

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition Nos.19111 of 2014 and 1511 & 35699 of 2015
and Contempt Petition No.1812 of 2015

DR. S.R.Jasmine Levy

..Petitioner in W.P. Nos.19111 of 2014
1511 of 2015 and Cont.P. No.1812 of 2015

P.Anto Paulin Brinto ...Petitioner in W.P. No.35699 of 2015

Versus

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

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

3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli-627 007.

4.The Scott Christian College,
rep. by its Correspondent-cum-Secretary,
Nagercoil, Kanyakumari District-629 003.

..Respondents 1 to 4 in all WP'S

5.Manonmaniam Sundaranar University,
rep. by its Registrar,
Abishekapatti,
Tirunelveli-627 012.

.. 5th Respondent in W.P. No.19111 of 2014 and
W.P. No.1511 of 2015

5.DR.S.R.Jasmine Levy

.. 5th respondent in W.P. No.35699 of 2015

6.P.Anto Paulin Brinto.. 6th respondent in W.P. No.1511 of 2015

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

2.C.Vijayambika (I-C)
Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli-627 007.

3.Joseph Raj,
Correspondent - cum - Secretary,
Scott Christian College,
Nagercoil,
Kanyakumari District-629 003.

.. Respondents in Cont. P. No.1812 of 2015

Prayer in W.P. No.19111 of 2014: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the second respondent to approve the appointment of the petitioner as Assistant Professor of Hindi in the fourth respondent college with effect from 20.06.2001, with all monetary benefits, on the basis of her representation dated 18.06.2014.

Prayer in W.P. No.1511 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the proceedings of the second respondent vide Na.Ka.No.12680/F2/2010, culminating in her order dated 30.04.2014, quash the same and direct the second respondent to restore the post of Assistant Professor of Hindi in the fourth respondent college, as sanctioned by the second respondent, vide his Proc.Pa.Mu.No.42095/F4/1999, dated 12.10.1999.

Prayer in W.P. No.35699 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the order of the second respondent made in Na.Ka.No.5500/F2/2015 dated 25.09.2015 and that of the consequential proceedings order of the third respondent made in Na.Ka.No.686/E1/2015 dated nil.10.2015 signed on 30.09.2015, quash the same and consequently direct the respondents to extend all service and other benefits from the date of his initial appointment i.e. from 13.06.2007 forthwith thereto.

Prayer in Cont. P.No.1812 of 2015: Petition filed under Section 11 of the Contempt of Courts Act 1971 to punish the respondents herein for the willful disobedience of the order

dated 23.01.2015 passed in M.P. No.2 of 2015 in W.P. No.1511 of 2015.

For Petitioner in
W.P. Nos.19111 of 2014
and 1511 of 2015 and
Cont. P. No.1812 of 2015 and
R5 in W.P. No.35699 of 2015 : Mr.N.Rajan

For Petitioner in W.P. No.
35699 of 2015 and R6 in : Mr.P.Ganesan for
W.P. No.1511 of 2015 M/s.D.Prabhu Mukunth Arunkumar

For R4 in all W.Ps and for R3 : Mr.G.Sankaran for
in Cont. P.No.1812 of 2015 Mr.S.Bharathirajan

For R1 to R3 in all W.Ps and
for R1 and R2 in : Mr.V.Kadhirvelu,
Cont.P.No.1812 of 2015 Special Government Pleader

For R5 in W.P. Nos.19111 of : Mr.B.Vishnu Chellaiya for
2014 and 1511 of 2015 M/s.Ajmal Associates

COMMON ORDER

W.P. No.19111 of 2014 has been filed by one S.R.Jasmine Levy seeking a direction to the second respondent to approve the appointment as Assistant Professor of Hindi in the fourth respondent college with effect from 20.06.2001, with all monetary benefits, on the basis of her representation dated 18.06.2014.

W.P. No.1511 of 2015 has been filed by the said S.R.Jasmine Levy questioning the correctness of the proceedings dated 30.04.2014 made in Na.Ka.No.12680/F2/2010 issued by the second respondent and seeking a direction to the second respondent to restore the post of Assistant Professor of Hindi in the fourth respondent college, as sanctioned by the second respondent, vide his Proc.Pa.Mu.No.42095/F4/1999, dated 12.10.1999.

W.P. No.35699 of 2015 has been filed by one P.Anto Paulin Brinto questioning the correctness of the order dated 25.09.2015 made in Na.Ka.No.5500/F2/2015 passed by the second respondent and the proceedings dated nil.10.2015 signed on 30.09.2015 made in Na.Ka.No.686/E1/2015 issued by the third respondent and seeking a direction to the respondents to extend all service and other benefits from the date of his initial appointment i.e. from 13.06.2007 forthwith.

