

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2017

CORAM :

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

W.P.Nos.24540, 6226, 6573 and 9247 of 2013 and
29335 of 2012 and M.P.No.1 of 2013 and
WMP.Nos.18225 and 18226 of 2016

G.Johnsi Christobel ... Petitioner in WP.No.24540/2013
P.Metilda .. Petitioner in WP.No.6226/2013
R.S.Santhakumari .. Petitioner in WP.No.6573/2013
S.C.Jayakumar .. Petitioner in WP.No.9247/2013
E.Ebin Raja Merly .. Petitioner in WP.No.29335/2012

Vs.

- 1.The State of Tamilnadu
Rep. by its Secretary,
Higher Education,
Fort St. George, Chennai - 9.
- 2.The Director of College Education,
College Road, Chennai - 6.
- 3.The Joint Director of Collegiate Education,
Tiruvnelveli Region,
Tirunelveli - 627 002.
- 4.The Nesamony Memorial Christian College,
Rep. by its Correspondent and Secretary,
Marthandam,
Kanyakumari District - 629 165.
.. Respondents in all WPs

WP.NO.24540/2013:Writ of certiorarified mandamus or any other order or direction in the nature of a writ calling for the records relating to the proceedings of the 2nd respondent vide Na. Ka. No. 52792/F2/2003 culminating in the order dt 23.9.2004 as confirmed by the order vide Na. Ka. No. 8589/F2/2010 dt 9.9.2010 quash the same and direct the 2nd respondent to approve the appointment of the petitioner as Assistant Professor in Botany in the 4th respondent College with all monetary benefits (excluding the salary from 5.1.2005 to 25.7.2006) with effect from 23.8.2001 instead of 26.7.2006.

WP.No.6226/2013:Writ of Mandamus or any other order or direction in the nature of a writ directing the 2nd respondent to approve the appointment of the petitioner as Lecturer in Chemistry in the 4th respondent College with effect from 18.1.2007 instead of 30.7.2007 with all monetary benefits on the basis of petitioner representation dt 12.2.2010.

WP.No.6573/2013:Writ of mandamus or any other order or direction in the nature of a writ, directing the 2nd respondent to approve the appointment of the petitioner as lecturer in History in the 4th respondent College with effect from 21.4.2004 instead of 29.7.2007 with all monetary benefits on the basis of her representation dt 15.12.2007 and the remainder dt 5.3.2012.

WP.No.9247/2013:Writ of Mandamus as any other order or direction in the nature of writ directing the 2nd respondent to approve the appointment of the petitioner as Lecturer of Physics in the 4th respondent College with effect from 1.3.2002 instead of 30.7.2007 with all monetary benefits.

WP.No.29335/2012:Writ of certiorarified mandamus or any order or direction in the nature of a writ, Calling for the records relating to the proceedings of the 2nd respondent Na.Ka.No.2158/F2/2009 culminating in his order dated 22.03.2010 quash the same and direct the 2nd respondent to approve the petitioner as lecturer in Mathematics in the 4th respondent college with effect from 01.07.2002 till 25.07.2006 with all monetary benefits.

(In all the writ petitions)

For Petitioners : Mr.N.Rajan

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

Special Government Pleader

Mr.P.Godson Swaminathan (for R4)

COMMON ORDER

In W.P.Nos.24540 of 2013 and 29335 of 2012, the petitioners seek a direction to set aside the orders passed by the respondent authority refusing to approve the appointments of the petitioners from the date of their initial appointment in the retirement vacancies and to approve their appointments from the date of their initial appointment and to confer all monetary and consequential service benefits.

2. In W.P.Nos.6226, 6573 and 9247 of 2013, the petitioners seek a direction on the respondent authority to approve their appointments from the date of their initial appointment in the vacancies that arose either on account of retirement/medical leave/death of the existing incumbent and to confer all monetary and other consequential service benefits.

3. The facts in a nutshell, insofar as W.P.No.24540 of 2013 (as a lead case) are narrated herein below for better understanding: It is the case of the petitioner in W.P.No.24540 of 2013 that she was appointed as Lecturer (now designated as Assistant Professor) in Botany in the fourth respondent college on 23.08.2001, in the vacancy caused by the retirement of the then regular incumbent. According to the petitioner, the appointment was well within the sanctioned strength of Lecturers.

