



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.05.2017

CORAM:

**THE HONOURABLE MR. JUSTICE R. SURESH KUMAR**

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W.P. (MD) No. 4949 of 2014

and

M.P. (MD) No. 1 of 2014

Dr. M. Balakrishnan

.. Petitioner

Vs.

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

2. The Joint Director of Collegiate Education,  
Madurai Region,  
No. 30, Vaidhyanada Iyer Street,  
Madurai-625 002.

3. The Principal and Secretary,  
The American College,  
Madurai-625 002.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the first respondent to approve the petitioner's appointment as Physical Training Instructor in the third respondent College with effect from 14.06.2006 by considering the proposal dated 16.07.2007 of the third respondent along with Monetary benefits within the period that may be stipulated by this Court.

For Petitioner : Mr. M. Jerin Mathew  
for Mr. M. E. Ilango

For Respondents : Mr. J. Gunaseelan Muthiah  
Government Advocate  
for R1 and R.2  
Mr. K. Ponnaiah  
for M/s Ajmal Associates  
for R3

O R D E R

The prayer in this writ petition is for a writ of mandamus directing the first respondent to approve the petitioner's appointment as Physical Training Instructor in the third respondent College with effect from 14.06.2006 by considering the proposal dated 16.07.2007 of the third respondent, along with the monetary benefits within a time frame to be stipulated by this Court.



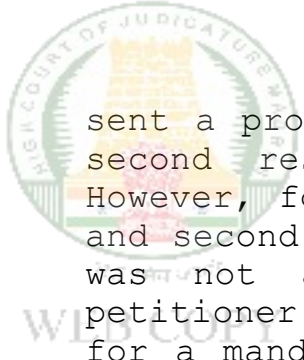
2. The case of the petitioner, according to the affidavit filed in support of the writ petition, is that the petitioner is having the qualifications of B.A., B.P.Ed., M.P.Ed., M.Phil., and Ph.D. The third respondent college is a minority educational institution established in the year 1881 and is administered by an educational agency viz., the Governing Council of American College, Madurai, a society registered under the Societies Registration Act. The Principal of the college is the Secretary of the Governing council.

3. A post of Director of Physical Education and another post of Physical Training Instructor had been sanctioned by the first respondent to the third respondent college. One Mr. James Devadoss and Mr. W. Chester Manuel were working respectively in those two posts. At that time, the petitioner was appointed as Assistant Physical Training Instructor by the third respondent and he joined duty on 04.08.1988. Though the said two posts, which were sanctioned by the first respondent, are aided posts, the post wherein the petitioner was appointed and was working is not a sanctioned post and therefore, the petitioner was appointed only as a Management staff of the third respondent.

4. When that being so, the post of Director of Physical Education became vacant due to the demise of the said Mr. James Devadoss and therefore, the said Mr. W. Chester Manuel who was working as Physical Training Instructor was promoted to the said post and his appointment to the post of Director of Physical Education had been approved by the first respondent with effect from 14.06.2006. Therefore, the post of Physical Training Instructor became vacant from 14.06.2006.

5. It is the further case of the petitioner that in the said post of Physical Training Instructor which became vacant from 14.06.2006, the petitioner was appointed and a proposal dated 16.07.2007 was sent to the first respondent, through the second respondent, by the third respondent college, seeking approval of the appointment of the petitioner, as Physical Training Instructor. Since the said proposal sent as early as on 16.07.2007, by the third respondent college, to the first respondent through the second respondent is still pending with them and no action has been taken so far, in approving the appointment of the petitioner, the petitioner has filed the present writ petition with the aforesaid prayer.

6. Mr. M. Jerin Mathew, learned Counsel appearing for the petitioner would submit that admittedly the post of Physical Training Instructor is a sanctioned post at the third respondent college and the same became vacant from 14.06.2006, wherein the petitioner was appointed by the third respondent college. Pursuant to the said appointment, the third respondent college had



sent a proposal on 16.07.2007 to the first respondent through the second respondent seeking approval of the said appointment. However, for several years, nothing was forthcoming from the first and second respondents, as still the appointment of the petitioner was not approved. Therefore, the learned Counsel for the petitioner would submit that the petitioner is entitled to seek for a mandamus, as he has been working all along from 14.06.2006 in the said post at the third respondent college and unless and until, the said appointment is approved by the Authorities viz., the respondents 1 and 2, the petitioner would not get the salary as admissible, since the said post where the petitioner is working is the aided post. Therefore, the learned Counsel for the petitioner would submit that the writ petition may be allowed.

