

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

Dated : 01.08.2018

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

WP Nos.11564 & 21696 OF 2014
and MP Nos.1&1 of 2014

WP No.11564 of 2014

Dr.N.Saravana Amutha Kumari

..Petitioner

Vs.

1. The State of Tamil Nadu,
Represented 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 Joint Director of Collegiate Education,
Thirunelveli Region,
Thirunelveli - 627 002.
4. Womens Christian College,
Rep by its Secretary cum correspondent,
Nagercoil,
Kanyakumari District - 629 001.
5. Manonmaniam Sundaranar Universiy,
Rep. By its Registrar,
Abishekappati, Thirunelveli - 627 012.

6. N.Jayanthi

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus to direct the second respondent to approve the petitioner's appointment as Assistant Professor of Economics in the fourth respondent college, with effect from 02.01.2012, on the basis of the first appointment order dated 22.12.2011 in the light of the order dated 25.02.2014 passed in WP No.5615 of 2014 with all monetary benefit issued by the fourth respondent.

WP No.21696 of 2014

Dr.N.Saravana Amutha Kumari

..Petitioner

Vs.

1. The State of Tamil Nadu,
Represented 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 Joint Director of Collegiate Education,
Thirunelveli Region,
Thirunelveli - 627 002.
4. Womens Christian College,
Rep by its Secretary cum correspondent,
Nagercoil,
Kanyakumari District - 629 001.
5. Manonmaniam Sundaranar Universiy,
Rep. By its Registrar,
Abishekappati, Thirunelveli - 627 012.
6. N.Jayanthi ... Respondents
Petition filed under Article 226 of the Constitution of India,
praying for issuance of a writ of Mandamus to forbear the
respondents 2 and 3 herein from approving the appointment of
the sixth respondent, as Assistant Professor in Economics in
the fourth respondent college in the vacancy caused by
Dr.Selvi Devadas.

For Petitioner(both Wps) :Mr.N.Rajan
For R1 to R3 :Mr.P.Kavitha
Government Advocate
For R4 :Mr.Godson Swaminathan
For R5 : Mr.Vishnu Chelliya for
M/s.Ajmal Associates
For R6 :Mrs.K.Bharathi for
M/s,E.Martin Jayakumar

COMMON ORDER

Both the writ petitions are at the instance of the same petitioner against the same respondents. In the first writ petition i.e. WP No.11564 of 2014, the petitioner who joined as a Assistant Professor in the Department of Economics of the 4th respondent College in pursuant to the order of appointment dated 22.12.2011, on 02.01.2012, notwithstanding her appointment in the said post from a subsequent date vide order dated 09.04.2014, in view of the order passed by this Court in WP No.5615 of 2014 to consider her representation to approve her appointment from the date on which she was originally joined pursuant to the appointment order dated 22.12.2015. The

other writ petition vide WP No.21696 of 2014 is filed to challenge the appointment of the 6th respondent in the said institution, as the Assistant Professor of Economics, on a date earlier to the date of appointment given to the petitioner in the second appointment which the petitioner assails and to forbear the respondents 2 and 3 not to approve such appointment of the 6th respondent. Both the cases, therefore being interlinked are heard together and dispose of by this common order on consent of the parties.

2. The case of the petitioner is that the 4th respondent college is a minority aided educational institution and governed under the Tamil Nadu Private College (Regulations) Act, 1976 and the rules made thereunder (herein after referred to as the Regulation Act and the Regulation Rules). For appointment in the sanctioned vacancy in the said college, no prior approval of the respondents 1 to 2 is necessary. The Management of the college as such is competent to appoint against the sanctioned vacancy without prior approval of the Government. The 4th respondent college had four sanctioned post of Assistant Professor then Lecturer in the Department of Economics out of which two of them, namely, Mrs. Jeol Gloria Shanthi and Dr. Selvi Devadhas however, retired on 31.05.2011. Thereafter, the 3rd respondent college came out with an advertisement to fill up one post of Assistant Professor in a daily Newspaper and in pursuant to the same, the petitioner applied for the post and was selected. Hence, she was issued with an order of appointment on 22.12.2011 indicating that she is appointed against retired vacancy, pursuant to which, the petitioner joined in the service on 02.01.2012. The petitioner as such was continuing to serve as a Assistant Professor in the said post against the sanctioned vacancy. However, her such appointment was not approved and no such proposal for approval was given by the 4th respondent to the 2nd respondent. The petitioner therefore approached this Court in WP No.5615 of 2014 to approve such appointment which was disposed of with a direction to the petitioner to submit a representation to the 2nd respondent within one weeks from the date of receipt of copy of the order and with a further direction to the respondents to consider the said representation of the petitioner in the light of the law laid down by this Court in W.A.No.2318 of 2011, within a period of four weeks thereof, wherein the competency of the management for appointment against a sanctioned vacancy of teaching staff, of a qualified person without prior approval of the respondent No.2 has been upheld. In spite of such positive direction and observation of this Court in the said writ appeal, the representation of the petitioner was not considered in a proper perspective, but an order of appointment appointing as Assistant Professor was issued on 09.04.2014. The said appointment of the 4th respondent indicated that the petitioner, who was appointed as a Lecturer in the Department of Economics and joined in duty on 02.11.2014, is appointed as a Assistant professor in the Department of Economics with effect from the said date against

the vacancy that occurred on account of the retirement of the Mrs.Helen Christinal on 31.05.2012. The petitioner come to challenge the same in W.P.No.11564 of 2014, so also the order that has been passed appointing the 6th respondent in the said college against a vacancy that arose wherein the petitioner was appointed prior to the appointment order issued to the 6th respondent in the second writ petition No.21696 of 2014 with the prayer to injunct the respondent Nos.1 to 3 to approve such appointment of the sixth respondent. It is the case of the petitioner that since he was regularly appointed against the regular vacancy, the adjustment of the 6th respondent against the same though he was not regularly appointed prior to the petitioner against the said vacancy was illegal and arbitrary and also consequently, the order of appointment of the petitioner from the posterior date. Hence, he filed the aforesaid writ petitions seeking direction as stated earlier.

