



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.1759 of 2011

and

M.P.(MD) No.1 of 2011

The Madurai Diraviyam

Thayumanavar Hindu College

rep.by its Secretary

Pettai, Thirunelveli-10

...Petitioner

-vs-

1.The Government of Tamil Nadu

rep.by its Secretary to Government

Higher Education Department

Secretariat, Chennai

2.The Director of Collegiate Education

Chennai

3.The Joint Director of Collegiate Education

Thirunelveli Circle, Thirunelveli

4.S.Sankaranarayanan

M.D.T.Hindu College

Thirunelveli

...Respondents

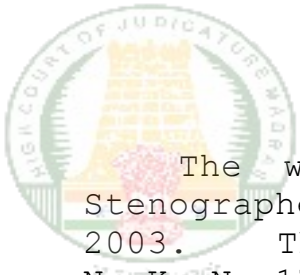
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records of the second respondent in Na.Ka.No.26627/G3/2006-2, dated 07.01.2008, the proceeding of the third respondent in Na.Ka.No.01060/E1/2008, dated 12.03.2008, and consequential proceedings of the third respondent in Mu.Mu.No.9194/E1/2009, dated 24.11.2009, and quash the same and issue direction to the respondents to approve the appointment of the fourth respondent as Stenographer from the date of his appointment in the petitioner's College with effect from 07.01.2008 and to regularize his services in the post of Stenographer with effect from the date of his initial appointment on 07.01.2008 with all consequential service and monetary benefits.

For Petitioner : Mrs.Priya Ravi

For Respondents : Mr.S.Kumar

Addl. Govt. Pleader for R1 to R3

R4 - No appearance

O R D E R

The writ petitioner is an aided College. The post of Stenographer in the petitioner College fell vacant in the year 2003. The second respondent, vide proceedings in Na.Ka.No.17378/F2/2007, dated 14.05.2007, has passed orders permitting the petitioner College to fill-up the post of non-teaching staff by direct recruitment or by promotion, subject to the conditions laid down therein. Accordingly, the second respondent accorded permission to fill-up one post of Stenographer, one post of Record Clerk and two posts of Lab Technician, totally four posts, subject to the conditions reduced therein. The conditions for direct recruitment were that candidates list should be obtained from the District Employment Exchange, communal rotation should be followed and proper educational and age qualification should be adhered to. Pursuant to the approval granted by the second respondent, paper publication was issued by the petitioner College, on 19.11.2007, calling for applications for the posts of Stenographer and Record Clerk. Simultaneously, the petitioner College has requested the District Employment Officer to sponsor candidates for the above said posts. The District Employment Officer, vide proceedings, in Ref.No.X2/264/2007, dated 22.11.2007, has sponsored the name of one Akila Selvei to the post of Steno-Typist. Accordingly, interview was conducted on 31.12.2007 and the fourth respondent was appointed as a Steno-Typist in the petitioner College on 05.01.2008.

2. Thereafter, on 21.01.2008, a letter was addressed by the petitioner College to the third respondent for approval of the appointment to the post of Steno-Typist. But, in the meanwhile, the second respondent has issued a communication, vide proceedings in Na.Ka.No.26627/G3/2006-2, dated 07.01.2008, directing the third respondent to withhold the approval of appointments until further orders. Based on that letter, the third respondent has refused to grant approval for the appointment of the fourth respondent and directed the petitioner College to resubmit the proposal, when further orders are passed. However, the fourth respondent has been continuing in the employment without Government salary. The petitioner College has renewed its request by letters, dated 03.05.2009, 07.05.2009 and 19.05.2009. While so, the Government has passed G.O.(1D) No.135, Higher Education (D1) Department, dated 12.06.2009, lifting the ban on approval for the appointment of non-teaching staff. Subsequently, the second respondent has recommended for the approval of appointments as the vacancies arose due to resignation, retirement and death and therefore, there was no requirement to create additional posts and that will not create any financial implication to the Government. But, the first respondent, without assigning any reason, has simply deleted the proposal sent by the second respondent and permitted to fill-up only 793 posts of various categories. The



petitioner College has once again renewed their request to approve the appointment for the posts of Steno-Typist and Record Clerk as the said posts have been filled up even before the ban imposed by the second respondent.