Cont. P.No.1812 of 2015 has been filed by the said S.R.Jasmine Levy to punish the respondents for the willful disobedience of the order dated 23.01.2015 passed in M.P. No.2 of 2015 in W.P. No.1511 of 2015.

2.Mr.N.Rajan, learned counsel for the petitioner in W.P. Nos.19111 of 2014, 1511 of 2015 and Cont.P. No.1812 of 2015 would submit that when the petitioner was appointed as Lecturer in the Department of Hindi in the time scale of Rs.8000-275-13500 in the Scott Christian College, the fourth respondent with effect from 20.06.2001 in the retirement vacancy of one K.Gunamony Bright Singh, with usual allowance permissible under the rules, she has been conducting classes from the date of joining the services. However, the strength of students in the Hindi Department has also been informed to the Director of Collegiate Education and the Joint Director of Collegiate Education, the respondents 2 and 3 by the fourth respondent college regularly. While so, the fourth respondent college has sent three representations dated 05.06.2009, 22.06.2010 and 31.05.2011 to the second respondent through the third respondent with a request to approve the appointments of the lecturers made against those vacancies with all monetary benefits. However, the third respondent asked for the vacancy positions of the fourth respondent college by a letter dated 04.07.2012 and the college has furnished all the details as per their letter dated 09.07.2012. In this regard, the petitioner has also sent a representation dated 18.06.2014 to the second respondent through the third respondent and the same has also been countersigned by the Principal of the fourth respondent College, but, the second respondent herein has failed to come forward to approve the petitioner's appointment, in spite of receipt of repeated representations from the college and the petitioner. Therefore, the petitioner came to this Court with the above writ petition in W.P. No.19111 seeking the above direction.

3.Learned counsel would further submit that during the pendency of the same, the fourth respondent has informed the second and third respondents that the post of Assistant Professor, Hindi has not been filled up ever since the date of vacancy caused by the retirement of the said K.Gunamony Bright Singh on 31.05.2000 due to lack of students and requested them to transfer the said post to the Mathematics Department so that one more lecturer of Maths could be appointed to cope up with the strength of students and the workload in the Maths Department. According to the learned counsel for the petitioner, the second respondent by impugned order dated 30.04.2014, transferred the post to the Mathematics Department, thereby increasing the sanctioned strength of lecturers from $2+7=9$ to $2+8=10$ and has permitted the fourth respondent college to retain

the sixth respondent as Assistant Professor of Maths with an assurance that his appointment will be approved from 13.06.2007 in the 10th post, subject to qualification approval from the fifth respondent University. Learned counsel appearing for the petitioner further submitted that when the petitioner also has been appointed in the sanctioned post on account of retirement of the said K.Gunamony Bright Singh, as per the settled legal position, the respondents ought to have passed an order approving the order of appointment of the petitioner as an Assistant Professor in the fourth respondent College, but, the second respondent has wrongly passed the impugned proceedings dated 30.04.2014 approving the appointment of the said P.Anto Paulin Brintos in the Maths Department by transferring the post of Hindi Lecturer to the Mathematics Department, accepting proposal made by the fourth respondent. Such an approach adopted by the second respondent on the wrong proposal given by the fourth respondent is liable to be interfered with.

4.Referring to the appointment order dated 19.06.2001 passed by the fourth respondent College in favour of the petitioner as lecturer of Hindi in the retirement vacancy of K.Gunamon Bright Singh, the learned counsel for the petitioner submitted that the conditions mentioned in the order of appointment, no doubt, shows that the appointment of the petitioner is subject to the terms and conditions stipulated by the College, by the post approval of the Director of Collegiate Education, Chennai, but, after appointing the petitioner in the sanctioned post as Assistant lecturer of Hindi, the second respondent cannot refuse to grant approval to the petitioner, in collusion with the fourth respondent College. Again emphatically submitted that but for the fact made by the fourth respondent to the second respondent that the post of Assistant Professor, Hindi was not filled up, the second respondent could not have passed the impugned order dated 30.04.2014 transferring the post of Hindi Lecturer as Maths Lecturer in the Maths department increasing the sanctioned strength.

5.Again referring to the letter dated 20.06.2018 addressed by the fourth respondent to the second respondent through the third respondent, the learned counsel for the petitioner submitted that the number of Hindi students admitted in the UG classes from the year 2000-2018 has been wrongly misrepresented, though there was no sanctioned students strength in the Hindi class. When the sanctioned students strength in the Hindi class in the year 2017-18 is 10 in number, it is not known how the communication dated 20.06.2018 prepared by the Principal of the fourth respondent can be believed and accepted by the second respondent. Adding further, he would submit that when the students in the Hindi class in the fourth respondent college is fluctuating from the year 2001 till now, the refusal of approval

is illegal as the petitioner was appointed in the year 2001 in a sanctioned post on account of retirement vacancy of one K.Gunamony Bright Singh, as per the settled legal position as laid down by this Court that in a minority educational institution, without obtaining prior approval from the education department, the sanctioned vacancy can be filled up.

6.Arguing in the contempt petition, he would submit that when this Court has passed an interim order to maintain status quo with regard to the service of the petitioner, the fourth respondent in collusion with the second respondent, have committed serious error in not sending any fresh proposal granting approval to the petitioner. Aggravating the error, they have sent a proposal to the second respondent to transfer the post of Hindi Lecturer to the Maths department and again asked for increase of strength in the Maths department citing a reason that the vacancy in the Hindi class has not been filled up. Therefore, he prays for allowing the W.P. Nos.19111 of 2014, 1511 of 2015 by quashing the impugned order dated 30.04.2014 and by directing the second respondent to restore the post of Assistant Professor of Hindi in the fourth respondent college.

7.Mr.P.Ganesan, learned counsel appearing for the petitioner in W.P. No.35699 of 2015 would submit that the petitioner possessed the qualification of Post Graduation and M.Phil degree in Mathematics. Since the year 1990 the students strength in Mathematics of the fourth respondent college is 100% and the requisite workload in the said faculty is 162 hours, for the said 162 hours, the permissible sanction of teaching staff is 11 posts, whereas in the other colleges, 11 lecturers were approved and sanctioned by the second respondent. Insofar as the fourth respondent is concerned, only 9 lecturers were sanctioned, instead of 11 posts.

8.Learned counsel would further submit that after realising the continued need of 11 teachers, the fourth respondent college made a representation dated 23.09.2009 requesting the second respondent to increase the strength of lecturers from 9 to 11 to meet the workload so as to teach the students 162 hours as per norms. Since there was no response from the second respondent to increase the lecturers from 9 to 11, the petitioner filed a Writ Petition in W.P. (MD) No.3994 of 2010 seeking approval on the basis of existing work load of 162 hours and this Court, by order dated 25.03.2010, disposed of the same with a direction to the respondents 2 and 3 to consider and pass orders regarding the request for the increase of sanctioned strength of the post in the department of Mathematics from 9 to 11. Pursuant thereto, the second respondent called the fourth respondent for an enquiry on 10.08.2010 vide letter dated 03.08.2010 with regard to the increase of sanctioned strength of posts from 9 to 11 in

the department of Mathematics and the fourth respondent college in turn submitted its need for lecturers and sought for increase from 9 to 11. However, the first respondent, vide letter dated 06.03.2012, sought for certain clarifications from the second respondent to increase the sanctioned strength of lecturers from 9 to 11 posts based on work load of 162 hours. On considering the above said letters and orders, the second respondent increased the sanctioned approved posts for Mathematics from 9 to 10 vide proceedings dated 30.04.2010 and through the said order, the petitioner's post as Lecturer in Mathematics was approved with effect from 13.06.2007 and he was granted with monetary benefits.

9.He would further add that in the meanwhile, by order dated 30.04.2014, taking into account the prevailing circumstances and realizing the need for increase in the post of Mathematics Lecturers from 9 to 10, the respondents 1 to 4 have transferred the said post. Aggrieved by the same, S.R.Jasmine Levy, by way of filing W.P. No.1511 of 2015, has got an interim order dated 23.01.2015 to maintain status quo with regard to her service in M.P. No.2 of 2015. Pursuant thereto, the second respondent by order dated 25.09.2015 addressed to the third respondent to forthwith cancel the approval and sanction of the post of the petitioner and to which the third respondent had chosen to pass the above impugned order dated Nil.10.2015 cancelling the appointment of the petitioner. Aggrieved by the same, the petitioner is before this Court. When the second respondent had only directed to await the outcome of the writ petition in W.P. No.1511 of 2015, the impugned order passed by the third respondent is contrary to the direction of the second respondent and therefore, the same is liable to be quashed as the same is passed without following the principles of natural justice.