3. Counter affidavit has been filed by the 4th respondent in both the writ petition disputing the claim of the writ petitioner that she was appointed as a regular lecturer by the 4th respondent in pursuance to the appointment order filed in the typed set of document. The 4th respondent has seriously disputed the same to be a genuine one but they don't dispute the fact that the petitioner was appointed as a lecturer in the college pursuant to such selection and joined in the date stated. According to the respondent, the said appointment was a guest lecturer to which the petitioner stated to have suppressed, inasmuch as, the proceeding of the 4th respondent in the Resolution of the college in this regard indicates the same to be a guest lecturer. According to the averments made in the reply affidavit, four sanctioned post of lectures were there in the college but the management had appointed a 5th person namely Mrs.M.Jenat Vasantha Kumari to meet the work load and applied to the 2nd respondent to sanction that post. However, the same having not been sanctioned and request in this regard having been declined by the second respondent, the 4th respondent filed a writ petition.6639 of 2000 challenging the declining the request of the 4th respondent by the 2nd respondent to sanction the 5th post from the year 1988 - 1989, against which the said Mrs.Jennet Kummari was appointed and release the consequential benefit in his favour which was allowed. Writ appeal against the same filed vide WA.2593 of 2003 by the 2nd respondent also dismissed confirming the order passed in the writ petitioner. Civil Appeal 1808 of 2007 preferred against the said order also came to be dismissed by the Supreme Court on 07.04.2011. In the meanwhile also considering the work load, the 6th respondent who was working as a Store Keeper having all the requisite qualification for being appointed was allowed to work as a part time lecturer and subsequently from 01.06.2005 as a full time lecturer in economics against a self financing post. However, thereafter two persons in the position of lecturer in the department of economics namely Mrs.Joel Gloria Shanthi and Dr.Selvi devadasa having retired, the college when

made advertisement to appoint a guest lecturer, the 6th respondent challenge the same before Madurai Bench of this Court vide WP (MD) .No.14686 of 2011 to appoint him against a sanctioned post wherein an interim order was passed to maintain status quo with regard to the appointment of the 6th respondent on 21.12.2011. But in the the petitioner having been selected as a guest lecturer pursuant to the letter of appointment dated 22.12.2011, joined on 02.01.2012. In the meanwhile, the post of Mrs.Jennet Vasanthakumari was sanctioned vide GO 3D Higher Education (E2) Department dated 01.06.2012 from 08.08.1988 to 31.05.2011 inasmuch as, to accommodate her in the meanwhile, a vacancy had occurred, therefore the petitioner could not have been appointed in any of the regular vacancy inasmuch as, already out of the four sanctioned post, though two had retired four persons including Mrs.Jennet Vasantha Kumari and 6th respondent were in position. Therefore, considering the same, when another vacancy arose the appointment of the petitioner as well as the 6th respondent were regularized by giving appointment to the 6th respondent against the post of Dr.Selvi Devadasa w.e.f 10.01.2013 and the present petitioner from the date of impugned order i.e on 09.04.2014 against the vacancy that arose on account of retirement of Mrs.Helen Christinal. Hence, the writ petitions filed are devoid of merit.

4. The 6th respondent in the reply affidavit filed WP.21696 of 2014 have taken the stand since 01.06.2005 she was working as a Lecturer in the College against the self-financing post and in this regard, though she had made representation to accommodate him the vacancy that arose in the retirement of those two persons but the 4th respondent without considering his representation had made advertisement to fill up the post, he filed Writ petition before the Madurai Bench wherein her service was protected by granting the order of status quo and in the mean while, the petitioner though appointed the said appointment being illegal, the same does not enure to the benefit of the petitioner. However, thereafter out of the two vacancies that arose, the 4th respondent having decided to appoint the 6th respondent against one such post i.e against the vacancy of Dr.Selvi Devadasa and in a subsequent vacancy that arose the writ petitioner, hence she (writ petitioner) could not have any grievance against the appointment of the 6th respondent. The same is more so since she being a qualified person was already in the institution and working as a Assistant Professor much prior to the writ petitioner therefore, the prayer made in the writ petition to forbear the respondents not to approve the appointment of the petitioner is without any substance. Hence, the same is liable to be dismissed. It is also her case that since the petitioner has not sought for quashment of her second appointment from 09.11.2014, she has no case.

5. The 2nd respondent in the reply affidavit filed in
<https://hcservices.courts.gov.in/hcservices/> WP NO.11364 of 2014 having taking the stand that since the 4th

respondent held the appointment of the petitioner from 02.1.2012 to be a guest lecturer and she was only absorbed in a regular vacancy from 09.04.2014 therefore, the petitioner representation in this regard to approve her appointment since 02.01.2012 rejected by the 2nd respondent. No proposal in the meanwhile however having been received indicating the appointment of the petitioner against any regular vacancy since 02.01.2012 or 09.04.2014 and also writ petition MD No.14686 of 2011 filed by the 6th respondent which has been pending wherein status quo order has been passed, the 2nd respondent is not bound to approve the appointment of the petitioner from 02.01.2012, moreso, the proposal for appointment of the petitioner against the regular post being not there, the writ petition filed by the petitioner is devoid of merit. In the other writ petition, however no counter affidavit has been filed but in the meanwhile, the approval of appointment of 6th respondent having been given however the same was challenged in WP No.30212 of 2015 by the writ petitioner and during the pendency of the same, such approval having been canceled the said writ petition was dismissed as infructuous.

6. During the course of hearing, the learned counsel appearing for the petitioner submits that the petitioner being appointed pursuant to an advertisement made through a regular process of selection against a sanction post vide order of appointment dated 22.11.2011 and joined in the post on 02.01.2012 and the Management being competent to appoint the petitioner against such post, without prior approval of the Government respondent Nos.1 to 3, the 4th respondent in all fairness of thing should have submitted proposal to the 2nd respondent for approval of his appointment since 02.01.2012 moreso when there is no dispute that she was fully qualified to hold the post then and duly selected. Since, the same was not done, the petitioner made representation and came to challenge such inaction on the part of the respondent before this Hon'ble court vide WP.No.5615 of 2014 wherein positive direction was given to consider the case of the petitioner, in the light of the law laid down in WA.2318 of 2011. Thereafter the respondents more particularly the 4th respondent without sending proposal to approve such appointment of the petitioner to the 2nd respondent, could not have given him an appointment from a subsequent date indicating that the petitioner was not appointed as a regular post but appointed as a guest lecturer and accommodated the 6th respondent against the vacancy which was available against which the petitioner was appointed, assigning the reasons that the 6th respondent was working earlier though against a self-financing post than the petitioner and the appointment of the petitioner was as a Guest Lecturer. The stand of the 4th respondent that since the 6th respondent was working earlier to him, she is entitled to adjustment against the same and the petitioner on the subsequent vacancy appears to be not in consonance with the law. She had no right to be accommodated against the said

post, as she was not recruited against that post and as such, post dating the appointment of the petitioner instead of furnishing the proposal for appointment from a earlier date, was illegal and arbitrary and hence, the same is liable to be quashed and the 4th respondent be directed to submit proposal for appointment of the petitioner pursuant to the appointment order dated 22.12.2011 as a vacancy was available against which she was recruited as a lecturer and nowhere in the said appointment it has been indicated that she was appointed as guest lecturer. And accordingly, the second respondent be directed to approve the appointment of the petitioner since the date she joined i.e 02.01.2012. It is the contention of the learned counsel of the petitioner that so far as the appointment of the 6th respondent is concerned, the writ petitioner has no grievance of her being appointment as a lecturer from the date she is appointed if post is available, except the fact that indicating her appointment to have been made against a vacancy that occurred on account of the retirement of a person namely D.Selvidevadas as the petitioner was appointed against that vacancy. The learned counsel appearing for the petitioner in this regard has drawn notice of this Court to the documents in the type set of papers disputing the contention of the 4th respondent that the appoint of the petitioner as a guest lecturer, as according to him, the documents furnished by the petitioner clearly indicates that the petitioner has been appointed as a lecturer against the vacancy that occurred on account of retirement of the persons by the time the petitioner was appointed.

7. The 4th respondent however submits that the resolution of the college indicates that the petitioner appointment was against a post of guest lecturer. The appointment letter given by the then correspondent of the college on which the petitioner places reliance indicating the petitioner to have been appointed as lecturer does not contain the seal of the 4th respondent and hence, the same is fabricated one. Therefore when the petitioner was appointed as a guest lecturer, he could not have any claim seeking for approval of her appointment as a regular lecturer since that date. However, by the time the petitioner was appointed as a guest lecturer undisputedly two vacancies were there out of the four sanctioned post. Besides the same, the college authority has appointed Mrs.Jennet Vasantha Kumari since in the year 1988 and fighting litigations with the 2nd respondent to get his post sanctioned from the dates she was appointed in view of the work load and had also the order passed in their favour in WP No 6639 of 2000 in the year 2003 which had reached its finality as the second 2nd respondent unsuccessfully challenged to such order up to the highest forum i.e. the Apex Court. But the 2nd respondent in the meanwhile, had sanctioned the post up to 31.05.2011 as thereafter a regular vacancy was available for his accommodation though the same was after the appointment of the petitioner as a Guest lecturer and therefore one such vacancy

of regular post was available on 01.06.2011.

8. The 6th respondent had also then made representation for his absorption as in the meanwhile vacancy was available for her appointment and an interim order passed by the Madurai bench status quo with regard to her service was to be maintained as indicated in the counter affidavit. In such premises, such order of appointment came to be passed adjusting the Mrs.Jennet Vasantha Kumari against the post of Mrs.Joel Gloria Shanthi as she was senior person and thereafter in the next vacancy the 6th respondent and the petitioner in a subsequent post hence, the writ petition filed by the petitioner is devoid of merit.

9. The learned counsel appearing for the 6th respondent also submits she is entitled to be regularized against the said post as she was working earlier as a regular lecturer though against a self-financing post and as such, the petitioner could not have any grievance against such appointment of the 6th respondent.

10. The learned counsel appearing for the state however submits that in view of the litigations in the meanwhile the approval of the 6th respondent having been withdrawn and no proposal for approval of the appointment of the petitioner is pending and it being the stand of the 4th respondent that the writ petitioner was appointed as a guest lecturer vide letter dated 22.12.2011, the writ petitioner has no case.

11. From the averments made and also the contention raised, the questions that have arisen for determination in this case is (i) whether the appointment of the writ petitioner pursuant to the order of appointment dated 22.12.2011 can be stated to be a regular one and as such, the petitioner is entitled to approval of his appointment from the said date, quashing the order of the 4th respondent making his appointment from a posterior date and (ii) whether the respondents 1 to 3 can be restrained not to approve the appointment of the 6th respondent from the date, she was appointed indicating the fact that she was appointed against the vacancy of one Dr.Selvi Devadasa.

12. For the aforesaid purpose, it would be apposite to look into some undisputed fact. Undisputedly there were four sanctioned post of Assistant professors then lecturers in the 4th respondent college. The 4th respondent college is a minority educational institution and as such, there is no requirement under the Regulation Act or the Regulation Rules of prior approval of the 2nd respondent to fill up the sanctioned vacancy of teaching staff for appointment. The management is therefore, competent to fill up the post by qualified persons through a process of selection. Four persons were admittedly occupying those post in the year 1988. however due to work load, there was requirement of one more

post. Hence, one Jennet Vasantha Kumari was appointed and the 2nd respondent was requested to give sanction to the 5th post of lecturer in economics and approve such appointment. But the same was refused by the 2nd respondent. The 4th respondent therefore challenged such refusal in a writ petition wherein this Court directed vide order passed in WP. 6639 of 2000 in the year 2003 to accord sanction for such post and also the appointment of Mrs. Jennet Vasantha Kumari from the date she was appointed. Thereafter, the 2nd respondent unsuccessfully challenged the same upto supreme Court and lost. In the meanwhile also from the year 2005 due to further work load against a self-financing post, the 6th respondent was appointed. However on 31.5.2011 two persons in position out of the sanctioned post having retired, the management came out with an advertisement to fill up one such post. Against the advertisement, the petitioner applied and selected and appointed vide letter dated 22.01.2011 pursuant to which she joined on 02.01.2012. No doubt, by then the Madurai Bench of this Hon'ble Court in a writ petition filed by the sixth respondent challenging such advertisement and to absorb her in the service of the 6th respondent against the self-financing post was protected vide an interim order but had not prevented the 4th respondent not to recruit the petitioner. The 5th post was sanctioned but up to 31.05.2011 inasmuch as, thereafter a vacancy occurred to accommodate Mrs. Jennet Vasantha Kumari. Out of those two sanctioned vacancies as such one post had gone to Mrs. Jennet Vasantha Kumari but the other post the petitioner claims to have been recruited regularly as the vacancy was available for his accommodation. Needless to say that a vacancy is not identified with the persons who retired, but according to the sanctioned strength and the person in position against the same. So on the date the petitioner was appointed there were two vacancies which were regular vacancies and recruitment to one post was done and another vacancies was consumed by Mrs. Jennet Vasantha Kumari, inasmuch as sanction of her 5th post was given by subsequent order up to 31.05.2011 as from the next date a vacancy was available to accommodate her. The only controversies therefore is that whether the other vacancy, the petitioner can said to have been recruited regularly or recruitment was stop-gap one and as such the 6th respondent was appointed earlier to her is entitled to appointment against the same. As stated earlier, undisputedly, in the advertisement it was never stated that the said vacancy was a stopgap or for a post of guest lecturer. The appointment of the petitioner also does not indicate that the petitioner was appointed as a guest lecturer but indicates that she was appointed as a Lecturer against a retired vacancy. The same is disputed by the 4th respondent to be a genuine document as according to them, the same does not contained the seal of the college. But, the earlier correspondent who had issued the appointment order has not come forward disputing the same. No doubt, resolution of the college has been produced indicating that they have decided to appoint against the vacancies as guest lecturer however, the

same is self serving piece of evidence in the possession of the 4th respondent. No material has also been produced by the 4th respondent indicating that the petitioner was appointed as a guest lecturer, even if it is expected that they would have been in possession of copy such appointment order. In all subsequent document, i.e the ID card, also the certification of the Principal on the application of the petitioner for guideship to the University having completed Ph.D. on 2008, the no objection certificate in this regard and also the experience certificate issued to the petitioner by the Principal and countersigned by Secretary cum Correspondent, when the petitioner made application for Assistant Professor against the advertisement made by the Government through the recruitment Board to fill up the post of Assistant Professor in different colleges, it is indicated the petitioner was an Assistant Professor and joined on 02.01.2012. Nowhere it is indicated that she was a guest lecturer. Lastly the appointment order of the petitioner dated 09.04.2014 also indicates the petitioner who had been appointed as a Lecturer vide the order made dated 22.12.2011 though the same was issued by the present Secretary cum Correspondent. Therefore, the contention advanced by the fourth respondent that the appointment of the petitioner through the letter of appointment as regular lecturer is a spurious letter and as the petitioner was appointed as a guest Lecturer, appears to be without any substance. Since, the petitioner was regularly appointed as a Lecturer pursuant to an advertisement made again an existing retired vacancy vide letter dated 22.11.2011 and joined in the post on 02.01.2012 and the vacancy available was a sanctioned one, notwithstanding the fact that the 6th respondent was working there as a Lecturer against a self-financing post then and she had not applied pursuant to the advertisement and selected, it cannot be said that she is entitled to appointment against that vacancy. The 6th respondent therefore cannot claim of her appointment against the aforesaid vacancy of Dr.Selvi Devadasa. However, the petitioner has no grievance for appointment of the 6th respondent from the date she was appointed if any regular vacancy is available for her such appointment. She is only concerned for approval of her appointment from the date she was appointed. I am told that from the date the 6th respondent was appointed, such a vacancy was available inasmuch as, another Assistant professor in the meanwhile Mrs.Helen Christinal against which the petitioner has been adjusted has retired. Since the petitioner has no grievance on the appointment of the petitioner inasmuch as she is concerned only with her appointment from the date she joined in the post to which she appears to be legally entitled to inasmuch as she was appointed on a regular basis against a vacancy available and more particular nothing is there indicating the fact she was appointed as a Guest lecturer as contended by the 4th respondent, this Court is therefore of the view that the prayer made by the writ petitioner in W.P.No.11564 of 2014 deserves to be allowed. The other writ petition can be

disposed of without any injunction on the respondent not to approve the appointment of the petitioner, if she has been appointed by the 4th respondent against any sanctioned vacancy available, in accordance with law from the date of her appointment. No doubt the petitioner has not made specific prayer to quash the appointment 09.04.2014. But this Court in this petition under Article 226 can modulate the relief in appropriate manner notwithstanding absence of such prayer.

