Bench of this Court in the case of P.Ravichandran Vs State of Tamil Nadu, [2013 (7) MLJ 641]. Paragraph No.20, is 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.

(4) The College Committee while filling up the vacant post, should follow the procedures stated in Rule 11(1A) to 11(4)(ii).

(5) If there is no rival candidate for any post, the appointment is bound to be approved for the purpose of payment of pay and allowances, by the Regional Joint Director of Collegiate Education.

The writ appeal is disposed of with the above directions. No costs."

10. Further, in various Judgments, this Court interfered with the action of the educational authorities in refusing to approve the appointment of Teachers in the post sanctioned by stating one reason or another, since those action would ultimately seriously affect the poor students who will seek admission in various courses in Aided Colleges, wherein no fee or nominal fee, is collected. In these circumstances, whenever a post is vacant on account of resignation, retirement or death, the concerned College shall fill up the post by a qualified Teacher, without loss of time, in the interest of the students.

11. In view of the above, the first and second respondents are directed to grant approval to the appointment of the petitioner as she was appointed against the regular vacancy due to retirement/death, within a period of four weeks from the date of receipt of a copy of this order and on such order being passed by the respondents 1 & 2, the concerned University is directed to grant approval for qualification based on records, within a period of four weeks thereafter."

7. In view of the above facts and circumstance of the case, though the petitioner prayed for a larger relief, instead of giving such a positive direction, I am of the opinion, it would be appropriate to direct the respondent to consider the case of the petitioner in the light of the judgment of this Court dated 16.11.2015 made in W.P.No.35715 of 2015.

8. Accordingly, without going into the merits of the claim made by the petitioner, this Court directs the petitioner to give a fresh representation to the respondent along with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law and also in the light of the judgment of this Court dated 16.11.2015 made in W.P.No.35715 of 2015 (Dr.N.Santhy vs. The Director of Collegiate Education, College Road, Chennai and others), within a period of six weeks thereafter. The writ petition is disposed of accordingly.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

+1cc to Mr.Martin Jayakumar, Advocate, S.R.No.61379

+1cc to the Government Pleader, S.R.No.61583

nmi (CO)

md (11/11/2016)

W.P.No. 37526 of 2016

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