

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.07.2019

Delivered on : 22.08.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.Nos.34280 of 2018 and 153 of 2019  
and  
W.M.P.Nos.39841, 39842 of 2018 and  
9969 of 2019

S.Ginil Mon

.... Petitioner in  
W.P.No.34280 of 2018

... 4<sup>th</sup> respondent in  
W.P.No.153 of 2019

vs.

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

2.The Joint Director of Collegiate Education,  
Thirunelveli Region,  
Thirunelveli-627 001

... Respondents 1  
and 2 in both the W.Ps.

3.The Secretary,  
Scott Christian College,  
Nagercoil

... 3<sup>rd</sup> respondent in  
W.P.No.153 of 2019

4.The Administrative Secretary,  
The C.S.I.Kanyakumari Diocese,  
No.71-A, Dennis Street,  
Nagercoil-625 001  
Kanyakumari District.

5.The Diocesan Employment Bureau,  
The C.S.I.Kanyakumari Diocese,  
No.71-A, Dennis Street,  
Nagercoil-625 001  
Kanyakumari District.

6.The Secretary-cum-Correspondent,  
Scott Christian College,  
Nagercoil-629 003  
Kanyakumari District

7.The Secretary-cum-Correspondent,  
Nesamony Memorial Christian College,  
Marthandam-629 165  
Kanyakumari District.

... Respondents 3 to 6  
in W.P.No.34280 of 2018

8.Dr.G.R.Bella,  
Assistant Professor(Chemistry),  
Nesamony Memorial Christian College,  
Marthandam-629 165,  
Kanyakumar District

... 7<sup>th</sup> Respondent in  
W.P.No.34280 of 2018  
.... Petitioner in  
W.P.No.153 of 2019

Prayer in W.P.No.34280 of 2018: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 3<sup>rd</sup> respondent herein dated 13.11.2018 in so far transferring the 7<sup>th</sup> respondent from 6<sup>th</sup> respondent college and appointing her in the 5<sup>th</sup> respondent college in the retirement vacancy of Dr.M.Rashi, who retired on 31.05.2018 and direct the respondents 1 to 4 herein to appoint and approve the petitioner as Assistant Professor(Chemistry) in the 5<sup>th</sup> respondent college in the retirement vacancy of Dr.M.Rashi.

Prayer in W.P.No.153 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the first and second respondents herein to approve the petitioner's appointment as Assistant Professor in Chemistry in the 3<sup>rd</sup> respondent College, in the sanctioned retirement vacancy of Dr.M.Rashi, with effect from 14.11.2018 in the light of the order in W.A.No.2318 of 2011, P.Ravichandran vs. The State of Tamil Nadu dated 11.10.2013 and the approval given by the 1<sup>st</sup> respondent to the similarly placed person Dr.Avvai M.S.Vijaya vide proceedings Mu.Mu.No.44350/F2/2017 dated

02.04.2018 with monetary and all other attendant and service benefits based on the representation of the petitioner dated 28.11.2018.

For Petitioners .. Mr.G.Venkatesh  
in W.P.No.34280 of 2018  
Mr.C.R.Rose Radhi Jijo  
in W.P.No.153 of 2019

For Respondents .. Mr.V.Kathirvelu, Spl.G.P.  
For R1 and R2 in both W.Ps.  
Mr.L.Chandrakumar  
for R4 to R6 in W.P.No.34280/18  
Mrs.A.V.Bharathi for R7  
in W.P.No.34280 of 2018

For R3 in W.P.No.34280 of 2018-  
No appearance.

#### COMMON ORDER

The petitioner in W.P.No.34280 of 2018 was appointed as an Assistant Professor (Chemistry) in the sixth respondent college, vide appointment letter dated 09.11.2010, with effect from 01.12.2010 to 31.03.2012, in a leave vacancy. According to him, he was appointed after regular selection from the merit list by interview. According to the petitioner, his appointment was also ratified by the Governing Board in its Resolution dated 17.10.2012. The petitioner completed his Ph.D on 25.03.2013. The petitioner was treated as a staff belonging to self finance category in the Chemistry Department. His appointment was also confirmed on 31.03.2013.