10.Reiterating the averments made in the counter affidavits filed by the respondents, the learned counsels appearing for the respondents 1 to 4 in W.P. No.35699 of 2015 would submit that the Scott Christian College, Nagercoil is a Christian Minority Aided College and administered by the Church of South India Kanyakumari Diocese and governed by the Tamil Nadu Private Colleges (Regulation) Act 1976 and certain rules have been framed and the instructions have been issued by the Higher Education Department from time to time. While so, for the academic year 1999-2000, vide proceedings dated 12.10.1999 made in D.Dis.No.42095/F4/1999 issued by the Director of Collegiate Education, the second respondent herein has fixed the college staff strength for Mathematics at 9 and Hindi at 1. However, the second respondent by proceedings dated 30.04.2014 in Na.Ka.No.12680/F2/2010 granted one additional post in Mathematics Department in lieu of one post in the Hindi

Department surrendered by the management for lack of students. Due to poor admission in the Hindi Department, the post was not filled up. Moreover, when S.R.Jasmine Levy was appointed on 20.06.2001, the said appointment order clearly states various conditions that her appointment as Lecturer of Hindi in the retirement vacancy of J.Gunamani Bright Singh is subject to the terms and conditions stipulated by the College and also the post approval of the Director of Collegiate Education, Chennai and the same further states that her salary will be drawn only when it is passed by the Joint Director of Collegiate Education, Tirunelveli and the management is not liable to pay the salary or allowance. For the aforementioned conditions, the petitioner was asked to give her willingness by signing the copy of the appointment order and the petitioner accepting the four conditions, appended her signature in the same and thereafter she was appointed.

11.Learned counsels would further submit that after the petitioner's appointment, the fourth respondent College has made repeated representations on various dates namely 05.06.2009, 22.06.2010 and 31.05.2011 to the second respondent through the third respondent with a request to approve the appointments of the lecturers made against those vacancies with all monetary benefits. However, till 2007, the respondents 2 and 3 have not considered the grant of approval and by Proceedings Na.Ka.No.26627/G3/2007 dated 18.09.2007, the second respondent has directed the Secretaries of all the Government Aided Colleges not to fill up the vacant posts in respect of minority languages like Hindi, Telugu and other in which the admission of the students below 20 for the academic years 2004-05, 2005-06, 2006-07. However, the second respondent has further directed the Joint Director of Collegiate Education not to grant approval to those category of posts, even though the said posts were sanctioned by the Director of Collegiate Education in Na.Ka.No.26627/G3/2007 dated 26.07.2007. The fourth respondent college, knowing pretty well about the sanctioned strength of the Hindi Department as very less, based on the work load in the Mathematics Department, requested the Director of Collegiate Education to grant one additional post in Mathematics Department in lieu of one post in the Hindi Department surrendered by the management for lack of students and therefore, the same has also been rightly considered by the second respondent, which cannot be questioned.

12.They would further submit that by proceedings dated 29.04.2014 the second respondent directed the third respondent to approve the appointment of P.Anto Paulin Brinto in the new post of Mathematics sanctioned additional with effect from 13.06.2007. Subsequently, S.R.Jasmine Levy has filed the above W.P. No.1511 of 2015 questioning the above proceedings and

seeking a direction to restore the post of Assistant Professor of Hindi in the fourth respondent college sanctioned by the second respondent and has obtained an order of status quo on in M.P. No.2 of 2015. Subsequently, the third respondent has granted approval of the appointment of P.Ano Paulin Brinto by sanctioning one additional post to the department of Mathematics in the fourth respondent college by proceedings dated 25.05.2015. Aggrieved by the same, S.R.Jasmine Levy has filed the above Contempt Petition No.1812 of 2015. Subsequent to the filing of the above Contempt Petition, the second respondent by proceedings dated 25.05.2015 has instructed the third respondent to cancel the order passed by him.

13.Learned counsels further submitted that although the students strength is very less, till now the petitioner has been paid with the salary and as she is going to retire on reaching the age of superannuation, the fourth respondent college has decided not to remove her from the post of Hindi Lecturer. Due to poor admission in the Hindi Department and after repeated representations made by the fourth respondent to the second respondent seeking approval of appointment of the petitioner as Lecturer in the Hindi Department and taking note of the proceedings issued by the first respondent that no approval can be granted if the students strength in a particular subjects namely Hindi, Urdu, Telugu less than 10, the fourth respondent has asked for enhancement for additional strength in lieu of the Hindi Teacher and therefore, the writ petitions filed by the petitioners are liable to be dismissed.

14.Heard both sides.

