



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)Nos.14870 of 2016 and 14946 of 2018

and

W.M.P. (MD)Nos.10984 of 2016, 13511, 13512, 17038 of 2018, 13 and 18412 of 2019

Madhankumar ... Petitioner in W.P. (MD)No.14870 of 2016
G.J.Leema Rose ... Petitioner in W.P. (MD)No.14946 of 2018

-Vs-

1.The Commissioner,
Department of Arts and Culture,
Tamil Valarchi Valagam,
Halls Road, Chennai-1.

2.The Registrar,
Bharathidasan University,
Trichy.

3.The Secretary,
Kalai Kaviri College of Fine Arts,
Government Aided College,
18, Benwells Road, Trichy.

... Respondents
in W.P. (MD)No.14870 of 2016

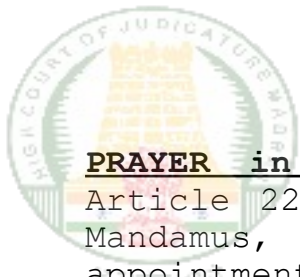
1.The Commissioner,
Department of Arts and Culture,
Tamil Development Complex,
Egmore, Chennai-600 008.

2.The Regional Joint Director of Collegiate Education,
Trichy Road,
No.7, Race Course Road,
Trichy-625 020.

3.Kalai Kaviri College of Fine Arts,
Represented by its Secretary,
No.18, Benwells Road, Trichy-1.

... Respondents
in W.P. (MD)No.14946 of 2018

PRAYER in W.P. (MD)No.14870 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the first respondent to approve the petitioner's appointment for the post of Assistant Professor in Classical Dance (Bharatha Natyam) in the college of the third respondent.



PRAYER in W.P.(MD)No.14946 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents herein to approve the appointment of the petitioner as Assistant Professor in Dance (Bharathanattiyam) from 20.09.2016 as per the proposal sent by the third respondent dated 27.09.2016 with all monetary, attendant and service benefits.

For Petitioner : Mr.V.Meenakshi Sundaram,
(in W.P.(MD)No.14870 of 2016) For Mr.RM.Sivakumar
For Petitioner : Mr.Veerakathiravan,
(in W.P.(MD)No.14946 of 2018) Senior Counsel,
For M/s.Veera Associates.
For R1 : Mr.V.R.Shanmuganathan,
(in both Writ Petitions)Special Government Pleader.
For R3 : Mr.Isaac Mohanlal,
(in both Writ Petitions)Senior Counsel,
For Mr.T.Cibi Chakraborty

COMMON ORDER

W.P.(MD)No.14870 of 2016

This Writ Petition is filed to direct the first respondent to approve the petitioner's appointment for the post of Assistant Professor in Classical Dance (Bharatha Natyam) in the college of the third respondent.

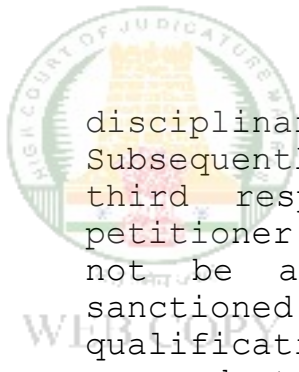
2.According to the petitioner, he is fully qualified to be appointed as Assistant Professor. He joined as Lecturer in the third respondent College in Classical Dance Department on 27.12.2004 under the management quota. His educational qualifications were approved by the second respondent. While so, in the year 2009, 8 vacancies in the post of Assistant Professor arose in the third respondent College. A paper publication was effected on 30.12.2009. The petitioner has applied for the post of Assistant Professor. After following the due process of selection, the petitioner was selected by the Selection Committee constituted by the second respondent. The third respondent has appointed the petitioner on 01.07.2010, subject to the approval of the qualification by the second respondent and the approval by the first respondent. Meanwhile, the Tamil Nadu Government has constituted a separate University for Music and Fine Arts at Chennai by the Government Order in G.O.Ms.338, dated 14.11.2013. Therefore, the approval of the educational qualifications was redirected from the second respondent to the University of Music and Fine Arts at Chennai. The Registrar of the said University has also approved the educational qualification of the petitioner to the post of Assistant Professor in Classical Dance (Bharatha Natyam) in Government Aided Quota of the third respondent College on 25.08.2015.



