

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

WP.Nos.26259 of 2012 & 4800 of 2013
and
M.P.Nos.2 of 2012 & 2 of 2013

Cynthia Mathew ...Petitioner in both W.Ps

Vs

1. University of Madras,
Rep. by the Registrar
University Building,
Chepauk Chennai,
Tamil Nadu 600 055.

2. Loyola College,
Rep. by the Secretary
Chennai - 600 034.
Tamil Nadu

...Respondents in both W.Ps

PRAYER in W.P.No.26259 of 2012:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the relevant records relating to the withdrawal of qualification approval vide 1st respondent's letter No.A-II/PSG/Loyola/2012/731 dated 30.05.2012 and quash the same and to further quash the consequential letter No. A-11/RSN/Loyola/2012/996 dated 13.07.2012 passed by the second respondent which seeks to terminate the petitioners lectureship.

PRAYER in W.P.No.4800 of 2013:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the relevant records relating to the termination of the petitioner's Lectureship vide second respondents letter dated 26.10.2012 and quash the same and reinstate the petitioner with back wages.

For Petitioner in both W.Ps. : Mr.C.Ruban D.Silva
for Mr.Thomas T Jacob

For Respondent 1 in both W.Ps.: Mr.B.Bharath Kumar
for Mr.Stalin Abhimanyu

For Respondent 2 in both W.Ps.: Mr.P.Godson Swaminath

COMMON ORDER

W.P.No.26259 of 2012 had been filed by the writ petitioner seeking issuance of a writ of certiorarified Mandamus to quash letter No.A-II/PSG/Loyola/2012/731 dated 30.05.2012 on the file of the first respondent and letter No.A-11/RSN/Loyola/2012/996 dated 13.07.2012 on the file of the second respondent.

2. W.P.No.4800 of 2013 had been filed by the writ petitioner seeking issuance of a writ of certiorarified Mandamus to quash the letter dated 26.10.2012 on the file of the second respondent.

3. The writ petitioner and the respondents in both the writ petitions are same. The writ petitioner is challenging denial her rights over the same set of facts. The Honourable Chief Justice had ordered to club both the writ petitions together. In view of the overlapping facts in the writ petitions, both the writ petitions are disposed of by a common order.

4. The writ petitioner, Cynthia Mathew was working as a Physics Lecturer in the second respondent, Loyola College. She had completed M.Phil in physics in September 2007. As on the date of filing of W.P.No.4800 of 2013, she was pursuing her P.hd with the University of Madras. It has been informed by Mr.C.Ruban D.Silva, the learned counsel for the writ petitioner, that as on date, the writ petitioner had also completed her P.hd and had also qualified in the National Eligibility Test, which is pre-requisite for appointment as lecturer in any college. When W.P.No.26259 of 2012 was filed, she had completed only the theory papers in M.Phil course. The viva voce test was not conducted. However, she had been, on the strength of pursuing M.Phil in the second respondent college, appointed as lecturer in the physics department in the management category on contract basis for a period of two years. She was appointed in the unaided stream, in a self financing course. The letter of appointment dated 13.06.2007 also stated that she would be appointed on regular basis only on successful completion of the

stipulations mentioned therein. The petitioner claimed that she had qualified herself for appointment on regular basis. She completed her M.Phil Degree in the month of September 2007 and continued to work as temporary lecturer in the physics department in the second respondent college. Thereafter, by appointment letter dated 16.06.2010, she was appointed on regular basis as management cadre lecturer.

5. In accordance with requirements under the University Grants Commission regulations, the second respondent addressed a letter to the first respondent, University of Madras, seeking ratification and approval of the appointment. However, from 23.07.2012, she was asked to sign in an alternate register. It was informed to her by the second respondent that they had received a letter that the first respondent had withdrawn the approval and had given two months time to get approval from the first respondent failing which they would terminate her services. Unfortunately, the petitioner had not been directly addressed either by the first respondent or by the second respondent on this issue. The first respondent then passed the order dated 13.07.2012 which was impugned in W.P.No.26259 of 2012. Thereafter, the second respondent had issued a notice of termination dated 21.08.2012 which stated as follows:

"As you are aware, the University of Madras vide its letter referred above cancelled your qualification approval. It would be inappropriate to let a person continue in service in whom the qualification approval is cancelled.

You are hereby given two months grace time to bring qualification approval from the University of Madras. On failure, the college will have no option except to terminate your services."

In the said letter, the second respondent had referred to a letter of the first respondent dated 13.07.2012 in letter No.A.II/RSN/Loyola/2012/996.

6. The learned counsel for the first respondent, Mr.B.Bharathkumar, very fairly accepted that the letter dated 13.07.2012 had not been addressed to the petitioner herein. Consequent to this letter, the second respondent by letter dated 26.10.2012 terminated the service of the writ petitioner, which is impugned in W.P.No.4800 of 2013.

