



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A(MD)No.1591 of 2016
and
C.M.P(MD)No.11925 of 2016

1)The Principal Secretary,
Higher Education Department,
Secretariat,
Fort St.George,
Chennai-600 009.

2)The Director of Collegiate Education,
E.V.K. Sampath Maligai,
College Road,
Chennai-600 006.

... Appellants

vs.

K.Mohan

... Respondent

Appeal filed under Clause 15 of Letters Patent, against the order dated 03.12.2014 made in W.P(MD)No.19577 of 2014.

Prayer in WP(MD). 19577/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 1st Respondent to issue posting order to the petitioner as Assistant Professor on recruitment by transfer of service, based on the recommendation of the 2nd Respondent vide Letter Na.Ka. No. 10993/D5/2011-7 dated 01.08.2013 within stipulated time.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader
For Respondent : Mr.C.Arul Vadivel Sekar

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

<https://hcservices.courts.gov.in/hcservices/>
This writ appeal has been filed against the order passed by the learned single Judge dated 03.12.2014 made in W.P(MD)No.19577



of 2014, whereby, a positive direction was given to the 1st appellant to consider the two recommendations made by the 2nd respondent/Director of Collegiate Education, Chennai, and pass suitable orders appointing the petitioner as Assistant Professor within a period of eight weeks from the date of receipt of the order.

2.The case of the respondent/writ petitioner is that he joined as Laboratory Assistant through the employment exchange in Raja Duraisingam Government Arts College, Sivagangai, on 26.02.1999. Thereafter, he was transferred to Alagappa Arts College, Karaikudi, in the year 2000 and the writ petitioner is now serving as Laboratory Assistant in the said college. He has also acquired M.A(Tamil) in May 2005, M.Phil(Tamil) in May 2006 and Ph.D(Tamil) in November 2009 from Alagappa University, Karaikudi. He has also passed National Eligibility Test(NET) in December 2005 and fully qualified to be appointed as Assistant Professor in Arts College.

3.While so, the Government vide G.O.Ms.No.2406, Education Department, dated 31.10.1981, permitted the Management of aided colleges to fill up the vacancies of non teaching staff. In the said G.O., it has also been clearly mentioned by the Directorate of Collegiate Education that there is a provision for such appointment in Government service and he has recommended extension of the same concession to the aided colleges. The petitioner filed W.P.No.30037 of 2008, for a direction to consider his representation dated 23.10.2007 seeking appointment as Lecturer in the existing or future vacancies on the basis of the said G.O. Similarly, several non teaching staff from various colleges filed writ petitions for the same relief. This Court, by a common order dated 19.12.2008 in W.P.No.30037 of 2008 batch, directed the 2nd respondent to consider the representations of the petitioners therein, in the light of G.O.Ms.No.2406, Education Department, dated 31.10.1981. Based on the abovesaid order, the 2nd respondent forwarded two recommendations vide Letter Na.Ka.No.28090/D5/08, dated 09.02.2009 and another Letter Na.Ka.No.10993/D5/2011-7, dated 01.08.2013 to the 1st respondent. As no orders were passed by the 1st respondent, the writ petitioner filed W.P(MD)No.19577 of 2014. In the said writ petition, the learned single Judge after considering all aspects, has granted a positive direction to the 1st respondent to consider the two recommendations forwarded by the 2nd respondent and pass suitable orders. As against the said order, the present Writ Appeal has been filed.

4.It is the submission of the learned Special Government Pleader appearing for the appellants that the learned single Judge failed to consider Regulation 3.1.0 of the University Grants Commission, wherein, it has been prescribed that direct recruitment to the post of Assistant Professor and Associate Professor and Professor's in the Universities and Colleges shall



be on the basis of merit through All India Advertisement and selections by the duly constituted selection committees as per the provisions made under these regulations.

5. It is the further submission of the learned Special Government Pleader that the Writ Court has failed to consider Rule 2(a) of the Special Rules for the Tamil Nadu Collegiate Education Service, which prescribes the method of recruitment for the posts of Assistant Professors in Government Colleges included in Class VII. Further, in method (v), it is clear from the provision in rule 2(a) that recruitment by transfer from any other service, can be resorted to only if no qualified and suitable candidates are available for appointments by methods (I) to (iv). Therefore, he submitted that the positive direction given by this Court is liable to be set aside.

6. To counter the submission made by the learned Special Government Pleader, learned counsel for the respondent/writ petitioner submitted that similarly placed persons were given promotions in the light of G.O.Ms.No.323, Higher Education (F2) Department, dated 14.08.2003. Therefore, it is contended that when similarly placed persons were promoted based on the said G.O., different yardstick cannot be applied to the case of the respondent/writ petitioner. Hence, he prayed for dismissal of this writ appeal.

7. Be that as it may, without going into the merits and demerits of the claim made by the writ petitioner, We direct the 1st appellant to consider the two recommendations forwarded by the 2nd appellant vide Letter Na.Ka.No.28090/D5/08, dated 09.02.2009 and another Letter Na.Ka.No.10993/D5/2011-7, dated 01.08.2013 and pass appropriate order in the light of G.O.Ms.No.323, Higher Education (F2) Department, dated 14.08.2003, which was passed in respect of the claim made by the similarly placed persons. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

Accordingly, this Writ Appeal is disposed of. No costs. Consequently, C.M.P(MD)No.11925 of 2016 is closed.

Sd/-

Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar



To

1) The Principal Secretary,
Higher Education Department,
Secretariat,
Fort St. George,
Chennai-600 009.

2) The Director of Collegiate Education,
E.V.K. Sampath Maligai,
College Road,
Chennai-600 006.

+1cc to Mr.C.Arul Vadivel @ Sekar, Advocate SR.No.82057

nbi

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W.A (MD) No.1591 of 2016
19.12.2016