13. Hence, the WP No.11564 of 2014 stands disposed of being allowed with the order quashment of the appointment of the petitioner from 09.04.2014 and with a direction to the 4th respondent to submit proposal to approve the appointment of the petitioner to the 2nd respondent from 02.01.2012 pursuant to the letter of appointment on 22.11.2011 and release the monetary benefit thereof. So far as the other writ petition is concerned, in view of the submission made this Court does not want to restrain the 2nd respondent not to approve the appointment of the 6th respondent if she has been appointed by the 6th respondent against any sanctioned vacancy available then, in accordance with law and no rival claim is there for the same, notwithstanding her appointment has been identified against a retiral vacancy of Dr.Selvi Devadhas which was already consumed by the petitioner's appointment. With the aforesaid order, the said writ petition No.20615 of 2014 stands disposed of. Consequently, all connected miscellaneous petitions are closed. No costs.
rka dt.01.08.2018

Order:

This WP.11564 & 21696/2014 coming on for hearing today 29/10/2018 under the caption "for Being Mentioned", upon pursuant to the order of this Court dated 1.8.2018 and made herein in the presence of Mr.N.Rajan, Advocate for the petitioner and Mrs.P.Kavitha, Government Advocate for R1 to R3, Mr.Godson Swaminathan, for R4, Mr.Vishnu Chelliya for R5 and Mrs.K.Bharathi for M/s.E.Martin Jayakumar for R6, this Court made the following order:-

Today, the matter is listed under the caption "For Being Mentioned" for correction of certain typographical error. It appears that this Court has passed an order on 01.08.2018 in W.P.Nos.11564 & 21696 of 2014 as follows:.....

But in the said order, typographical error has crept in and hence, above paragraphs of the order is deleted and the following paragraphs are substituted :

"Both the writ petitions are at the instance of the same petitioner against the same respondents. In the first writ petition i.e. WP.No.11564 of 2014, the petitioner who joined as a Assistant Professor in the Department of Economics of the 4th respondent College in pursuant to the order of appointment

dated 22.12.2011, on 02.01.2012, notwithstanding her appointment in the said post from a subsequent date vide order dated 09.04.2014, in view of the order passed by this Court in WP.No.5615 of 2014 to consider her representation to approve her appointment from the date on which she was originally joined pursuant to the appointment order dated ***20.12.2011**. The other writ petition vide WP No.21696 of 2014 is filed to challenge the appointment of the 6th respondent in the said institution, as the Assistant Professor of Economics, on a date earlier to the date of appointment given to the petitioner in the second appointment which the petitioner assails and to forbear the respondents 2 and 3 not to approve such appointment of the 6th respondent. Both the cases, therefore being interlinked are heard together and dispose of by this common order on consent of the parties.

2. The case of the petitioner is that the 4th respondent college is a minority aided educational institution and governed under the Tamil Nadu Private College (Regulations) Act, 1976 and the rules made thereunder (herein after referred to as the Regulation Act and the Regulation Rules). For appointment in the sanctioned vacancy in the said college, no prior approval of the respondents 1 to 2 is necessary. The Management of the college as such is competent to appoint against the sanctioned vacancy without prior approval of the Government. The 4th respondent college had four sanctioned post of Assistant Professor then Lecturer in the Department of Economics out of which two of them, namely, Mrs.Jeol Gloria Shanthi and Dr.Selvi Devadhas however, retired on 31.05.2011. Thereafter, the ***4th respondent** college came out with an advertisement to fill up one post of Assistant Professor in a daily Newspaper and in pursuant to the same, the petitioner applied for the post and was selected. Hence, she was issued with an order of appointment on 22.12.2011 indicating that she is appointed against retired vacancy, pursuant to which, the petitioner joined in the service on 02.01.2012. The petitioner as such was continuing to serve as a Assistant Professor in the said post against the sanctioned vacancy. However, her such appointment was not approved and no such proposal for approval was given by the 4th respondent to the 2nd respondent. The petitioner therefore approached this Court in WP No.5615 of 2014 to approve such appointment which was disposed of with a direction to the petitioner to submit a representation to the

2nd respondent within one weeks from the date of receipt of copy of the order and with a further direction to the respondents to consider the said representation of the petitioner in the light of the law laid down by this Court in W.A.No.2318 of 2011, within a period of four weeks thereof, wherein the competency of the management for appointment against a sanctioned vacancy of teaching staff, of a qualified person without prior approval of the respondent No.2 has been upheld. In spite of such positive direction and observation of this Court in the said writ appeal, the representation of the petitioner was not considered in a proper perspective, but an order of appointment appointing as Assistant Professor was issued on 09.04.2014. The said appointment of the 4th respondent indicated that the petitioner, who was appointed as a Lecturer in the Department of Economics and joined in duty on ***02.01.2012**, is appointed as a Assistant professor in the Department of Economics with effect from the said date against the vacancy that occurred on account of the retirement of the Mrs.Helen Christinal on 31.05.2012. The petitioner come to challenge the same in W.P.No.11564 of 2014, so also the order that has been passed appointing the 6th respondent in the said college against a vacancy that arose wherein the petitioner was appointed prior to the appointment order issued to the 6th respondent in the second writ petition No.21696 of 2014 with the prayer to injunct the respondent Nos.1 to 3 to approve such appointment of the sixth respondent. It is the case of the petitioner that since ***she** was regularly appointed against the regular vacancy, the adjustment of the 6th respondent against the same though ***she** was not regularly appointed prior to the petitioner against the said vacancy was illegal and arbitrary and also consequently, the order of appointment of the petitioner from the posterior date. Hence, ***she** filed the aforesaid writ petitions seeking direction as stated earlier.

3. Counter affidavit has been filed by the 4th respondent in both the writ petition disputing the claim of the writ petitioner that she was appointed as a regular lecturer by the 4th respondent in pursuance to the appointment order filed in the typed set of document. The 4th respondent has seriously disputed the same to be a genuine one but they don't dispute the fact that the petitioner was appointed as a lecturer in the college pursuant to selection and joined in the date stated.

