IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.8441 of 2013

Dr.C.Isac Sobana Raj .. Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Higher Education Department,
Fort St. George,
Chennai - 600 009.

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

3.The Regional Joint Director of Collegiate Education,
Tirunelveli Region,
Trivandrum Road, Palayamkottai,
Tirunelveli District.

4.The Correspondent,
Nesamony Memorial Christian College,
Marthandam,
K.K. District. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the order of the 2nd Respondent in Na.Ka.No.49157/F2/2009, dated 28.05.2010 and the consequential order passed by the 1st Respondent in கடித (1டி) எண் 248 நாள் 31/08/2012 and quash the same thereby directing the Respondents to regularize the service of the Petitioner from 24.08.2000 and to pay all monetary benefits and arrears of salary to the Petitioner.

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For Petitioner : Mrs.A.V.Bharathi

For Respondents : Mr.R.Govindasamy (for R1 to R3)
Special Government Pleader

Mr.S.Bharathi Raja (for R4)

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O R D E R

The writ petition is directed against the order of the 2nd respondent in Na.Ka.No.49157/F2/2009, dated 28.05.2010 and the consequential order passed by the 1st respondent in கடிதத (1டி) எண் 248 நாள் 31/08/2012 whereby and where under the 2nd respondent rejected the request made by the petitioner for approval of his appointment to the post of Lecturer in Chemistry for the period from 17.06.2002 to 25.07.2006.

2.The petitioner was appointed as Lecturer in the Department of Chemistry by the 4th respondent in the 4th respondent college. The appointment was with effect from 17.06.2002 against a regular vacancy caused on account of the retirement of one Mr.P.Jesudian Ponnuthurai. The 4th respondent made a proposal to the 2nd respondent requesting to approve the appointment of the petitioner. The 4th respondent very clearly stated in the proposal that there were eight teaching posts in the Department of Chemistry and that the appointment of the petitioner was made against the said sanctioned post.

3.The 3rd respondent approved the appointment of the petitioner with effect from 26.07.2006. The petitioner thereafter filed a writ petition before this Hon'ble Court in W.P.No.18515 of 2008 to approve and regularize his appointment with effect from 17.06.2002 and disburse the salary and other attendant benefits. Pending writ petition the petitioner made a representation to the 2nd respondent through proper channel but the respondents failed to consider the representation. Hence, the petitioner filed W.P.No.11926 of 2009 to pass orders on his representation. Based on that the 2nd respondent passed an order on 28.05.2010 in Na.Ka.No.49157/F2/2009 rejecting the rights of the petitioner. Against the said order the petitioner preferred an appeal on 07.08.2010. The 1st respondent has also passed an order on 31.08.2012, confirming the order of the 2nd respondent. The petitioner has challenged the order passed by the 2nd respondent in Na.Ka.No.49157/F2/2009, dated 28.05.2010 and the consequential order passed by the 1st respondent in கடிதத (1டி) எண் 248 நாள் 31/08/2012/ The said orders are under challenge in this writ petition.

4.A counter affidavit has been filed by the 2nd respondent wherein it is stated that the Government has permitted the 2nd respondent to fill up 600 Lecturer posts in Government Aided Colleges vide G.O.(Ms.)No.198, Higher Education (F2) Department, dated 05.07.2006. It is further submitted that the Government permitted the 2nd respondent to fill up sanction 2000 Lecturer posts in Government Aided Colleges vide G.O.(Ms.)No.211, Higher Education (E2) Department, dated 03.07.2007. Based on the above

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Government Orders the 4th respondent College filled up certain posts. The petitioner was appointed in Chemistry Department with effect from 26.07.2006 only based on the permission granted by the Director of Collegiate Education vide Letter R.C.No.18821/G3/2006 dated 19.07.2006. In the said proceedings the 4th respondent college was permitted to fill up one post in the Chemistry Department. Consequent on the permission granted the petitioner was appointed with effect from 26.07.2006. The appointment was duly approved by the Regional Joint Director of Collegiate Education, Tirunelveli Region vide his proceedings Pa.Mu.No.17546/E2/2006 dated 12.02.2007.

5.According to the 2nd respondent the petitioner name or signature does not appear anywhere in the attendance register of the said college for the period 2002-2003 to 2006-2007. The name of the petitioner does not appear in the salary pay acquaintance for the period 17.06.2002 to 24.04.2006. The name of the petitioner does not appear in the Annual Financial statements submitted to audit for the period 2002-2003 to 2005-2006. The name of the petitioner does not appear in the staff returns list sent to Manonmanium Sundaranar University for the period 2002-2003 to 2005-2006. As per the Tamil Nadu Private College (Regulation) Rules, 1976, Rule 11(2)(i) a copy of the Form VII-A an agreement made between the newly appointed Assistant Professor with the College Management has to be sent to the Director of Collegiate Education when such agreement is made. But in this case, the petitioner has entered into an agreement in Form VII-A on 26.02.2006 and no such agreement was made on 17.06.2002. The qualification approval was granted to the petitioner only with effect from 26.07.2006.

6.The learned counsel appearing for the petitioner has placed reliance on the Staff sanction order dated 12.10.1999 contended that appointment of the petitioner was made only against a sanctioned vacancy. According to the learned counsel, the 4th respondent was maintaining two attendance registers, one with regard to the employees whose services were approved by the Government and the other register was maintained for the purpose of obtaining signatures of those whose services were not regularized. The learned counsel further contended that another employee by name M.Reginald Appavoo, whose services were not approved by the University filed a writ petition in W.P.No.22549 of 2010 before this Hon'ble Court to regularise his earlier services. The said writ petition was allowed by this Court and thereafter the Government have issued an order in G.O.(3D) No.4, Higher Education (E2) Department dated 06.03.2014 regularizing his earlier services and granting him monetary benefits.