15.It is an admitted fact that S.R.Jasmine Levy was appointed as Lecturer of Hindi by order of appointment dated 19.06.2001 passed by the Correspondent cum Secretary of Scott Christian College subject to the four conditions. It is relevant to extract the above said appointment order:

'Mrs.S.R.Jasmine Levy is selected and temporarily appointed as Lecturer of Hindi in the scale of Rs.8000-275-13500 in the retirement vacancy of Mr.K.Gunamony Bright Singh with effect from 20.06.2001, with the usual allowance permissible under the rules and subject to the terms and conditions stipulated by the College, by the post approval of the Director of Collegiate Education, Chennai. Her salary will be drawn only when it is passed by the Joint Director of Collegiate Education, Tirunelveli. The Management is not liable to pay the salary or allowance.

If you agree to the above conditions you should sign a copy of this order and report to the Principal

for duty on 20.06.2001 forenoon.'

16.A cursory reading of the appointment order shows that S.R.Jasmine Levy was appointed temporarily as lecturer in the time scale of pay of 8000-275-13500 in the retirement vacancy of K.Gunamony Bright Singh with effect from 20.06.2001 with usual allowance permissible under the rules and subject to the terms and conditions stipulated by the College.

17.It is also an admitted position that she was appointed subject to aforementioned terms and conditions and appending her signature in the copy of the appointment order agreed to all the conditions and that her salary also has been paid by the College till now.

18.When the matter stands as above, the fourth respondent also sent various proposals dated 05.06.2009, 22.06.2010 and 31.05.2011 requesting the second respondent through the third respondent to grant approval of appointment of the petitioner as Lecturer in the Hindi department. The details of number of Hindi students in aided stream admitted in the Scott Christian College in the UG classes from the year 2000-2018 dated 08.12.2018, furnished by the Principal of the said College clearly discloses the fact that number of students admitted in the Hindi class was less than 10 in every year and in respect of academic years 2005-06, 2006-07, 2007-08, 2008-09, 2014-15, 2015-16, 2016-17 and 2018-19, there were only 1, 2, 3, 2, 2, 2, 1 and 5 male students respectively and in respect of academic years 2005-06, 2007-08, 2008-09, 2009-10, 2010-11, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19, there were only 3, 1, 2, 3, 3, 3, 1, 3, 1 and 2 female students respectively and no male students in the consecutive five academic years namely 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 and no female students in the academic years namely 2006-07, 2011-12, 2012-13 and 2013-14.

19.Since there was more work load in the department of Maths, the fourth respondent college has appointed one P.Anto Paulin Brinto as a Lecturer by issuing notification and inviting applications from the eligible candidates for the post of Lecturer in the Mathematics Department. Subsequently, the second respondent by proceedings dated 18.09.2007 directed all the Secretaries of Government Aided Colleges not to fill up the vacant posts in respect of minority languages like Hindi, Telugu. The second respondent has further directed the Joint Director of Collegiate Education not to grant any approval to those category of posts even though the said posts were sanctioned by the second respondent in Proceedings Na.Ka.No.26627/G3/2007 dated 26.07.2007. On receipt of the same, the fourth respondent also sent a proposal for increasing the sanctioned strength from $8 + 2 = 10$ in the department of Mathematics. Since the fourth respondent college also placed a proposal before the second respondent that the students strength

of the Hindi department is very less not even touching upon the required strength, accepting the proposal made by the fourth respondent college, the second respondent has increased the sanctioned strength from granting one additional post in exchange of post of Hindi Department surrendered by the fourth respondent college and the second respondent has accepted the proposal only due to work load in the Maths Department. Although the appointment of S.R.Jasmine Levy as Hindi Teacher (lecturer) was not approved for the reasons mentioned above, the college has been paying the salary regularly and the learned counsel for the college also undertook to pay the salary till her superannuation i.e. for another few months. Therefore, I do not find any error or infirmity in the impugned order passed by the second respondent.

20. Accordingly, W.P. Nos.19111 of 2014, 1511 of 2015 and Cont.P. No.1812 of 2015 are dismissed and the W.P. No.35699 of 2015 is allowed. No costs.

vga

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Higher Education,
Fort St. George,
Chennai-600 009.

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

3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli-627 007.

+1cc to Mr.D.Prabhu Mukunth Arunkumar, Advocate, S.R.No.88087
+2cc to Mr.N.Rajan, Advocate, S.R.No.87827,87829
+3cc to Mr.S.Bharathirajan, Advocate, S.R.No.87753
+1cc to M/s.Ajmal Associates, Advocate, S.R.No.87989

W.P. Nos.19111 of 2014 and 1511 & 35699 of 2015
and Contempt Petition No.1812 of 2015

MP (CO)
kak(10/01/2019)