3.While so, the Secretary of the third respondent College called the petitioner, persuaded him to resign his post on the ground that various complaints were received against the petitioner. When the petitioner hesitated, the third respondent has intimidated the petitioner that there are some complaints against him and asked him to tender his resignation letter to put an end to all the complaints. The third respondent has assured the petitioner that he is resigning the post only under management quota and the third respondent would recommend his appointment order under Government aided quota. Believing the said assurance, the petitioner has resigned his post on 11.01.2016. The third respondent has also forced the two other Assistant Professors to resign their posts and on the agitation, the said resignation letters were not accepted by the third respondent. The third respondent, subsequently, recommended the first respondent for approval of other two Assistant Professors and the same was approved by the first respondent. The first respondent, by the order dated 15.02.2016, called upon the third respondent to furnish details of disciplinary proceedings initiated against the petitioner. The third respondent, by the letter dated 11.03.2016, has informed the first respondent that the petitioner has resigned the post on 11.01.2016 and his appointment need not be approved.

4.The learned counsel appearing for the petitioner contended that even if the resignation of the petitioner is voluntary, the petitioner has not resigned the post of Assistant Professor under Government quota. The appointment of the petitioner dated 01.07.2010 under Government quota was subject to the approval by the first respondent. The first respondent has yet to approve the appointment of the petitioner. Till the approval by the first respondent, the question of resigning the post in Government quota does not arise. The petitioner has sent a representation to the first respondent on 11.06.2016. It is the mandatory duty on the part of the first respondent to conduct an enquiry and hear the petitioner and the third respondent. However, the first respondent has failed to conduct an enquiry on the representation of the petitioner dated 11.06.2016 and therefore, prayed for approval of the appointment of the petitioner in the third respondent College.

5.The first respondent has filed counter affidavit and denied all the averments made in the affidavit. The learned Special Government Pleader appearing for the first respondent contended that the petitioner was appointed by the third respondent on 01.07.2010, after due process of selection as Assistant Professor in the sanctioned post under the Government aided quota. As per the appointment order, the petitioner is entitled to salary as per UGC norms. He was paid Rs.15,600-39,100 with a Grade Pay of Rs.6000 plus usual allowances. The appointment is subject to approval by the first respondent. While the approval was under consideration, the third respondent has informed the first respondent that



disciplinary proceedings are pending against the petitioner. Subsequently, in response to the first respondent's letter, the third respondent has informed the first respondent that the petitioner resigned the post on 11.01.2016 and his appointment need not be approved. The petitioner was appointed against the sanctioned post by the Government, subject to the approval of the qualification by the second respondent and approval by the first respondent. The appointment order reveals that the petitioner will be on probation for two years within a continuous period of three years. Further, the petitioner has not given any representation to cancel his resignation and therefore, he prayed for dismissal of the Writ Petition.

6.The third respondent has filed counter affidavit and denied the averments made in the affidavit. The learned counsel appearing for the third respondent contended that the petitioner was not intimidated to resign the post, in view of various complaints received against him. The petitioner himself has voluntarily resigned his post on 11.01.2016. The said resignation letter was placed before the College Committee and the same was accepted only on 10.02.2016, after one month of his resignation. If really, the third respondent intimidated the petitioner, the resignation letter would have been accepted immediately. On the other hand, the same was placed before the College Committee and was accepted after one month of resignation. The petitioner has received entire terminal benefits without any protest. The petitioner has also received all his original certificates submitted at the time of his appointment. The third respondent did not inform the petitioner that he is resigning the post only under management quota and will recommend for his approval for appointment under Government quota. Only as an afterthought, the petitioner has come out with a plea that the third respondent has forced him to resign his post.

7.Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the first respondent, the learned Senior Counsel appearing for the third respondent and perused the materials available on record carefully.

8.The contention of the petitioner is that by intimidation, he was forced to resign his post as Assistant Professor. According to the petitioner, he has resigned the post, holding by him under management quota and not under Government quota. The contentions are contrary to the facts.

9.From the materials on record, it is seen that the petitioner was initially appointed on 27.12.2004 in the third respondent College. Subsequently, when the first respondent has issued a notification on 02.12.2009, the petitioner has applied and participated in the selection process and after successful, he was appointed as Assistant Professor on 01.07.2010 in the sanctioned



post with UGC scale of pay under the Government aided quota. The appointment order dated 01.07.2010 is clearly reveals that his appointment is against the sanctioned post, subject to the approval of the qualification by the second respondent University and approval of appointment by the first respondent. Once the petitioner is appointed in a sanctioned post, the contention of the petitioner that he resigned the post only under management quota is not correct. After the petitioner has resigned his post on 11.01.2016 and the same is being approved by the third respondent on 10.02.2016, the petitioner has received all the terminal benefits and his original certificates. It is not the case of the petitioner that he has received terminal benefits and certificates without prejudice to his appointment in a sanctioned post. Further, till June, 2016, the petitioner has not taken any steps, alleging that his resignation is not voluntary and for cancellation of his resignation. The first respondent has considered the above materials and has not approved the appointment of the petitioner. The petitioner, except making allegation against the third respondent that he was intimidated to resign, has not placed any materials to substantiate the same.

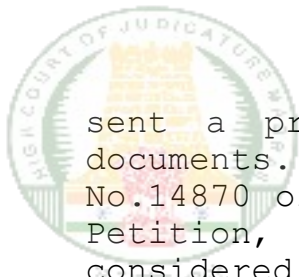
10. For the above reason, the petitioner is not entitled for approval of his appointment. In the result, W.P.(MD)No.14870 of 2016 stands dismissed.

W.P.(MD)No.14946 of 2018

11. This Writ Petition is filed to direct the respondents to approve the appointment of the petitioner as Assistant Professor in Dance (Bharatha Natyam) from 20.09.2016 as per the proposal sent by the third respondent dated 27.09.2016 with all monetary, attendant and service benefits.

12. The petitioner was appointed as Assistant Professor in a vacancy arose on resignation of Madhankumar / petitioner in W.P.(MD) No.14870 of 2016. According to the petitioner, she is fully qualified to be appointed as Assistant Professor and she has experience in teaching faculty. She was appointed as Assistant Professor in the third respondent College with effect from 20.09.2016. The third respondent has sent a proposal for approval of the appointment of the petitioner on 27.09.2016. The first respondent has not approved the appointment of the petitioner only on the ground that W.P.(MD)No.14870 of 2016 filed by Madhankumar, seeking approval of his appointment, is pending.

13. The first respondent has filed counter affidavit and the learned Special Government Pleader appearing for the first respondent contended that the petitioner was appointed in the vacancy arose on the resignation of Madhankumar, who is the petitioner in W.P.(MD)No.14870 of 2016. The third respondent has



sent a proposal for approval of the petitioner, enclosing the documents. Meanwhile, the said Madhankumar has filed W.P.(MD) No.14870 of 2016 for approval of his appointment. Pending the Writ Petition, the proposal for approval of the petitioner was not considered.

14. From the materials on record, it is seen that the first respondent has kept the proposal in abeyance on the ground that W.P. (MD)No.14870 of 2016 filed by Madhankumar is pending. In view of the dismissal order passed in W.P.(MD)No.14870 of 2016, W.P.(MD) No.14946 of 2018 stands disposed of, directing the first respondent to approve the appointment of the petitioner / G.J.Leema Rose as Assistant Professor and grant approval, if the petitioner is otherwise eligible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

Myr

To

The Commissioner,
Department of Arts and Culture,
Tamil Valarchi Valagam,
Halls Road, Chennai-1.

+2 CC to Mr.RM.SIVAKUMAR, Advocate (SR-93899,94170[F] dated 23/10/2019)
+2CC to M/s.ISAAC CHAMBERS, Advocate (SR-93959,93963[F] dated 23/10/2019)
+1 CC to SPL GP (SR-94087[F] dated 23/10/2019)
+1CC TO M/s. Veera Associates, SR.No.93867

W.P. (MD) Nos.14870 of 2016
and 14946 of 2018
22.10.2019

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