

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 2225 of 2012

T.F. Abbs Fen Reji ... Appellant/Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. By its Secretary,
Higher Education,
Fort St. George,
Secretariat,
Chennai - 600 009.
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli - 627 002.
4. The Nesamony Memorial Christian College,
Rep. by its Correspondent and Secretary,
Marthandam,
Kanyakumari District.

... Respondents/Respondents

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

... Respondent

(R5 is impleaded vide court
order dated 31.01.2019)

made in MP.1/2014 in WA.2225/2012

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent,
praying to set aside the order of the Learned Judge, dated
12.08.2011 passed in W.P. No. 20508 of 2007 and direct the
Second Respondent to approve the appointment of the Appellant as

Lecturer in Chemistry in the Fourth Respondent college with effect from 03.01.2003 as per the direction of this Court issued in its order dated 20.12.2006, passed in W.P. No. 35326 of 2006.

Prayer in WP.No.20508 2007: Writ petition filed under Article 226 of the constitution of India praying to issue a Writ of Certiorarified Mandamus calling Calling for the records relating to the proceeding of the 2nd respondent vide Pa.Mu.No.44563/F2/06 culminating in his order dt 12.4.2007 quash the same and direct the 2nd respondent to approve the appointment of the petitioner as lecturer in chemistry in the 4th respondent college w.e.f. 3.1.2003 as per the direction of this Honourable court issued in its order dt 20.12.2006 passed in W.P.No.35326 of 2006.

For Appellant : Mr. R. Thiagarajan, Senior Counsel
for S. Arun Raj

For Respondents : Mr. V. Kadhirvelu,
Special Government Pleader
(Education) (for R1 to R3)

Mr. P. Godson Swaminath (for R4)

Mr. B. Vishnu Chelliya
for M/s. Ajmal Associates (for R5)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 12.08.2011 in W.P. No. 20508 of 2008 passed by Learned Judge of this Court.

2. The facts leading to the filing of the Writ Petition have been extensively captured in the order dated 12.08.2011 passed in W.P. No. 20508 of 2008 and hence, the same are not repeated in this order except with regard to the material facts relevant for the purpose of disposal of this Appeal.

3. The Appellant claims to have joined the post of Lecturer in Chemistry with effect from 03.01.2003 in the College of the Fourth Respondent, which is a private aided institution. The application made for approval of grant for engaging the services of the Appellant was rejected by the Joint Director of Collegiate Education, Tirunelveli by order Na. Ka. No. 1872/E2/2003 dated 24.03.2003, which was challenged by the Appellant in W.P. No. 34387 of 2003 before this Court. This Court by order dated 10.12.2003 allowed the Writ Petition

following the earlier orders of the Learned Judges of this Court in the decisions mentioned below:-

- (i) Order dated 09.07.2003 in W.P. Nos. 18393 and 18916 of 2003;
- (ii) Order dated 30.09.1996 in W.P. No. 6758 of 1993; and
- (iii) Order dated 01.07.2002 in W.P. No. 6639 of 2000.

In the appeal in W.A. No. 2654 of 2004 preferred against that decision, the Division Bench of this Court by order dated 13.08.2004 modified the relief granted by directing to consider the claim of the Appellant relating to the post of Lecturer in Chemistry on merits in accordance with law within a period of eight weeks based upon the students strength available on each year.

4. The Director of Collegiate Education by proceedings Na. Ka. No. 52797/F2/2003 dated 10.09.2004 held that the appointment of the Appellant had been made without prior permission by the Management of the College when there was no necessity to fill up the vacancy as per the workload for the year 2000-2001 and held that the Appellant has to only approach the Management of the College, who appointed him for his salary. The Appellant then approached this Court in W.P. No. 35326 of 2006 challenging that order and this Court by order dated 12.12.2006 held that since the dispute raised is about the existence of the actual students strength, it was necessary to find out as to whether the sanctioned strength which was in existence at the time of approval, when it was originally granted continues to be the same on the date of appointment of the Appellant and also as on that date and disposed the Writ Petition accordingly. In pursuance thereof, the Director of Collegiate Education by proceedings Pa. Mu. No. 44563/F2/2006 dated 12.04.2007 arrived at the finding that the requirement for entering into an agreement in Form 7-A as per the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976, for a valid appointment had not been carried out and the copies of the same had not been sent to the Director of Collegiate Education and the Affiliated University, which fact was confirmed by the Secretary of the College in his letter dated 03.04.2007. It was further noticed that the approval for the academic qualifications of the Appellant had not been obtained from Manonmaniam Sundaranar University, Tirunelveli, which fact was also confirmed by the Secretary of College in his letter dated 03.04.2007. Taking note of the workload of the College, it has been stated that approval had been granted for the appointment of two other persons, viz., Tmt. N.T. Niveditha and Thiru. Issac Sobanaraj, who had been appointed prior to the Appellant, with effect from 26.07.2006 and hence it would not be possible to accord approval to the appointment of the Appellant from an earlier date, i.e., 03.01.2003 and accordingly, the application for the appointment of the Appellant with effect from 03.01.2003 was rejected. The Appellant challenged that order in W.P. No. 20508 of 2007 before

this Court. After the filing of that Writ Petition, the Joint Director of Collegiate Education, Tirunelveli by proceedings Pa. Mu. No. 52312/E2/2008 dated 06.11.2008 accorded approval for the appointment of the Appellant with effect from 30.07.2007 subject to the result of the Writ Petition.