2. According to the petitioner, regular vacancy had arisen in 2014. Although the petitioner was eligible for being considered and posted against regular vacancy, he was over looked and was not appointed. While so, the 7<sup>th</sup> respondent was appointed as an Assistant Professor (Chemistry), in the same year 2010, in the 6<sup>th</sup> respondent college and she had completed her Ph.D only in the year 2017. According to the petitioner, the 7<sup>th</sup> respondent became eligible for appointment in the aided post as Assistant Professor only in 2017. In 2018, a vacancy had arisen in the post of Assistant Professor, Chemistry Department and the vacancy was notified by the 4<sup>th</sup> respondent on 15.10.2018. As the petitioner was senior most person

available for appointment against regular aided vacancy, he was expecting to be appointed in that vacancy. However, the third respondent passed a resolution on 13.11.2018, wherein it was resolved to transfer the 7<sup>th</sup> respondent from the 6<sup>th</sup> respondent college to the 5<sup>th</sup> respondent institution in the regular vacancy caused due to retirement of one Dr.M.Rashi. According to the petitioner, the appointment of the 7<sup>th</sup> respondent in the regular aided vacancy, vide order dated 13.11.2018 was illegal and mala fide, since she was much junior to the petitioner, having obtained her Ph.D only in 2017, whereas the petitioner had qualified Ph.D in 2013 itself. Therefore, the petitioner is before this Court challenging the appointment of the 7<sup>th</sup> respondent as Assistant Professor (Chemistry) in the 5<sup>th</sup> respondent college.

3.After notice, Mr.L.Chandrakumar, learned counsel entered appearance for the college management, Mrs.A.V.Bharathi, learned counsel entered appearance for the 7<sup>th</sup> respondent and Mr.V.Kadhirvelu, learned Special Government Pleader entered appearance for the respondents 1 & 2. Respective counter affidavits have been filed in the matter.

4.The learned counsel for the petitioner Mr.G.Venkatesh would submit that the petitioner is fully qualified to be appointed as Assistant Professor (Chemistry) in the 5<sup>th</sup> respondent college against the regular vacancy, as he had obtained his Ph.D qualification in 2013 itself. Although, he was eligible to be appointed in 2014 itself when an vacancy arose in that year, he was over looked and yet he was awaiting his regular appointment in 2018, when a vacancy caused due to retirement of the then incumbent Dr.M.Rashi. But unfortunately, the college management has posted the 7<sup>th</sup> respondent, who is far junior to the petitioner, without any justification. According to the report, dated 18.08.2015, submitted before the Administrative Committee of the Diocese, which runs the 5<sup>th</sup> respondent institution, the seniority shall be reckoned from the date of obtaining the eligible qualification for the aided post. In this case, Ph.D being the qualification and if such qualification was reckoned for the purpose of seniority, the petitioner ought to have been preferred and appointed, as he had obtained his Ph.D in 2013 itself as against the 7<sup>th</sup> respondent, who has secured her Ph.D only in 2017. When both the petitioner and 7<sup>th</sup> respondent were working against non regular posts and when a regular vacancy had arisen, the senior person ought to have been preferred, but unfortunately, the Diocese has preferred to appoint the 7<sup>th</sup> respondent, by overlooking the just claim of

the petitioner herein. Therefore, the learned counsel would submit that the order appointing the seventh respondent by the impugned resolution is liable to be interfered with.

5.Per contra, the learned counsel appearing for the respondents 4 to 6 would submit that on 11.06.2010, a regular selection was held for appointment to the post of Assistant Professor in the institutions governed by the Diocese and one Mr.D.F.Sheeba was placed first, followed by the 7<sup>th</sup> respondent in the order of merit and the petitioner was not found suitable on merits, which according to the counsel, was evident from the publication of the merit list of the candidates dated 11.06.2010.

6.According to the respondents 4 to 6, the petitioner was appointed from 01.12.2010 to 31.03.2012 against a leave vacancy, which fact is admitted by the petitioner himself in his affidavit filed in support of the writ petition. However, the 7<sup>th</sup> respondent was appointed on 16.07.2010 against self finance vacancy, which was regular and therefore, the petitioner cannot claim seniority over the 7<sup>th</sup> respondent. As regards the seniority to be fixed on the basis of the date of acquiring eligible qualification for the aided post, the learned counsel would submit that the report, dated 18.08.2015, submitted to the Administrative Committee of the Diocese, which was relied on by the learned counsel for the petitioner, was not in force at the time when regular appointments were made in 2018. In this regard, the learned counsel would draw the attention of this Court to an amendment to the Diocesan Employment Bureau norms, which reads as under:

"K.K.6399 Amendment of Diocesan Employment Bureau norms:

K.K.6306. The Convener, Diocesan Employment Bureau, read out the relevant portion, from the norms already approved by the Administrative Committee, in its meeting held on 05.12.2015, i.e., the amended clause (iv) of K.K.No.4985 (3) I Para 3.

After discussion, it was resolved to amend clause (iv) of K.k.No.4985 (3) I Para 3, by deleting the last sentence "the seniority shall be reckoned from the date of obtaining the eligible qualification for the said aided post" and incorporate the following in its place "on the basis of service seniority in the colleges under the Kanyakumari Diocese as on the date when the

aided vacancy accrued shall be considered among the qualified staff for absorption into the aided stream"

7. According to the learned counsel for R4 to R6, the appointment shall be done on the basis of service seniority in the colleges under the Diocese and in the service seniority, as per the Diocesan Employment Bureau, the 7<sup>th</sup> respondent is senior to the petitioner.