3. On 13.07.2009, the second respondent permitted the petitioner College to fill-up the posts of Assistant and Record Clerk, but, he has not given permission to fill-up the post of Steno-Typist. Again, on 27.07.2009, the petitioner College has re-submitted the proposal and it was once again rejected on 24.11.2009. Thereafter, the petitioner College has made another representation and it was also rejected by the respondents 2 and 3 and the last such rejection was on 11.05.2010. Challenging the rejection orders passed by the second respondent, dated 07.01.2008, as well as by the third respondent, dated 12.03.2008 and 24.11.2009, the petitioner College has filed this writ petition.

4. The respondents 1, 2 and 3 have filed counter.

5. The contention of the petitioner College is that the vacancy for the post of Steno-Typist arose during 2003. They sought permission to fill-up the post and permission was accorded by the second respondent on 14.05.2007 and accordingly, paper publication was issued on 19.11.2007 and list of candidates was called for from the District Employment Exchange on 17.11.2007 and interview was conducted on 31.12.2007 and appointment order was issued to the fourth respondent on 05.01.2008. In the meanwhile, on 07.01.2008, the second respondent had given instructions to the third respondent not to approve the appointment to the post of non-teaching staff, which includes the posts of Steno-Typist and Record Clerk also.

6. It is the contention of the petitioner College that they have acted in pursuance of the permission accorded by the second respondent on 14.05.2007 and appointed the fourth respondent as a Steno-Typist on 05.01.2008. Therefore, the subsequent proceedings issued by the second respondent will not bind the appointment made prior to that date. Therefore, the proposal sent by the petitioner College, dated 21.01.2008, ought to have been accepted and the respondents 2 and 3 ought to have approved the appointment of the fourth respondent. The petitioner College had gone even to the extent of converting the post of Steno-Typist to one of Typist and to regularize the appointment of the fourth respondent as Typist with effect from 05.01.2008, the date of his initial appointment. Even, this request was also rejected as there was no permission from the respondents 2 and 3 to approve the appointment.

7. In reply to the writ petition, the learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the



Government, by G.O.(1D) No.135, Higher Education (D1) Department, dated 12.06.2009, has taken a decision to delete certain posts and approve the appointment of 763 posts only. The post of Steno-Typist was also one among the posts, which were deleted from the list. Therefore, the respondents 2 and 3 cannot approve the appointment of the fourth respondent and the request of the petitioner College has been rightly rejected.

8. Heard both sides.

9. It is an admitted fact that the second respondent has accorded permission to the petitioner College to fill-up the sanctioned posts of Steno-Typist, Lab Technician and Record Clerk. Based on the permission accorded, the petitioner College has appointed the fourth respondent as a Steno-Typist. Therefore, refusal to grant approval for the appointment of the fourth respondent requires re-consideration as the subsequent Government instructions cannot be applied with retrospective effect. The first respondent ought to have applied his mind with respect to the appointments made prior to the ban order. But, subsequently, the petitioner College has changed their request to atleast regularize the fourth respondent to the post of Typist and pay salary from the date of his initial appointment. Admittedly, the post of Typist was not deleted from the list and no reason has been assigned by the respondents as to why the post of Typist cannot be filled-up and the appointment of the fourth respondent shall not be approved. In the absence of any reason, for not approving the post to which permission was already accorded, the exercise of the respondents 1 to 3 is arbitrary. In such circumstances, it is not proper for the official respondents to refuse for granting approval for the fourth respondent's appointment, which was already made prior to the issuance of the Government Order.

10. Therefore, the petitioner College is directed to resubmit the proposal to the respondents 1 and 2 and on such resubmission, the respondents 2 and 3 are directed to reconsider the grant of approval for the appointment of the fourth respondent in the petitioner College with effect from the date of his initial appointment and pass appropriate orders in the light of the observations made above and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

11. The writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/



To:

1.The Secretary to Government,
Government of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai.

2.The Director of Collegiate Education,
Chennai.

3.The Joint Director of Collegiate Education,
Thirunelveli Circle, Thirunelveli.

+1cc to M/s.M.Ravi, Advocate in SR.62174

+1cc to the Special Government Pleader, in SR.62497

WP (MD) No.1759 of 2011
and MP (MD) No.1 of 2011
Dated: 20.10.2016

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PBK/SK-SKN 07/11/2016 ::5P-6C: