

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.1501 & 1502/2017

Mr.P.Paul Pandian .. Petitioner
in W.P.No.1501/2017

Mr.G.Radhakrishnan .. Petitioner
in W.P.No.1502/2017

Vs

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

2.The Secretary,
Scott Christian College,
Nagercoil.

.. Respondents
in both WP's

Prayer in W.P.No.1501/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent to approve the petitioner's appointment as Typist in the Scott Christian College, Nagercoil in the Sanctioned vacancy caused by the Retirement of Mr.C.T.Jeyaraj with effect from 08.10.2016 in the light of approval given to similarly placed non-teaching staffs Mr.M.Stephen and Mr.Cithirairaj Gnanadhasan vide Na.Ka.No.59741/F2/2014 dated 13.01.2015 with all monetary benefits based on this Court and the Hon'ble Supreme Court orders passed in W.P.No.23712 of 2008 dated 26.09.2008, W.A.No.99 of 2009 dated 24.04.2009 and SLP.No.27331 of 2013 dated 04.10.2013 with monetary benefits, Seniority in service, and other attendant benefits with effect from 08.10.2016 based on the representation given by the petitioner dated 31.10.2016.

Prayer in W.P.No.1502/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent to approve the petitioner's appointment as Office Assistant in the Scott Christian College, Nagercoil in the Sanctioned vacancy caused by the Promotion of Mr.S.David Thevanesan with effect from 07.02.2006 to 14.11.2014 in the light of the approval given to similarly placed non-teaching staffs like Mr.P.Jenson Jones vide

Na.Ka.No.39744/F2/2014 dated 03.02.2015, Mr.M.Stephen and Mr.Cithirairaj Gnanadhasan vide Na.Ka.No.59741/F2/2014 dated 13.01.2015 in W.A.No.99 of 2009 dated 24.04.2009 and SLP.No.27331 of 2013 dated 04.10.2013 with all monetary benefits and other attendant benefits with effect from 07.02.2006 to 14.11.2014 based on the review petition given by the petitioner dated 30.11.2015.

For Petitioner in
both WPs : Mr.E.Martin Jayakumar

For R1 in both WPs : Mr.K.Dhananjayan, Spl.GP
For R2 in both WPs : Mr.S.Bharathi Rajan

COMMON ORDER

By consent, the writ petitions are taken up for final disposal. Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the 1st respondent and Mr.S.Bharathi Rajan, learned counsel accepts notice on behalf of the 2nd respondent.

2 The petitioner in WP.No.1501/2017 would state that he was originally appointed as a Typist in the services of the 2nd respondent / College in a sanctioned vacancy caused on account of the retirement of Thiru.C.T.Jeyaraj with effect from 08.10.2016 and the said appointment was made in respect of the sanctioned post. The petitioner would further aver that vide proceedings of the 1st respondent dated 18.05.1987, permission has been granted to fill up the vacancies for non-teaching staff and revision of grant in aid for payment of salaries and fixation of staff was also granted in the year 1986-1987 and on that basis, the earlier incumbent Mr.C.T.Jeyaraj, was appointed in a sanctioned non-teaching post as a Typist and after his retirement, the petitioner has been appointed as a Typist. The petitioner would further aver that necessary proposal was also submitted by the 2nd respondent / College to the 1st respondent on 31.10.2016 and on the same day, the petitioner has also submitted similar representation to the respondents 1 and 2 and despite receipt and acknowledgment, no orders have been passed so far, approving the appointment of the petitioner and therefore, prays for appropriate orders.

3 The petitioner in WP.No.1502/2017 would state that he was selected and appointed as an Office Assistant in the 2nd respondent / College in the sanctioned vacancy caused on account of he promotion of Thiru S.David Thevanesan with effect from

02.01.2004 and the original appointment was made in pursuant to the orders of the Joint Director of the Collegiate Education, Tirunelveli, vide proceedings dated 27.04.2015 in a sanctioned vacancy and on account of the promotion, the petitioner was appointed and as such, prays for approval of his appointment. The petitioner would further state that in this regard, the 2nd respondent / College submitted a representation to the 1st respondent on 28.09.2016, praying for approval of the appointment of the petitioner and the petitioner has also submitted a Review Petition dated 30.11.2015 to the 1st respondent through the 2nd respondent praying for similar relief and since no orders have been passed, he came forward to file the present writ petition.