8. In this regard, the learned counsel would clarify that like Employment Exchange as far as the Kanyakumari Diocese is concerned, it has a Diocesan Employment Bureau, who is the fourth respondent herein. On the basis of the date of registration in the Bureau, the seniority will be drawn and admittedly the 7<sup>th</sup> respondent was registered with the Diocesan Employment Bureau much earlier and in fact the petitioner has not registered his name at all in the Bureau. Therefore, under any count, the petitioner cannot seek preference to the 7<sup>th</sup> respondent both in terms of seniority as well as merits.

9. In fact, in respect of merit list drawn by the Diocese, at the time of the first selection, held on 11.06.2010, the learned counsel for R4 to R6 would draw the attention of this Court to the documents filed in the typed set of papers, which would go show that the 7<sup>th</sup> respondent's name figured at Sl.No.2 as against the petitioner's name at Sl.No.10. In any case, the learned counsel would submit that the petitioner was not found suitable on merits by the Diocese. The learned counsel would add that the acquisition of Ph.D. qualification earlier does not give the petitioner an edge over other candidates, when the Diocese found, at the time of regular employment against aided vacancy in 2018, the 7<sup>th</sup> respondent had the necessary qualification, viz., Ph.D. When the 7<sup>th</sup> respondent and the petitioner participated in the selection and inter se merit was in favour of the 7<sup>th</sup> respondent, plus the seniority of the 7<sup>th</sup> respondent over the petitioner, the choice fell on the 7<sup>th</sup> respondent, though she was ranked No.2, the first ranked person Ms.D.F.Sheeba did not choose to join in 2010 on the ground that her appointment at that time was against self finance vacancy. Moreover, it is not open to the petitioner to claim the service benefit from 2010, since from 2010-2012, he had only worked in a leave vacancy, which cannot be compared to the service rendered by the 7<sup>th</sup> respondent in a regular self finance vacancy.

10. On behalf of the 7<sup>th</sup> respondent, Mrs. A.V. Bharathi, learned counsel appeared and a separate counter affidavit has been filed.

11. The learned counsel for the 7<sup>th</sup> respondent would submit that the 7<sup>th</sup> respondent was appointed on 16.07.2010 in a regular self finance vacancy, whereas the petitioner was appointed admittedly against the leave vacancy. Therefore, the petitioner cannot claim seniority over the 7<sup>th</sup> respondent. At the time when the selection took place in 2010, the 7<sup>th</sup> respondent had essential qualification, viz., M.Sc, B.Ed & M.Phil and on the basis of her merit, she came to be appointed and joined duty on 16.07.2010, in pursuance of her selection on 11.06.2010. Moreover, the learned counsel would submit that in the regular selection conducted by the Diocese, the 7<sup>th</sup> respondent found to be more meritorious and therefore, she was selected for appointment against the regular aided vacancy, in 2018. Unfortunately, the petitioner, under an mistaken impression, is claiming seniority over the 7<sup>th</sup> respondent as if his appointment in 2010 was regular. The learned counsel would reiterate that the petitioner's appointment in 2010 was against the leave vacancy for a period of two years and such appointment was not regular in any respect, which could be counted towards seniority. She would also support the submission made on behalf of the Diocese Counsel that the fact of the petitioner acquiring Ph.D qualification before the 7<sup>th</sup> respondent, does not give him any vested right to be considered for regular appointment in aided vacancy, notwithstanding the inter se merit assessed by the Diocesan Council. Moreover, even though going by the Registration in the Diocesan Employment Bureau, the 7<sup>th</sup> respondent is senior, in the absence of registration of the petitioner and in all counts, the claim of the petitioner, vis-a-vis, the claim of the 7<sup>th</sup> respondent is unsustainable and therefore, the writ petition No.34280 of 2018 is without merits and liable to be dismissed.

12. Heard the learned counsels appearing for the parties and perused the materials and pleadings placed on record.

13. The issue before this Court is as to whether the claim of the petitioner in W.P.No.34280 of 2018 in regard to his objection to the appointment of the 7<sup>th</sup> respondent as Assistant Professor (Chemistry) in the 5<sup>th</sup> respondent College is tenable or not, in the light of the facts as disclosed in the pleadings and also materials filed in support of the respective claims of the parties.