4. It is stated that the petitioner in W.P.No.24540 of 2013 sent a representation dated 6.2.2003 to the second respondent requesting approval of his appointment with effect from 23.08.2001, which was rejected by the second respondent vide proceedings dated 17.04.2003. Assailing the said order, the petitioner filed W.P.No.35275 of 2003, which was allowed by this Court, by order dated 10.12.2003.

5. An appeal was preferred by the respondent authorities challenging the said order passed by the learned Single Judge and a Division Bench of this Court, by order dated 13.08.2004 made in W.A.No.2652 of 2004, modified the order passed by the learned Single Judge and directed the second respondent to consider the claim of the writ petitioner on merits and in accordance with law.

6. It is averred in W.P.No.24540 of 2013 that pursuant to the said direction, the second respondent rejected the claim of the petitioner vide proceedings dated 23.09.2004, stating that there was no sufficient workload warranting the appointment of the petitioner.

7. It is stated that the second respondent fixed the strength of Lecturers in the Botany Department at six, and this fact shows that there is no reduction of workload in the fourth respondent college. It is added that the petitioner in W.P.No.24540 of 2013 worked in the faculty improvement programme from 05.01.2005 to 25.07.2006 with full salary.

8. Thereafter, the petitioner in W.P.No.24540 of 2013 approached this Court once again and based on the order passed therein, the second respondent once again rejected the claim of the petitioner in W.P.No.24540 of 2013 by order dated 09.09.2010.

9. It is stated that, in the meanwhile, the second respondent sanctioned one post of Lecturer in Botany vide proceedings dated 19.07.2006 and permitted the fourth respondent College to fill up the same and based on such order, the fourth respondent issued another appointment order dated 22.07.2006, as if the petitioner in W.P.No.24540 of 2013 was appointed in the fourth respondent College with effect from 26.07.2006, ignoring the service rendered by the petitioner from 23.08.2001.

10. The case of the other writ petitioners is also similar, the only difference being their appointments are to different faculties, either in retirement/death/medical leave vacancies and in three cases, their appointments have not been rejected, but are yet to be approved from the dates of their initial appointment.

11. It is the main contention of the learned counsel for the petitioners that the petitioners had not been paid salary for the period between their initial appointment and the date on which the respondent authority subsequently approved their appointment, despite rendering continuous service in the fourth respondent College from the date of appointment and such non payment of salary is causing undue hardship, irreparable loss and injury to them.

12. It is further pleaded that the appointment of the petitioners was, in fact, approved by the Manonmanium Sundranar University and despite the same, the respondent authority has not paid the salary to the petitioners for the service rendered by them.

13. Per contra, the learned Special Government Pleader submitted that inasmuch as the fourth respondent College had not obtained prior approval from the second respondent before the appointment of the petitioners and there is no sufficient workload in the departments to which appointments were made, the petitioners cannot seek regular appointment from the dates of their initial appointments.

14. The learned counsel appearing on behalf of the fourth respondent submitted that the reasons given by the second respondent are untenable, inasmuch as the fourth respondent had sufficient workload and the same continues even today. It is also submitted that the second respondent has not fixed the staff strength of the colleges in the State after the academic year 1999-2000.

15. It is emphatically pleaded by the learned counsel for the fourth respondent that the appointments of the petitioners were within the sanctioned strength approved by the respondent authority and in any case, the writ petitioners are fully qualified to be appointed to the said posts.

16. I heard Mr.N.Rajan, learned counsel for the petitioner, Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 3 and Mr.P.Godson Swaminathan, learned counsel for the 4th respondent in all the writ petitions and perused the documents on record.

17. In the case on hand, it is beyond any cavil that the petitioners were appointed in the fourth respondent College in the vacancies that arose due to the retirement/death/medical leave of the regular incumbent. It is also not in dispute that the petitioners are fully qualified. Moreover, all the appointments made, even as per the petitioner and the fourth respondent College, are to the staff strength approved by the respondent authority. The said sanctioned strength, admittedly, continues even as on date and it is not the case of the respondent authorities that there is reduction in staff strength.