According to the respondent, the said appointment was a guest lecturer to which the petitioner stated to have suppressed, inasmuch as, the proceeding of the 4th respondent in the Resolution of the college in this regard indicates the same to be a guest lecturer. According to the averments made in the reply affidavit, four sanctioned post of lectures were there in the college but the management had appointed a 5th person namely Mrs.M.Jenat Vasantha Kumari to meet the work load and applied to the 2nd respondent to sanction that post. However, the same having not been sanctioned and request in this regard having been declined by the second respondent, the 4th respondent filed a writ petition.6639 of 2000 challenging the declining the request of the 4th respondent by the 2nd respondent to sanction the 5th post from the year 1988 - 1989, against which the said Mrs. M.Jenat ***Vasantha** Kumari was appointed and release the consequential benefit in her favour which was allowed. Writ appeal against the same filed vide WA.2593 of 2003 by the 2nd respondent also dismissed confirming the order passed in the writ petitioner. Civil Appeal 1808 of 2007 preferred against the said order also came to be dismissed by the Supreme Court on 07.04.2011. In the meanwhile also considering the work load, the 6th respondent who was working as a Store Keeper having all the requisite qualification for being appointed was allowed to work as a part time lecturer and subsequently from 01.06.2005 as a full time lecturer in economics against a self financing post. However, thereafter two persons in the position of lecturer in the department of economics namely Mrs.Joel Gloria Shanthi and Dr.Selvi ***Devadhas** having retired, the college when made advertisement to appoint a guest lecturer, the 6th respondent challenge the same before Madurai Bench of this Court vide WP (MD) .No.14686 of 2011 to appoint ***her** against a sanctioned post wherein an interim order was passed to maintain status quo with regard to the appointment of the 6th respondent on 21.12.2011. But in the the petitioner having been selected as a guest lecturer pursuant to the letter of appointment dated 22.12.2011, joined on 02.01.2012. In the meanwhile, the post of Mrs.Jennet Vasanthakumari was sanctioned vide GO 3D Higher Education (E2) Department dated 01.06.2012 from 08.08.1988 to 31.05.2011 inasmuch as, to accommodate her in the meanwhile, a vacancy had occurred, therefore the petitioner could not have been appointed in any of the regular vacancy inasmuch as, already out of the sanctioned post, though two had retired four

persons including Mrs.Jennet Vasantha Kumari and 6th respondent were in position. Therefore, considering the same, when another vacancy arose the appointment of the petitioner as well as the 6th respondent were regularized by giving appointment to the 6th respondent against the post of Dr.Selvi ***Devadhas** w.e.f 10.01.2013 and the present petitioner from the date of impugned order i.e on 09.04.2014 against the vacancy that arose on account of retirement of Mrs.Helen Christinal. Hence, the writ petitions filed are devoid of merit.

4. The 6th respondent in the reply affidavit filed WP.21696 of 2014 have taken the stand since 01.06.2005 she was working as a Lecturer in the College against the self-financing post and in this regard, though she had made representation to accommodate ***her** the vacancy that arose in the retirement of those two persons but the 4th respondent without considering ***her** representation had made advertisement to fill up the post, ***she** filed Writ petition before the Madurai Bench wherein her service was protected by granting the order of status quo and in the mean while, the petitioner though appointed the said appointment being illegal, the same does not enure to the benefit of the petitioner. However, thereafter out of the two vacancies that arose, the 4th respondent having decided to appoint the 6th respondent against one such post i.e against the vacancy of Dr.Selvi ***Devadhas** and in a subsequent vacancy that arose the writ petitioner, hence she (writ petitioner) could not have any grievance against the appointment of the 6th respondent. The same is more so since she being a qualified person was already in the institution and working as a Assistant Professor much prior to the writ petitioner therefore, the prayer made in the writ petition to forbear the respondents not to approve the appointment of the petitioner is without any substance. Hence, the same is liable to be dismissed. It is also her case that since the petitioner has not sought for quashment of her second appointment from 09.11.2014, she has no case.

5. The 2nd respondent in the reply affidavit filed in WP No.11564 of 2014 having taking the stand that since the 4th respondent held the appointment of the petitioner from 02.1.2012 to be a guest lecturer and she was only absorbed in a regular vacancy from 09.04.2014 therefore, the petitioner representation

<https://hcservices.ecourts.gov.in/hcservices/> regard to approve her appointment since

02.01.2012 rejected by the 2nd respondent. No proposal in the meanwhile however having been received indicating the appointment of the petitioner against any regular vacancy since 02.01.2012 or 09.04.2014 and also writ petition MD No.14686 of 2011 filed by the 6th respondent which has been pending wherein status quo order has been passed, the 2nd respondent is not bound to approve the appointment of the petitioner from 02.01.2012, moreso, the proposal for appointment of the petitioner against the regular post being not there, the writ petition filed by the petitioner is devoid of merit. In the other writ petition, however no counter affidavit has been filed but in the meanwhile, the approval of appointment of 6th respondent having been given however the same was challenged in WP No.30212 of 2015 by the writ petitioner and during the pendency of the same, such approval having been canceled the said writ petition was dismissed as infructuous.

6. During the course of hearing, the learned counsel appearing for the petitioner submits that the petitioner being appointed pursuant to an advertisement made through a regular process of selection against a sanction post vide order of appointment dated 22.11.2011 and joined in the post on 02.01.2012 and the Management being competent to appoint the petitioner against such post, without prior approval of the Government respondent Nos.1 to 3, the 4th respondent in all fairness of thing should have submitted proposal to the 2nd respondent for approval of ***her** appointment since 02.01.2012 moreso when there is no dispute that she was fully qualified to hold the post then and duly selected. Since, the same was not done, the petitioner made representation and came to challenge such inaction on the part of the respondent before this Hon'ble court vide WP.No.5615 of 2014 wherein positive direction was given to consider the case of the petitioner, in the light of the law laid down in WA.2318 of 2011. Thereafter the respondents more particularly the 4th respondent without sending proposal to approve such appointment of the petitioner to the 2nd respondent, could not have given ***her** an appointment from a subsequent date indicating that the petitioner was not appointed as a regular post but appointed as a guest lecturer and accommodated the 6th respondent against the vacancy which was available against which the petitioner was appointed, assigning the reasons that the 6th respondent was working earlier though against a