7. Per contra, Mr.J.Gunaseelan Muthiah, learned Government Advocate appearing for the official respondents would submit that even though the post of Physical Training Instructor became vacant from 14.06.2006, the petitioner seems to have not been appointed immediately in the said post as the proposal sent by the third respondent was only on 16.07.2007. Along with the said proposal, a copy of the appointment order dated 14.04.2007 was annexed. These documents would go to show that the petitioner had not appointed on 14.06.2006, however seems to have been appointed only on 14.04.2007. Only because of this discrepancies probably the proposal has been kept pending by the respondents 1 and 2 without taking any decision. At any rate, whether the petitioner would be entitled to get approval in the said post and if so from which date, have to be decided by the first and second respondents, on consideration of the documents filed through the proposal sent by the third respondent on merits and in accordance with law within a time frame as may be fixed by this Court. The same can be done by the said Officials, the learned Government Advocate would submit.

8. Mr.K.Ponnaiah, learned Counsel appearing for the third respondent college would support the case of the petitioner by reiterating the said averments made by the petitioner that in the vacant post of Physical Training Instructor, the petitioner was appointed from 14.06.2006 and since then, he has been working at the third respondent college. However, the proposal was belatedly sent on 16.07.2007 by the college Authorities. Therefore, the same cannot be construed that the petitioner had been appointed only subsequently. The learned Counsel appearing for the third respondent would submit that since the post where the petitioner has been appointed and is working is a sanctioned post, for which the aid has to be given from the Government, without which the salary sanctioned as per the Government rate cannot be paid to the petitioner and therefore, the proposal sent, which is pending for long years at the office of the respondents 1 and 2, has to be immediately considered and the order to approve the appointment of the petitioner has to be passed at the earliest.



9. This Court has considered the submissions made by the learned respective Counsel appearing for the parties.

10. It is not in dispute that the post viz., the Physical Training Director was one of the sanctioned posts at the third respondent college, wherein the erstwhile incumbent viz., W.Chester Manuel worked and he had been promoted and posted as Director of Physical Education at the third respondent College from 14.06.2006. Therefore, the said post of Physical Training Instructor became vacant from 14.06.2006.

11. It was the claim of the petitioner that in the said vacant post, the petitioner was appointed on 14.06.2006 and from that date, he has been working. The said stand is also supported by the learned Counsel appearing for the third respondent college. However, on a perusal of the appointment order filed before this Court in the typed set of papers, it discloses that the very appointment order itself is dated 14.04.2007 and the same has the following contentions:

*"Dear Mr.M.Balakrishnan,  
I am happy to inform you that you have been appointed as Physical Training Instructor of the American College, Madurai, from 14.02.2006 in the place of Mr.W.Chester Manuel who has been promoted as Physical Director from 14.06.2006 as per DCE Pro. Dated 11.04.2007.*

*You will be paid salary and allowances as per the Tamilnadu State Government norms. The salary will be paid only after the Joint Director of Collegiate Education, Madurai Region. Madurai releasing the salary for you.*

*You are requested to give a joining report with the following documents to the Principal & Secretary."*

12. On reading of the contention available in the said order of appointment, dated 11.04.2007, it is clear that the erstwhile incumbent namely, W.Chester Manuel himself had been promoted by the orders of the third respondent dated 11.04.2007 of course with effect from 14.06.2006. Probably only after the said order dated 11.04.2007, the consequential order of appointment to the petitioner had been issued on 14.04.2007. If at all any regularisation seeks for or approval seeks for the same, it can go retrospectively from the date of appointment. Herein the case in hand, the very appointment order itself is 14.04.2007 by which the petitioner was appointed as Physical Training Instructor. The same cannot be construed that he had been appointed from 14.06.2006 and had been working since then. Therefore this Court feels that the proposal dated 16.07.2007 forwarded by the third respondent, shall be taken into account as if that the petitioner has been appointed in the said post of Physical Training Instructor only on



14.04.2007 and at least from then onwards, since he has been continuously working, as accepted by the learned Counsel appearing for the third respondent, the said appointment can be construed by the first and second respondent, for approval, in accordance with law and on merits.

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13. In the result the following orders are passed in this Writ Petition:

(1) The first and second respondents are directed to consider the proposal of the third respondent dated 16.07.2007 regarding the appointment of the petitioner as Physical Training Instructor from 14.04.2007 and if the petitioner's appointment is otherwise in accordance with the relevant rule and on merits, the same can be approved by the first and second respondents.

(2) In case the petitioner's appointment is approved as such, the petitioner is entitled to claim the salary sanctioned for the said post only from the date of appointment ie. 14.04.2007.

(3) The needful as directed above shall be done by the first and second respondents within a period of eight weeks from the date of receipt of a copy of this order.

14. With these directions/observations this Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To

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

2. The Joint Director of Collegiate Education,  
Madurai Region,  
No.30, Vaidhyanada Iyer Street,  
Madurai-625 002.

3. The Principal and Secretary,  
The American College, Madurai-625 002.

+One cc to The Special Government Pleader, SR.No.56478

+One cc to Mr.M.E.Ilango, Advocate, SR.No.56391

TA/SSL

RL/6C/5P/MMS/SAR4/11/8/2017

W.P. (MD) No.4949 of 2014