7.The learned counsel appearing for the petitioner also contended that the similarly placed persons namely

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J.Prekakumari, J.Renuka Ratnavathi and D.Aruldhas have filed the writ petitions bearing W.P.Nos.13119 of 2003, 36325 of 2003 and 17368 of 2005 seeking to approve their post right from their initial date of appointment till the approved period in the sanctioned post with salary and other benefits and the same was allowed by this Hon'ble Court on 29.06.2005. The respondents have challenging the said orders filed Writ Appeal in W.A.Nos.140, 811 of 2006 and 805 of 2007 and the same were dismissed by the Hon'ble Division Bench on 21.10.2010. Thereafter the respondents have challenged the said orders passed in the Writ Appeal by filing SLP.Nos.19526 to 19528 of 2013 and the same were also dismissed and the Hon'ble Supreme Court directed the respondents to approve the appointment of the said petitioners from the initial date of appointment which were made in the sanctioned posts. Based on the above said orders the respondent issued the order in Na.Ka.No.33733/F2/2005 dated 01.09.2014 and granted approval from the date of initial appointment in the sanctioned posts with all arrears of salary, monetary and service benefits with seniority. The learned counsel contended that this petitioner is also similarly situated and as such he should also be given the benefits of the relief given to the another employee of the very same institution.

8.The learned Additional Government Pleader submitted that the qualification of the petitioner was approved by Manonmaniam Sundaranar University only with effect from 26.07.2006, but the petitioner qualification was approved by the Manonmanium Sundaranar University vide Ref.No.MSU/CD/QA/2/2001 dated 21.02.2002 and Ref.No.MSU/CD/QA/2/2001 dated 09.05.2002 from 18.09.2000.

9.There is no dispute that the Government have sanctioned eight posts of Lecturers in the Department of Chemistry in Nesamony Memorial Christian College (Autonomous), Marthandam. It is also not in dispute that only against a vacancy caused on account of the retirement of Mr.P.Jesudian Ponnuthurai, the petitioner was appointed on 17.06.2002. The proceedings dated 19.02.2004 on the file of Manonmaniam Sundaranar University shows that the petitioner was appointed as Examiner in Chemistry Department. The said proceedings also contained the service details of the petitioner. The 3rd respondent approved the appointment of the petitioner and other Lecturers vide proceedings dated 12.02.2007 with effect from 26.07.2006. The services of the petitioner and another officer by name Reginald Appavoo were regularised with effect from 26.07.2006. The said employee filed a writ petition before this Hon'ble Court in W.P.No.22549 of 2010 to approve his appointment as Lecturer with effect from his initial date of appointment. The writ petition was allowed by this Court and a Mandamus was issued to the

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authorities to approve his appointment retrospectively. The Government have implemented the said order by issuing G.O.(3D) No.4, Higher Education (E2) Department dated 06.03.2014. The petitioner is therefore perfectly correct in his contention that he being an employee of the very same institution and similarly placed like the petitioner in W.P.No.22549 of 2010 is entitled to the benefits of the order dated 24.11.2010 and the subsequent Government Order in G.O.(3D) No.4, Higher Education (E2) Department dated 06.03.2014.

10.The 2nd respondent has taken a contention that the qualification of the petitioner was approved by the University under Rule 11(3) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 with effect from 26.07.2006 and therefore his services were rightly regularised with effect from the said date. There is absolutely no merit in the said contention in view of the documents produced by the petitioner. The petitioner obtained M.Sc. (Chemistry) Degree from Madurai Kamaraj University in April, 1988. Similarly he obtained M.Phil. (Chemistry) from the Madras University way back on April 1993. Therefore, it is very clear that the petitioner having the required qualification as on the date on which he was appointed as Lecturer of Chemistry is entitled to approval from 17.06.2002 to 25.07.2006.

11.The 2nd respondent has also taken up a further contention that the petitioner signed in a different register and as such his earlier services cannot be regularised. There is absolutely no merit in the said contention. The 4th respondent college has also produced copies of the attendance registers maintained by the institution to show that employees whose services were not approved by the Government were made to sign in a separate register. In fact, the register of employees whose appointments were not approved by the Government contained the signature of the petitioner as well as Thiru.Reginald Appavoo. His appointment was subsequently regularised retrospectively by the Government. Therefore, the fact that management maintained two registers would not support the stand taken by the respondents in this writ petition.

12.Therefore, on a careful consideration of the entire factual matrix, I am of the view that the orders passed by the respondents 1 and 2 are liable to be set aside.

13.In the result:

(a) this writ petition is allowed and the order of the 2nd respondent in Na.Ka.No.49157/F2/2009, dated 28.05.2010 and the consequential order passed by the 1st respondent in கடித (1டி) எண் 248 நாள் 31/08/2012 are set aside;

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(b) the 2nd respondent is directed to approve and regularize the appointment of the petitioner for the period from 17.06.2002 to 25.07.2006 pay the arrears of salary with all monetary benefits, seniority and all other attendant benefits in the light of the order dated 24.11.2010 in W.P.No.22549 of 2010 and the Government Order in G.O.(3D)No.4, Higher Education (E2) Department dated 06.03.2014;

(c) the said exercise shall be completed within a period of three weeks from the date of receipt of a copy of this order. No costs.

vs

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1.The Secretary,
Government of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai - 600 009.

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

3.The Regional Joint Director of Collegiate Education,
Tirunelveli Region,
Trivandrum Road, Palayamkottai,
Tirunelveli District.

+1cc to M/s.A.V.Bharathi, Advocate SR.No.59247
+1cc to Mr.S.Bharathirajan, Advocate SR.No.58105
+1cc to Government Pleader SR.No.58571

W.P.No.8441 of 2013

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