

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.34798 of 2019

Dr.B.Nalatha Vijilin

...Petitioner

Vs.

1. The State of Tamil Nadu
Rep by its Secretary,
Higher Education Department,
Secretariat, 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.
 4. The Correspondent Secretary,
Scott Christian College,
Nagercoil
- ...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 herein to approve the petitioner's appointment as Assistant Professor in Commerce in the 4th respondent college, in the sanctioned Retirement vacancy of Dr.D.Jacquiline Pon Mabel with effect from 25.10.2019 in the light of the order passed in W.A.No.2318 of 2011, P.Ravichandran Vs.The state of Tamil Nadu dated 11.10.2013 in S.L.P.No.887 of 2015 dated 29.01.2019 and the approval given by the Respondents to the similarly placed persons like Dr.V.Ahila & Mrs.J.Georgina vide proceedings Na.Ka.No.13023 /F2/2019 dated 23.04.2019 with monetary and all other attendant and service benefits based on the representation of the petitioner dated 11.11.2019.

For Petitioner : Mrs.A.V.Bharathi

For Respondents : Mr.V.Kadhirvel
Special Government Pleader
for R1 to R3
Mr.E.Martin Jayakumar
for R4

ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the respondents 1 to 3 to approve the appointment of the petitioner in the post of Assistant Professor in Commerce in the 4th respondent college with effect from 25.10.2019 and for all other consequential benefits.

2. The case of the petitioner is that the 4th respondent college had a sanctioned post for Assistant Professor in Commerce. The petitioner was appointed in the sanctioned post with effect from 25.10.2019. According to the petitioner, the petitioner was appointed in the place of a retirement vacancy. The 4th respondent college has also sent a proposal on 28.10.2019 to the respondents stating that the petitioner has been appointed in the sanctioned retirement vacancy and had sought for an approval. It is the further case of the petitioner that the respondents have already accorded sanction for the post and also permitted the 4th respondent college to fill up the vacant post and according to the petitioner, there are 12 sanctioned posts out of which, the petitioner has been appointed in one of the sanctioned post of Assistant Professor in Commerce.

3. The grievance of the petitioner is that the proposal is pending with the respondents and she has not even been paid her salary by the Management and therefore, left with no other alternative, the present writ petition has been filed before this Court.

4. Mrs.A.V.Bharathi, learned counsel appearing on behalf of the petitioner submitted that similarly placed Assistant Professor in English, who was appointed in the sanctioned post by the 4th respondent, approached this Court with a similar relief by filing WP No.7129 of 2017. This Court after considering the earlier order passed by this Court, directed the official respondent to consider the proposal and pass appropriate orders, within a time frame that was fixed by this Court. The learned counsel submitted that the learned Single Judge, who passed the order in the above writ petition had placed reliance upon the decision of this Court in B.Arul Ananda Ganesh and another Vs. The Secretary to Government, Education Department, State of Tamil Nadu, Fort St. George, Chennai - 9 and others. The learned counsel submitted that the petitioner is also similarly placed and the order passed by this Court will also squarely apply to the case of the petitioner also.

5. The learned counsel appearing for the Respondents submitted that the proposal that has been sent by the 4th

respondent college, will be considered in accordance with law and orders will be passed, within the time limit that may be fixed by this Court.

6. This Court has carefully considered the submissions made on either side and also the materials available on record.

7. This Court while considering a similar plea, had passed the following orders :-

4. At this juncture, it is felicitous to point out that the issue that falls for the consideration of this Court, viz., whether a minority educational institution is under an obligation to obtain prior permission before making any appointment in a sanctioned post, is no longer res integra, for, while holding sitting at the Madurai Bench, I had an occasion to deal with a batch of writ petitions in B. Arul Ananda Ganesh v. The Secretary to Government, Education Department, State of Tamil Nadu, St. Fort George, Chennai - 9, wherein too, the issue was precisely the same as in the instant case. In the said judgment, following the judgment of a Division Bench of this Court in P. Ravichandran v. State of Tamil Nadu, it was held as under:

"3. A cursory reading of the aforementioned Hon'ble Division Bench judgment in (2013) 7 MLJ 641, clearly shows that the issue raised in the present writ petitions, is no longer res integra, because, the Hon'ble Division Bench of this Court in the aforementioned judgment has also made it clear that there is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976, to seek prior permission to fill up any vacant post in an aided college, which has already been sanctioned for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules.

4. Therefore, the issues raised in the present writ petitions having been settled by this Court, I have no hesitation to accept the prayer made by the petitioners.

5. In the result, the writ petitions are disposed of with a direction to the respondents to approve the appointment of the petitioners in the fourth respondent school and to sanction grant, within a period of four weeks from the date of receipt of a

copy of this order. No costs. Consequently, connected Miscellaneous petitions are closed."

5. In the instant case, the first respondent, vide proceedings dated 12.10.1999, has already granted permission to the third respondent school to fill up vacancies that arose in the vacant post of the year 1999-2000 on or before 31.03.2000 and in the said proceedings, the number of sanctioned posts of Assistant Professors in English for the year 1999-2000 has been mentioned as 17 and the petitioner has been appointed in the 16 sanctioned post of Assistant Professor in English on 17.06.2015

6. Inasmuch as the aforesaid judgment in B. Arul Ananda Ganesh (supra) applies in all its fours to the facts of the instant case, this Court is of the considered view that the third respondent need not seek prior permission of the educational authorities to fill up the sanctioned post of Assistant Professor in English. Accordingly, this Court directs the first respondent to receive the proposal and pass appropriate orders in the light of the decision of this Court in B. Arul Ananda Ganesh (supra). Further, since the petitioner has been working from 17.06.2015 sans salary, such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

8. The above order will directly apply to the facts of the present case also. In the instant case, a sanction has already been given by the 1st respondent to fill up vacancies, as and when the vacancy arise in the sanctioned post. Therefore, there is no need for the 4th respondent college to seek prior permission of the authorities to fill up the sanctioned post. In the instant case, the sanctioned post is Assistant Professor (Botany). The law is well settled on this issue and does not require reiteration.

9. In view of the above discussion, there shall be a direction to the 2nd & 3rd respondents to act upon the proposal that has already been sent by the 4th respondent to appoint the petitioner to the post of Assistant Professor (Commerce) and pass appropriate orders, within a period of four weeks from the date of receipt of copy of this order.

10. This writ petition is disposed of with the above directions.

Sd/-
Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu
Higher Education Department,
Secretariat, 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.

+1 cc to M/s.A.V.Bharathi, Advocate Sr.No. 105140
+1 cc to The Special Government Pleader Sr.No.104754

AKM/11.03.2020/5P- 6C /

W.P.No.34798 of 2019

सत्यमेव जयते
WEB COPY