self-financing post than the petitioner and the appointment of the petitioner was as a Guest Lecturer. The stand of the 4th respondent that since the 6th respondent was working earlier to ***her**, she is entitled to adjustment against the same and the petitioner on the subsequent vacancy appears to be not in consonance with the law. She had no right to be accommodated against the said post, as she was not recruited against that post and as such, post dating the appointment of the petitioner instead of furnishing the proposal for appointment from a earlier date, was illegal and arbitrary and hence, the same is liable to be quashed and the 4th respondent be directed to submit proposal for appointment of the petitioner pursuant to the appointment order dated 22.12.2011 as a vacancy was available against which she was recruited as a lecturer and nowhere in the said appointment it has been indicated that she was appointed as guest lecturer. And accordingly, the second respondent be directed to approve the appointment of the petitioner since the date she joined i.e 02.01.2012. It is the contention of the learned counsel of the petitioner that so far as the appointment of the 6th respondent is concerned, the writ petitioner has no grievance of her being appointment as a lecturer from the date she is appointed if post is available, except the fact that indicating her appointment to have been made against a vacancy that occurred on account of the retirement of a person namely D.Selvivedadas as the petitioner was appointed against that vacancy. The learned counsel appearing for the petitioner in this regard has drawn notice of this Court to the documents in the type set of papers disputing the contention of the 4th respondent that the appoint of the petitioner as a guest lecturer, as according to ***her**, the documents furnished by the petitioner clearly indicates that the petitioner has been appointed as a lecturer against the vacancy that occurred on account of retirement of the persons by the time the petitioner was appointed.

7. The 4th respondent however submits that the resolution of the college indicates that the petitioner appointment was against a post of guest lecturer. The appointment letter given by the then correspondent of the college on which the petitioner places reliance indicating the petitioner to have been appointed as lecturer does not contain the seal of the 4th respondent and hence, the same is fabricated one. Therefore when the petitioner was

appointed as a guest lecturer, ***she** could not have any claim seeking for approval of her appointment as a regular lecturer since that date. However, by the time the petitioner was appointed as a guest lecturer undisputedly two vacancies were there out of the four sanctioned post. Besides the same, the college authority has appointed Mrs. Jennet Vasantha Kumari since in the year 1988 and fighting litigations with the 2nd respondent to get ***her** post sanctioned from the dates she was appointed in view of the work load and had also the order passed in their favour in WP No 6639 of 2000 in the year 2003 which had reached its finality as the second 2nd respondent unsuccessfully challenged to such order up to the highest forum i.e. the Apex Court. But the 2nd respondent in the meanwhile, had sanctioned the post up to 31.05.2011 as thereafter a regular vacancy was available for ***her** accommodation though the same was after the appointment of the petitioner as a Guest lecturer and therefore one such vacancy of regular post was available on 01.06.2011.

8. The 6th respondent had also then made representation for ***her** absorption as in the meanwhile vacancy was available for her appointment and an interim order passed by the Madurai bench status quo with regard to her service was to be maintained as indicated in the counter affidavit. In such premises, such order of appointment came to be passed adjusting the Mrs. Jennet Vasantha Kumari against the post of Mrs. Joel Gloria Shanthi as she was senior person and thereafter in the next vacancy the 6th respondent and the petitioner in a subsequent post hence, the writ petition filed by the petitioner is devoid of merit.

9. The learned counsel appearing for the 6th respondent also submits she is entitled to be regularized against the said post as she was working earlier as a regular lecturer though against a self-financing post and as such, the petitioner could not have any grievance against such appointment of the 6th respondent.

10. The learned counsel appearing for the state however submits that in view of the litigations in the meanwhile the approval of the 6th respondent having been withdrawn and no proposal for approval of the appointment of the petitioner is pending and it being the stand of the 4th respondent that the writ petitioner was appointed as a guest lecturer vide letter dated 22.12.2011, the writ

petitioner has no case.

11. From the averments made and also the contention raised, the questions that have arisen for determination in this case is (i) whether the appointment of the writ petitioner pursuant to the order of appointment dated 22.12.2011 can be stated to be a regular one and as such, the petitioner is entitled to approval of ***her** appointment from the said date, quashing the order of the 4th respondent making ***her** appointment from a posterior date and (ii) whether the respondents 1 to 3 can be restrained not to approve the appointment of the 6th respondent from the date, she was appointed indicating the fact that she was appointed against the vacancy of one Dr.Selvi ***Devadhas**.

12. For the aforesaid purpose, it would be apposite to look into some undisputed fact. Undisputedly there were four sanctioned post of Assistant professors then lecturers in the 4th respondent college. The 4th respondent college is a minority educational institution and as such, there is no requirement under the Regulation Act or the Regulation Rules of prior approval of the 2nd respondent to fill up the sanctioned vacancy of teaching staff for appointment. The management is therefore, competent to fill up the post by qualified persons through a process of selection. Four persons were admittedly occupying those post in the year 1988. However due to work load, there was requirement of one more post. Hence, one Jennet Vasantha Kumari was appointed and the 2nd respondent was requested to give sanction to the 5th post of lecturer in economics and approve such appointment. But the same was refused by the 2nd respondent. The 4th respondent therefore challenged such refusal in a writ petition wherein this Court directed vide order passed in WP. 6639 of 2000 in the year 2003 to accord sanction for such post and also the appointment of Mrs.Jennet Vasantha Kumari from the date she was appointed. Thereafter, the 2nd respondent unsuccessfully challenged the same upto supreme Court and lost. In the meanwhile also from the year 2005 due to further work load against a self-financing post, the 6th respondent was appointed. However on 31.5.2011 two persons in position out of the sanctioned post having retired, the management came out with an advertisement to fill up one such post. Against the advertisement, the petitioner applied and selected and appointed ***her** pursuant to which she