5. When the Writ Petition was taken up for final hearing before the Writ Court, the Appellant had relied on the order in Secretary to Government -vs- B. Ravichandran (Order dated 06.01.2010 in W.A. Nos. 92 and 93 of 2008) passed by the Division Bench of this Court holding that if the appointment of persons in a sanctioned post is made by way of filling up the vacancies in accordance with law, then no permission from the Director of Collegiate Education is required for filling up those vacancies and that the grant for the salary of the Lecturer appointed to that post should necessarily follow. However, the Learned Judge was not inclined to accept the said argument and held that for each time for filling up the vacancy in a post, the Management of the College has to approach the Director of Collegiate Education for granting approval as per the requirements of Rule 11(1) of the Private Colleges (Regulation) Rules, 1976, citing the rationale behind the decisions of the Hon'ble Supreme Court of India in State of Tamil Nadu -vs- Amala Annai Higher Secondary School [(2009) 9 SCC 386] and Kolawana Gram Vikas Kendra Vs. State of Gujarat [(2010) 1 SCC 133] and arrived at the following conclusion:-

"19. Therefore, it must be held that the sanctioned strength is not a static factor and it has to be appraised and approved for each academic year. A vacancy, merely because it arose out of the death, resignation or retirement, will not automatically create a right in favour of the management to fill up the post and as per Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, each time when such a contingency takes place, the authority will have to decide about the desirability of filling up the post on the basis of the then workload and also the financial constraints. That is the import of the two decisions of the Supreme Court, referred to above, and the earlier decisions of this Court did not have the benefit of the ruling of the Supreme Court."

The Learned Judge took note of the fact that the approval had been granted for the appointment of the Appellant by the Director of Collegiate Education with effect from 30.07.2007 after filing of the Writ Petition and that the Appellant has to rest content with the grant only from that date and if he had any claim for any salary for the prior period, he would have to workout his remedies only against the Management of the College in that regard. Aggrieved thereby, the Appellant has preferred this appeal

6. We have heard Mr. R. Thyagarajan, Learned Senior Counsel appearing for the Appellant, Mr. V. Kadhirvelu, Learned Special Government Pleader (Education) appearing on behalf of the First to Third Respondents, Mr. P. Godson Swaminath, Learned Counsel appearing for the Fourth Respondent, Mr. B. Vishnu Chelliya, Learned Counsel appearing for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

7. The Learned Senior Counsel appearing for the Appellant submitted that the Director of Collegiate Education had declined to accord approval to the appointment of the Appellant with effect from 03.01.2003 mainly on the ground that the appointment of two other persons, viz., Tmt. N.T. Niveditha and Thiru. Issac Sobanaraj made on 24.08.2000 and 17.06.2002 respectively, had been approved only with effect from 26.07.2006 and as such, approval could not be accorded to the appointment of the Appellant from an earlier date on 03.01.2003 and has been granted with effect from 30.07.2007. It is brought to the notice of this Court that after the order dated 12.08.2011 in W.P. No. 20508 of 2007 passed by the Learned Judge, the Government of Tamil Nadu has accorded approval for the appointment of the said Tmt. N.T. Niveditha and Thiru. Issac Sobanaraj with effect from 24.08.2000 and 17.06.2002 respectively pursuant to the order dated 14.12.2012 in W.P. No. 8197 of 2005 and the order dated 11.08.2017 in W.P. No. 8441 of 2013 passed by this Court. In view of the aforesaid subsequent developments, it is submitted by the Learned Senior Counsel appearing for the Appellant that though the Appellant could be extended the same relief by approving his appointment from 03.01.2003, the Appellant is willing to give up his claim for the monetary benefits from the State exchequer as grant for his salary for the period from 03.01.2003 to 29.07.2007 so that the financial liability of the State for that period could be avoided, but the Appellant may be granted continuity of service with other consequential benefits, viz., seniority reckoning his appointment as 03.01.2003 for the purpose of promotion, which would not cause any prejudice to the State or the other persons appointed before him and an affidavit dated 16.02.2019 to that effect has been filed by him, which is taken on record. The Learned Counsel appearing for the Fourth Respondent also agreed to restricting the relief, which would mean that the monetary liability for payment of salary of the Appellant would be fully borne by the Management of the College for that period.

8. In view of the aforesaid submissions made, the Appellant shall be entitled to continuity of service from the date of his initial appointment on 03.01.2003 with consequential seniority for the purpose of consideration for promotion in the College of

the Fourth Respondent with effect from that date without any claim for salary by way of grant from the State exchequer for the period from 03.01.2003 to 29.07.2007 including notional or actual increments in pay in consequence thereof.

9. Accordingly, the Writ Appeal is allowed in part and the order dated 12.08.2011 in W.P. No. 20508 of 2007 is modified on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vjt

To

1. Secretary to the Government of Tamil Nadu,
Higher Education,
Fort St. George,
Secretariat, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli - 627 002.
4. The Correspondent and Secretary,
The Nesamony Memorial Christian College,
Marthandam, Kanyakumari District.
5. The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli - 627 012.

+2cc to Mr.P.Godsen, Advocate, S.R.No. 15734
+1cc to Mr.Ajmal Associates, Advocate, S.R.No. 14747

W.A. No. 2225 of 2012

PM(CO)
GN(21/03/2019)