18. The only plea which deserves consideration is whether the fourth respondent College is empowered to appoint the petitioners, without prior approval of the second respondent, to a post within the strength sanctioned/approved by the second respondent.

19. An identical issue came up for consideration in S.Jayakumar v. The State of Tamil Nadu and others, reported in 2011 (1) CWC 822, wherein a learned Single Judge of this Court held as under:

"8. Similar issue was considered by me in W.P.No.22549 of 2010 by order dated 24.11.2010. In the said decision, following the earlier orders, I have allowed the writ petition filed by the Lecturer in the Department of Botony in Scott Christian College, Nagercoil and ordered to give approval from 8.3.2002 instead from 27.3.2007. In the said order it is held thus,

'5. The learned counsel for the petitioner submitted that once the staff strength is approved by the Director of Collegiate Education, as per Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, the appointment made within the said

staff strength, does not require any approval for filling up of the post. Such approval may be needed in the cases, where the educational authorities taking note of the reduction of students strength initiate proceedings to reduce the teachers strength. In the absence of such initiation of proceedings for the purpose of reduction of the sanctioned strength, there has been absolutely nothing for the management to get prior permission to fill up the vacant post, and appointment without prior approval cannot be stated as irregular appointment at all.

6. On the other hand, the learned Government Advocate submitted that even if it is within the sanctioned strength, the educational authorities have every right to decide periodically every year as to whether the teachers strength, approved earlier to be retained or to be reduced based on the student strength and therefore, whenever vacancy arose in the private colleges, it is the duty of the management to get approval of the educational authorities.

7. In this context, it would be worthwhile to extract Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules 1976, which reads as follows:-

'The number of teachers employed in a college shall not exceed the number of posts fixed by the Director from time to time, with reference to the academic requirements and norms of work load prescribed by the respective Universities and over all financial considerations.'

8. No doubt, the above Rule enables the Director of Collegiate Education to fix the teachers strength from time to time, with reference to the various norms. But on the facts of the present case, it is the definite case of the fourth respondent management that in the year 1999, the Director of Collegiate Education based on the students strength and other norms then

exist has fixed the staff strength and that has never come down in the subsequent years and therefore, there was absolutely no occasion for the educational authorities to re-consider the strength of the teaching strength of the third respondent college. Under such circumstances, as a minority institution, certainly the fourth respondent has got a right to administer the Private Institution, within the ambit of Article 30 of the Constitution of India. Of course, the person appointed is having the required qualification. It is not in dispute that the petitioner is fully qualified for the appointment to the post of Lecturer in Botany and it is also not in dispute that the appointment of the petitioner made in the fourth respondent college was within the sanctioned strength, since admittedly the appointment was made in a vacancy, caused due to the retirement of the previous incumbent. In that view of the matter, there is absolutely no reason to come to the conclusion that the fourth respondent should have obtained prior permission for filling up of the post.

9. The purport of Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 came to be discussed by the Honourable Mr. Justice ELIPE DHARMA RAO in the order dated 29.03.2006 in W.P.(MD)No.28396 of 2004, when the Government took a similar stand and raised such an argument, and the learned Judge has held that no prior permission is required so long as such appointment has been made within the sanctioned post. Following are the relevant paragraphs in this regard, which read as follows:-

"9. So, the question that now arises for consideration is as to whether the appointment of the petitioner is well within the sanctioned post. In this context, it would be worthwhile to extract Rule 11(1) of the Rules:

10. Thus, it is evident from the above, any such appointment of teachers should not exceed the number of posts fixed by the Director. In the present case, the third respondent college has been sanctioned with two posts of Malayalam Lecturers and since a vacancy has arisen due to the retirement of one Dr.A.M.Vasudevan Pillai, the petitioner herein was appointed through direct recruitment process in the said vacancy.

11. Further, as regards the other limbs of the rule relating to the norms of the workload and financial considerations also, when there is no reduction of workload in the third respondent college and in the absence of any order passed by the second respondent pointing out any such reduction of financial constraints, it can be held that the appointment of the petitioner is done in accordance with the Rule and therefore, no prior permission is required to appoint the petitioner.