joined on 02.01.2012. No doubt, by then the Madurai Bench of this Hon'ble Court in a writ petition filed by the sixth respondent challenging such advertisement and to absorb her in the service of the 6th respondent against the self-financing post was protected vide an interim order but had not prevented the 4th respondent not to recruit the petitioner. The 5th post was sanctioned but up to 31.05.2011 inasmuch as, thereafter a vacancy occurred to accommodate Mrs.Jennet Vasantha Kumari. Out of those two sanctioned vacancies as such one post had gone to Mrs.Jennet Vasantha Kumari but the other post the petitioner claims to have been recruited regularly as the vacancy was available for her accommodation. Needless to say that a vacancy is not identified with the persons who retired, but according to the sanctioned strength and the person in position against the same. So on the date the petitioner was appointed there were two vacancies which were regular vacancies and recruitment to one post was done and another vacancies was consumed by Mrs.Jennet Vasantha Kumari, inasmuch as sanction of her 5th post was given by subsequent order up to 31.05.2011 as from the next date a vacancy was available to accommodate her. The only controversies therefore is that whether the other vacancy, the petitioner can said to have been recruited regularly or recruitment was stop-gap one and as such the 6th respondent was appointed earlier to her is entitled to appointment against the same. As stated earlier, undisputedly, in the advertisement it was never stated that the said vacancy was a stopgap or for a post of guest lecturer. The appointment of the petitioner also does not indicate that the petitioner was appointed as a guest lecturer but indicates that she was appointed as a Lecturer against a retired vacancy. The same is disputed by the 4th respondent to be a genuine document as according to them, the same does not contained the seal of the college. But, the earlier correspondent who had issued the appointment order has not come forward disputing the same. No doubt, resolution of the college has been produced indicating that they have decided to appoint against the vacancies as guest lecturer however, the same is self serving piece of evidence in the possession of the 4th respondent. No material has also been produced by the 4th respondent indicating that the petitioner was appointed as a guest lecturer, even if it is expected that they would have been in possession of copy such appointment order. In all subsequent documents, i.e the ID card, also the certification of

the Principal on the application of the petitioner for guideship to the University having completed Ph.D. on 2008, the no objection certificate in this regard and also the experience certificate issued to the petitioner by the Principal and countersigned by Secretary cum Correspondent, when the petitioner made application for Assistant Professor against the advertisement made by the Government through the recruitment Board to fill up the post of Assistant Professor in different colleges, it is indicated the petitioner was an Assistant Professor and joined on 02.01.2012. Nowhere it is indicated that she was a guest lecturer. Lastly the appointment order of the petitioner dated 09.04.2014 also indicates the petitioner who had been appointed as a Lecturer vide the order made dated 22.12.2011 though the same was issued by the present Secretary cum Correspondent. Therefore, the contention advanced by the fourth respondent that the appointment of the petitioner through the letter of appointment as regular lecturer is a spurious letter and as the petitioner was appointed as a guest Lecturer, appears to be without any substance. Since, the petitioner was regularly appointed as a Lecturer pursuant to an advertisement made again an existing retired vacancy vide letter dated 22.11.2011 and joined in the post on 02.01.2012 and the vacancy available was a sanctioned one, notwithstanding the fact that the 6th respondent was working there as a Lecturer against a self-financing post then and she had not applied pursuant to the advertisement and selected, it cannot be said that she is entitled to appointment against that vacancy. The 6th respondent therefore cannot claim of her appointment against the aforesaid vacancy of Dr.Selvi Devadasa. However, the petitioner has no grievance for appointment of the 6th respondent from the date she was appointed if any regular vacancy is available for her such appointment. She is only concerned for approval of her appointment from the date she was appointed. I am told that from the date the 6th respondent was appointed, such a vacancy was available inasmuch as, another Assistant professor in the meanwhile Mrs.Helen Christinal against which the petitioner has been adjusted has retired. Since the petitioner has no grievance on the appointment of the petitioner inasmuch as she is concerned only with her appointment from the date she joined in the post to which she appears to be legally entitled to inasmuch as she was appointed on a regular basis against a vacancy available and more particular nothing is there indicating the fact she was

appointed as a Guest lecturer as contended by the 4th respondent, this Court is therefore of the view that the prayer made by the writ petitioner in W.P.No.11564 of 2014 deserves to be allowed. The other writ petition can be disposed of without any injunction on the respondent not to approve the appointment of the petitioner, if she has been appointed by the 4th respondent against any sanctioned vacancy available, in accordance with law from the date of her appointment. No doubt the petitioner has not made specific prayer to quash the appointment 09.04.2014. But this Court in this petition under Article 226 can modulate the relief in appropriate manner notwithstanding absence of such prayer.

13. Hence, the WP No.11564 of 2014 stands disposed of being allowed with the order quashment of the appointment of the petitioner from 09.04.2014 and with a direction to the 4th respondent to submit proposal to approve the appointment of the petitioner to the 2nd respondent from 02.01.2012 pursuant to the letter of appointment on 22.11.2011 and release the monetary benefit thereof. So far as the other writ petition is concerned, in view of the submission made this Court does not want to restrain the 2nd respondent not to approve the appointment of the 6th respondent if she has been appointed by the 6th respondent against any sanctioned vacancy available then, in accordance with law and no rival claim is there for the same, notwithstanding her appointment has been identified against a retiral vacancy of Dr.Selvi Devadhas which was already consumed by the petitioner's appointment. With the aforesaid order, the said writ petition ***No.21696 of 2014** stands disposed of. Consequently, all connected miscellaneous petitions are closed. No costs."

2. Accordingly, the correction be carried out by the Registry, and the Registry is directed to carryout the necessary amendment and issue fresh order copy.

rka/lok

dt.29.10.2018

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

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

To be substituted for
the order already
despatched on
24.10.2018

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

+2cc to Mr.N.Rajan, Advocate SR.NO.74241 & 74240
+1cc to Mr.E.Martin Jayakumar, Advocate SR.NO.52210
+1cc to Mr.P.Godson Swaminath, Advocate SR.NO.74926
+1cc to Mr.Ajmal Associates SR.NO.52361
+1cc to Government Pleader SR.NO.53257

sm:23.10.2018
sm:16.11.2018

WP Nos.11564 & 21696 OF 2014
and MP Nos.1&1 of 2014

सत्यमेव जयते
WEB COPY