14. Admittedly, the petitioner in W.P.No.34280 of 2018 was appointed in 2010 only in the leave vacancy. In fact, the said fact has been disclosed by the petitioner himself in the affidavit filed in support of the writ petition. Therefore, the appointment between 2010 and 2012 of the petitioner cannot be reckoned for the purpose of claiming any seniority by the petitioner. When the selection was held on 11.06.2010 by the diocese, the 7<sup>th</sup> respondent was found to be meritorious and suitable as against the claim of the petitioner herein. Moreover, the 7<sup>th</sup> respondent was appointed against a regular self-finance vacancy in 2010 and her seniority has been reckoned from the date of service seniority. In fact, the learned counsel for the diocese would draw the attention of this Court to the merit list prepared by the diocese, dated 11.06.2010, in which, the 7<sup>th</sup> respondent's name was shown against No.2 position as against the petitioner at No.10 position. Therefore, the contention put forth on behalf of the petitioner that he was senior to the 7<sup>th</sup> respondent is not factually established before this Court.

15. Further as contended by the learned counsel appearing for the diocese, Respondents 4 to 6 herein, the 7<sup>th</sup> respondent is senior on the date of registration of her name in the Diocesan Employment Bureau, which is like local Employment Exchange, as far as appointments to the various institutions governed under the 3<sup>rd</sup> respondent Church of South India, Kanyakumari Diocese. In fact, it is mentioned that the petitioner was not registered in the Bureau at all. Therefore, on this count also the petitioner's claim as against the 7<sup>th</sup> respondent appears to be unacceptable.

16. The principal contention raised on behalf of the petitioner was that the petitioner acquired his Ph.D., qualification in 2013 as against the 7<sup>th</sup> respondent in 2017 and therefore, by virtue of his acquiring qualification before the 7<sup>th</sup> respondent, he became senior to the 7<sup>th</sup> respondent, is also answered by the diocese, wherein, the amendment was brought in on 05.12.2015, which amendment was also extracted supra.

17. According to the amended regulations of the Diocesan Employment Bureau, the date of obtaining eligible qualification as the basis for seniority has been replaced by Service Seniority. As far as the Service Seniority is concerned, the 7<sup>th</sup> respondent having been appointed on 16.07.2010 against self-finance college and on the basis of regular selection, naturally she ranks senior to the petitioner. On the other hand, the petitioner, who was found to be wanting of merit, was only accommodated against

leave vacancy between 2010-12. When service seniority is the basis for consideration for appointment, the acquisition of Ph.D., qualification becomes insignificant while the present inter se claim is concerned, as against the petitioner and the 7<sup>th</sup> respondent.

18. Moreover, in the counter affidavit filed on behalf of the 4<sup>th</sup> to 6<sup>th</sup> respondents, it is clearly averred that the petitioner was not found suitable on merits when a selection was involved in the appointment of Assistant Professor in the 5<sup>th</sup> respondent College. Unless a person is found to be suitable on merits, no right vested in the petitioner to stake any claim in the absence of any merit, as against the assessment of merit of the 7<sup>th</sup> respondent. In fact, the petitioner has not alleged any mala fides against the diocese in any specific terms in the matter of subject selection. That being the case, the Court has to necessarily come to the conclusion that the selection and appointment of the 7<sup>th</sup> respondent in terms of her qualification, seniority and merit is perfectly in order. On the other hand, the claim of the petitioner that he was senior to the 7<sup>th</sup> respondent was not supported by any materials.

19. As regard the inter se merit is concerned, the selection committee, viz., the diocese has assessed the merit and this Court cannot sit in judgment over such assessment. Further, the 7<sup>th</sup> respondent was registered in the 4<sup>th</sup> Respondent Employment Bureau and the third respondent diocese, as a matter of practice, makes appointment only from the candidates who registered in the Bureau. When such is the practice, this Court is unable to see anything amiss with the selection and appointment of the 7<sup>th</sup> respondent.

20. As rightly contended by the learned counsel for the respondents 4 to 6, merely holding a Ph.D., degree and obtaining the same ahead of the 7<sup>th</sup> respondent does not give the petitioner any edge over the 7<sup>th</sup> respondent, when all other factors are in favour of the 7<sup>th</sup> respondent. Therefore, the entire premise on which W.P.No.34280 of 2018 has been filed is invalid and the same is without any legal or factual basis.

21. For the above said reasons, this Court is unable to find any merit in W.P.No.34280 of 2018 and accordingly, the same is dismissed. The interim order already granted by this Court shall stand vacated. Connected miscellaneous petitions are dismissed. No costs.

22.In view of the dismissal of W.P.No.34280 of 2018, the other writ petition in W.P.No.153 of 2019, filed by the 7<sup>th</sup> respondent in W.P.No.34280 of 2018, claiming for grant of approval by the Educational authority for the subject appointment is allowed as prayed for. No costs.

mrm/msk

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

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

2.The Joint Director of Collegiate Education,  
Thirunelveli Region,  
Thirunelveli-627 001

+2ccs to Mr.G.Venkatesh, Advocate SR.No. 71725  
+1cc to M/s.A.V.Bharathi , Advocate SR.No. 72066

W.P.Nos.34280 of 2018  
153 of 2019

A.SK(04/09/2019)