7. Mr.P.Godson Swaminath, learned counsel representing the second respondent stated that the second respondent is bound by the regulations of the first respondent, University of Madras and any appointment made by them has to be approved by the

University as per the guidelines of the University Grants Commission. It was stated that the writ petitioner was appointed purely on contractual basis. Even otherwise, the said appointment would have to be approved by the first respondent, University of Madras. The first respondent had addressed the following letter to the second respondent:

"I am, by direction of the Vice-Chancellor, to inform you that a representation has been received in which it has been stated that Mrs.S.Cynthia Mathew has been appointed as full-time lecturer in Physics in your College on 13.06.2007 while she was pursuing her M.Phil (Physics) Full-time in your College during the academic year between August 2006 and August 2007 which is in violation of norms of the University of Madras.

Hence, I am to request you to kindly offer your remarks on the above complaint, within a weeks time, from the date of receipt of this communication.

Please quote this communication No. and date in your reply."

8. It is very unfortunate to note that even this communication was not forwarded to the writ petitioner. She was kept completely in the dark. She was not given an opportunity to put forth her case regarding her qualification and her eligibility and suitability for functioning as lecturer in physics department in the second respondent college. The second respondent had replied to the University. Thereafter, the University had issued a further letter to the second respondent on 30.05.2012, which is extracted hereunder:

"I am to inform you that Ms.S.Cynthia has been granted approved of qualification to hold the post of Lecturer in Physics to teach the subject at UG level only with effect from 01.10.2007 i.e. after completing here M.Phil Defree. Now, it is brought to the notice of the University that Ms.S.Cynthia has been appointed in the Department of Physics with effect from 13.06.2007 while she was doing her M.Phil. degree as a full time candidate in the same department.

Hence, I am, by direction, to inform you that the approval qualification granted to her in this office letter No.A-II/PSG/Loyola/2011/1557, dated 13.01.2012 is hereby treated as cancelled and the incumbent may be informed accordingly."

9. By the said letter, the approval qualification granted to the writ petitioner was treated as cancelled and it was also stated that the writ petitioner may be informed accordingly.

10. The grievance of the writ petitioner is that she was never afforded an opportunity, before successive orders were issued and passed, directly affecting her. She was the only individual, who stood affected by these orders/letters. She was the only individual, who should have been heard, before passing any order, disqualifying her on the alleged grounds of non-eligibility and not possessing required eligibility qualification.

11. I hold that there has been serious violation of principles of natural justice on this ground. Both the first and second respondents have not taken the writ petitioner into confidence regarding the stand taken by the first respondent and have not afforded an opportunity to her to speak regarding her suitability and eligibility. Having failed to do so, I hold that the orders challenged cannot stand scrutiny. Accordingly, the writ petitions are allowed and the impugned order are set aside. Consequently connected miscellaneous petitions are closed. However, there shall be no order as to costs.

12. The respondents have to proceed further only after giving the petitioner an opportunity to represent and put forth the facts relating to her eligibility to function as lecturer in Physics Department in the second respondent College.

13. I am conscious that this court cannot turn the clock backwards. It is seen that the writ petitioner was previously appointed on contractual basis. By the impugned orders, there has been severance in the contract between the petitioner and the second respondent. Any appointment made by the second respondent has to be approved and ratified by the first respondent. The order passed in these writ petitions should not be a bar to the second respondent, if they are of the considered opinion that the petitioner has now fully qualified herself by obtaining Doctorate Degree in physics and qualified in National Eligibility Test to be appointed as lecturer in the college, they can consider her to be so appointed subject to other conditions stipulated in their rules and regulations. It is also held that if qualification which she now possesses are sufficient, then the first respondent may take a considered decision to grant approval if such approval is sought.

14. It is made clear that the petitioner should make a fresh representation to the second respondent for appointment on the basis of her present qualification and the second respondent may take a decision on such representation. The first

respondent, University of Madras may also pass appropriate orders, if the second respondent takes a decision to appoint the petitioner, on the eligibility and suitability of the writ petitioner to function as lecturer in the second respondent college.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
University of Madras,
University Building,
Chepauk Chennai, Tamil Nadu 600 055.

2. Loyola College,
Rep. by the Secretary
Chennai - 600 034, Tamil Nadu

+1cc to Mr.Stalin Abhimanyu, Advocate, S.R.No.41619

+1cc to Mr.P.Godson Swaminath, Advocate, S.R.No.41703

+1cc to Mr.Thomas T Jacob, Advocate, S.R.No.42895

WP.Nos.26259 of 2012 & 4800 of 2013

LN(CO)
CS/23/05/2019

सत्यमेव जयते

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