

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.02.2020
CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.3996 of 2020

L.Charlet Bhami

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,
Nesamony Memorial Christian College,
Marthandam.
- Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to approve the petitioner's appointment as Assistant Professor in Zoology in the 4th respondent College, in the sanctioned retirement vacancy of Dr.D.Malar with effect from 29.10.2019 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 SLP No.887 of 2015 dated 29.01.2019 and the approval given by the Respondents to the similarly placed persons like Dr.W.Shiney Sarah Lionel & 3 others vide proceedings Na.Ka.No.15202/F2/2019 dated 30.04.2019 with monetary and all other attendant and service benefits based on the representation of the petitioner dated 11.11.2019.

For Petitioner : M/s.A.V.Bharathi
For Respondents : Mr.Akhil Akbar Ali
Government Advocate for R1 to R3

Mr.E.Martin Jeyakumar for R4

O R D E R

This writ petition has been filed for issuance of a writ of mandamus directing the respondents 1 to 3 to approve the appointment of the petitioner as an Assistant Professor in Zoology in the 4th respondent College.

2.The case of the petitioner is that there is a sanctioned post of Assistant Professor in Zoology in the 4th respondent College and there was a vacancy due to the retirement of the incumbent. The petitioner was appointed in the said sanctioned post on 29.10.2019. Thereafter, proposals were sent by the 4th respondent to the respondents 1 to 3 seeking for approval of the appointment. Since, no approval was granted till date and the same is pending, the present writ petition has been filed before this Court.

3.Heard M/s.A.V.Bharathi, learned counsel appearing on behalf of the petitioner, Mr.Akhil Akbar Ali, learned Government Advocate appearing on behalf of the respondents 1 to 3 and Mr.E.Martin Jeyakumar, learned Counsel appearing on behalf of the 4th respondent.

4.The issue that has been raised in the present writ petitioner is squarely covered by the judgment of this Court in W.P.No.34797 of 2019, dated 16.12.2019. The relevant portions are extracted hereunder:

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 (Commerce). 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 (Botany) and pass appropriate orders, within a period of four weeks from the date of receipt of copy of this order.

5. In the instant case, the post is already sanctioned and therefore, there is no requirement for the 4th respondent to seek for prior permission from the authorities to fill up the sanctioned post. Permission is required only after the appointment is made towards sanctioned post. The 4th respondent has already forwarded the proposal to the respondents and the same is pending till date.

6. In view of the above, there shall be a direction to the 2nd and 3rd respondents to consider the proposal that has been forwarded by the 4th respondent College and grant sanction for the appointment of the petitioner to the post of Assistant Professor in Zoology, if the petitioner is otherwise qualified and appropriate orders shall be passed within a period of four weeks from the date of receipt of copy of this order.

7. This writ petition is disposed of with the above directions. No Costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The 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.

+1 cc to Government Pleader Sr.No. 15139

W.P No.3996 of 2020

A.SK(17/03/2020)



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