4 The learned counsel for the petitioners has drawn the attention of this Court to the orders dated 26.09.2008 made in WP.No.23712/2008 [X.Joice Issabella Vs. The Director of School Education and two others] and the judgment dated 24.04.2009 made in WA.No.99/2009 [The Director of School Education, Chennai and another Vs. X.Joice Issabella and another] and the order dated 04.10.2013 made in SLP [C] No.27331/2013 [The Director of School Education, Chennai and another Vs. X.Joice Issabella and another] and would submit that in similar facts and circumstances, the order of rejection with regard to the approval of appointment of X.Joice Issabella was set aside in WP.No.23712/2008 and it was put to challenge by the official respondents which include the 1st respondent herein in WA.No.99/2009 and it was also dismissed on 24.04.2009 and the Special Leave Petition filed by the official respondents in SLP [C] No.27331/2013 before the Hon'ble Supreme Court of India, also ended in dismissal on 04.10.2013 and in the light of the well settled legal position in respect of the sanctioned post, the approval is mandatory and prays for appropriate orders.

5 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the 1st respondent would contend that the approval of the appointment in respect of the non-sanctioned post is not a matter of right and various factors have to be considered and appropriate orders would be passed by the respondents at the earliest.

6 This Court heard the submissions of Mr.S.Bharathi Rajan, learned counsel appearing for the 2nd respondent / College and also perused the materials placed before it.

7 A Single Bench of this Court, while allowing WP.No.23712/2008 on 26.09.2008, has taken note of the order dated 30.10.2007 made in WP [MD] No.484/2007 and extracted

paragraphs 19 and 20 of the said order and it is relevant to extract the said paragraphs:-

"....

19 Similar ban order issued by the Department on the ground that new norms are contemplated and pending the same, no appointment in aided schools are to be made was set aside by this Court in WP.No.10237/1994 by order dated 16.08.1999. Since the petitioner was appointed from 05.06.2002 and he is continuously working in the sanctioned post, the respondents may be justified in not approving the appointment of the petitioner from 05.06.2002 to 06.02.2006. The petitioner has got a right to get his appointment approved, once the ban order is lifted. Admittedly, the ban order imposed, not to fill up the posts, was lifted on 07.02.2006. Hence, the petitioner has got every right to get his post approved with salary and other benefits with effect from 07.02.2006. Once the ban order is lifted, the provisions contained in Rule 15[1] and [3] of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973, comes into operation and the petitioner is deemed to be appointed on regular basis as he was appointed within the sanctioned post in the 4th respondent school.

20 For all the reasons stated above, the impugned orders are set aside with a direction to the respondents to approve the appointment of the petitioner as Lab Assistant with effect from 07.02.2006. The 3rd respondent is directed to pass orders approving the appointment of the petitioner with effect from 07.02.2006 and pay arrears of salary from 07.02.2006 within a period of four weeks from the date of receipt of a copy of this order..."

It is further stated in the order dated 26.09.2008 that the writ appeal in WA.[MD].No.308/2008, challenging the order made in WP.[MD].No.484/2007, came to be dismissed on 04.08.2008.

8 A Single Bench of this Court, based on the said order, has passed a positive order, directing the respondents concerned to pass orders for approval of the appointment with a consequential order of payment of arrears of salary and the official respondents in the said writ petition, which includes

the 1st respondent herein, filed WA.No.99/2009 and it was also dismissed on 24.04.2009 and the further challenge made by them before the Hon'ble Apex Court in SLP [C] No.27331/2013 had also ended in dismissal on 04.10.2013.

9 This Court, taking into consideration, the above facts and circumstances, directs the 1st respondent to take note of the above cited orders and judgments and pass appropriate orders on the approval sought for by the 2nd respondent with regard to the sanction for approval of appointment of the petitioner in non-teaching post, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the 2nd respondent / College.

10 The writ petitions stand disposed of with the above direction. No costs.

sd/
Assistant Registrar

/true copy/

Sub Assistant Registrar

AP

To

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

+2cc to Mr.S.BharathiRajan, Advocate Sr.No4311
+2cc to Mr.E.Martin Jayakumar, Advocate SR.No.4131
+1cc to The Government Pleader SR.No.4301

सत्यमेव जयते

W.P.Nos.1501 & 1502/2017

AK(CO)

GN(31/01/2017)1

WEB COPY