12. Therefore, it is clear that the order passed by the second respondent is contrary to Rule 11(1) of the Rules and has to be set aside. Accordingly, the same is set aside. The second respondent is directed to pass the order of approval of the petitioner from the date of his initial appointment within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected WPMP is closed."

Thereby held that the rejection of proposal for approval of the appointment made is contrary of the Provisions of Rule 11(1) of the Rules.

10. That proposition was followed by the Honourable Mr.Justice S.RAJESWARAN in the order in W.P.Nos.4960 & 14450 of 1997, dated 10.07.2007, wherein the learned Judge after referring to Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules 1976, has set aside the rejection order, which was

made on the ground that prior approval was not obtained and directed the educational authorities to grant approval.

11. The said judgment of the learned Single Judge, came to be questioned by the educational authorities in W.A.Nos.93 and 94 of 2008, which came to be decided by a Division Bench of this court wherein I was also a party and in the judgment dated 06.01.2010, the Division Bench confirmed the order of the learned single Judge and held as follows:

"The learned single Judge has dealt with both the above said writ petitions together and by following the decision of this court rendered in W.P.No.28396 of 2004, dated 29.03.2006, the learned Judge has categorically held that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission from the Director of Collegiate Education is required. While holding so, the learned Judge has quashed the impugned proceedings, dated 28.02.1997 and directed the appellants to approve the writ petitioner's (C.Karunakaran) appointment from 02.07.1990 with all consequential service benefits."

The said order of the Division Bench has become final. Hence, the matter in issue is covered by the said judgment of the Division Bench.

12. In the light of the categorical pronouncement on the issue, especially that of the Division Bench as stated above, the writ petition is disposed of with a direction to the second and third respondents to grant approval for the appointment of the petitioner in the fourth respondent college as Lecturer in Botany, with effect from the date of his appointment i.e. on 08.03.2002 and also release the teaching grant from the said date till 26.03.2007 and such order shall be passed within four weeks from the date of receipt

of a copy of this order. No costs."

9. In view of the above cited decisions I am of the view that the petitioner is entitled to get the relief as sought for as the issue involved in this writ petition is covered by the above said judgments. Consequently the writ petition is allowed with a direction to the second respondent to approve the appointment of the petitioner in the Department of Botany from the date of petitioner's initial appointment i.e, from 19.9.2003 with salary and also confer all other eligible benefits from the date of initial appointment for all purposes. The arrears of salary payable is directed to be paid by the respondents 1 to 3 within six weeks from the date of receipt of copy of this order."

20. In my considered view, the law enunciated in the decision referred supra, squarely applies to the case on hand and the fourth respondent College is empowered to appoint qualified candidates within the sanctioned strength, which is admittedly approved by the respondent authorities.

21. In the result, the writ petitions are allowed with the following directions:

i. The impugned orders in W.P.No.24540 of 2013, namely, orders dated 23.09.2004 and 09.09.2010 passed by the second respondent are set aside;

ii. The impugned orders in W.P.No.29335 of 2012, namely order dated 22.03.2010 of the second respondent is set aside;

iii. In all these writ petitions, the respondent authorities are directed to approve the appointment of the petitioners in the respective faculty from the date of their initial appointment, with salary and also confer all other eligible benefits, including monetary and service benefits, from the date of initial appointment for all purposes. The arrears of salary payable shall be paid by the respondent authorities within six weeks from the date of receipt of copy of this order.

iv. No costs. Consequently, M.P.No.1 of 2013 (3 petitions), W.M.P.Nos.18225 and 18226 of 2016 are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Higher Education,
Fort St. George, Chennai - 9.

2.The Director of College Education,
College Road, Chennai - 6.

3.The Joint Director of Collegiate Education,
Tiruvnvelveli Region,
Tirunelveli - 627 002.

+5cc to M/s.Isaac Chamber, Advocate SR.No.58891 to 58895

+5cc to Mr.N.Rajan, Advocate Sr.No.58357 to 58364

+1cc to Government Pleader SR.No.58569 & 58570, 58572 to 58574

W.P.Nos.24540, 6226, 6573 and
9247 of 2013 and 29335 of 2012 and
M.P.No.1 of 2013 and
WMP.Nos.18225 and 18226 of 2016

VGII(CO)
sm:23.2.2018

सत्यमेव जयते

WEB COPY