

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.20059 & 20060 of 2014

1. R.Ramesh ..Petitioner in W.P.No. 20059 of 2014
2. A.Dharmendra Kumar ..Petitioner in W.P.No. 20060 of 2014

-Vs-

1. Government of Tamilnadu
rep. by its Secretary,
Department of Higher Education,
Fort St. George, Chennai-600009.

2. The Director of Collegiate Education,
E.V.K. Sampath Maligai,
College Road, Chennai-600006.

3. The Joint Director of Collegiate Education,
Chennai Region,
Chennai - 600 015.

4. A.M.Jain College,
rep by its Secretary,
Meenambakkam,
Chennai - 600 114.

... Respondents in both WPs

PRAYER in W.P.No. 20059 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to proceedings in Na.Ka. No. 9837/ U1/2008 dated 16.10.2012 issued by the 3rd respondent and quash the same in so far as rejection of approval from 13.1.1995 to 19.8.2007 is concerned and direct the 3rd respondent to grant approval from the initial date of appointment namely 13.1.1995 onwards with all attendant benefits.

PRAYER in W.P.No. 20060 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records

pertaining to proceedings in Na.Ka. No. 9837/ U1/2008 dated 16.10.2012 issued by the 3rd respondent and quash the same in so far as rejection of approval from 29.04.1994 to 19.8.2007 is concerned and direct the 3rd respondent to grant approval from the initial date of appointment namely 29.04.1994 with all attendant benefits.

For Petitioner :: M/s. R.Subramanian

For Respondents :: Mr. Karthikai Balan, GA - R1 to R3
Mr. R. Mahesh - R4

COMMON ORDER

The prayer sought for in these writ petitions is to call for the records pertaining to proceedings in Na.Ka. No. 9837/ U1/2008 dated 16.10.2012 issued by the 3rd respondent and quash the same in so far as rejection approval and direct the 3rd respondent to grant approval from the initial date of appointment of the petitioners with all attendant benefits.

2. The case of the petitioner in W.P. No. 20059 of 2014 is as follows:

The writ petitioner was appointed as Laboratory Assistant by the 4th respondent on 10.01.1995 in a regular vacancy. The proposal for appointing the petitioner was sent to the 3rd respondent by the 4th respondent on 04.08.1995 . The said proposal was returned vide proceedings in Na.Ka.No. 4191/A2/06, dated 17.09.1996 stating that prior approval of the competent authority is to be obtained for making direct appointment overlooking promotion from lower cadre. The 4th respondent college has sent a reply dated 09.01.1997 explaining that the 4th respondent college is run by S.S. Educational Society, which is religious minority institution, but there was no progress. The petitioner has been continuously working in the college as Lab Assistant. In view of ban on appointments by the 1st respondent, there was no progress on the part of the respondent department till 2006 for approval of the writ petitioner's appointment. In the meantime, the 4th respondent had given fresh appointment order dated 20.08.2007 appointing the writ petitioner as Lab Assistant . Further contention of the petitioner is that he was reluctant to accept the same as the proposal for approval of his earlier appointment from 1995 was still pending. But the 4th respondent assured that they would send both the proposals once again to the 3rd respondent. The 3rd respondent rejected the proposal holding that he was over aged. Challenging the aforesaid rejection order passed by the 3rd respondent, the writ

petitioner has filed writ petition in W.P. No.26764 of 2009 and this Court by order dated 14.10.2011 allowed the writ petition holding that the authorities were not justified in rejecting the proposal. Pursuant to the order of this Court, the 3rd respondent approved the petitioner's appointment w.e.f.20.08.2007 vide proceedings Na.Ka.No. 9837/U1/2008 dated 16.10.2012. The petitioner accepted the same without prejudice to his right to claim approval from the date of initial appointment as per order in the writ petition. Thereafter, the petitioner made representations to consider his approval from the date of initial appointment i.e. on 13.01.1995, since the same was not considered till date, the writ petitioner preferred the present writ petition, challenging order passed by the 3rd respondent dated 16.02.2012.

3. The case of the petitioner in W.P. No. 20060 of 2014 is as follows:

The writ petitioner was appointed as record clerk in the 4th respondent college and promoted as Junior Assistant in the year 1994 and he continued in the said post without getting approval thereafter. The proposal for appointing the petitioner was sent to the 3rd respondent by the 4th respondent and the said proposal was returned vide proceedings in Na.Ka.No. 4181/A2/95, dated 17.09.1996, raising query as to how the 4th respondent made appointment instead of promoting the incumbents in the lower cadre. The 4th respondent sent a reply stating that it is a religious minority institution and the petitioner has been employed and working already in the 4th respondent institution and hence he is entitled to be appointed. In the meantime, there was a ban on appointments by the 1st respondent, there was no progress on the part of the respondent department till 2006 for approval of the writ petitioner's appointment. In the meantime, the 4th respondent had given fresh appointment order dated 20.08.2007. The said proposal was rejected by the 3rd respondent holding that he was over aged. Challenging the aforesaid rejection order passed by the 3rd respondent, the writ petitioner has filed writ petition in W.P. No.26765 of 2009 and this Court by order dated 14.10.2011 allowed the writ petition holding that the authorities were not justified in rejecting the proposal. Pursuant to the order of this Court, the 3rd respondent approved the petitioner's appointment w.e.f.20.08.2007 vide proceedings Na.Ka.No. 9837/U1/2008 dated 16.10.2012. The petitioner accepted the same as per order passed in the writ petition. Thereafter, the petitioner has submitted representations to consider his approval from the date of initial appointment i.e. on 29.04.1994. The writ petitioner preferred the present writ petition, challenging order passed by the 3rd respondent dated 16.02.2012.

4. The learned counsel for the petitioners submitted that in the earlier writ petitions in W.P. No. 26764 & 26765 of 2009, petitioners challenged the proceedings dated 17.09.1996 passed by the 3rd respondent and consequential proceedings dated 16.11.2009 to quash the same and direct the 3rd respondent to approve the appointment of the petitioners from 13.01.1995 and 29.04.1994 respectively and grant all attendant benefits.

5. The learned counsel for the petitioners further submitted that in the aforesaid writ petition, this Court had rejected the order passed by the educational authorities on the ground that no prior permission is required to the appoint the petitioners more so when their appointments were against the sanctioned vacancy. In the light of the discussions in the earlier order of this Court cited supra, the respondent ought to have approved the appointment of the writ petitioners w.e.f. 13.01.1995 & 29.04.1994 respectively and therefore, the impugned order passed by the 3rd respondent dated 16.10.2012 is liable to be quashed.

6. On the other hand, the learned Government Advocate submitted that the reasons stated in paragraphs 14 & 15 of the order is only in respect of the fact that the 4th respondent management has appointed the writ petitioners without getting prior permission. According to the learned Government Advocate, in the aforesaid order, this Court has not considered the 4th respondent college as a minority institution and therefore, after categorical discussion, rejected the stand of the department and directed the authorities concerned to consider afresh and pass appropriate orders as expeditiously as possible.

7. Considering the facts and circumstances of the case, there is no dispute on the factual issue that the initial appointment order was issued to the petitioners on 13.01.1995 and 29.04.1994 respectively and the proposal was sent to the 4th respondent for approval of the appointments of the writ petitioners. Due to ban of appointments of non teaching staff in the state of Tamil Nadu, the 2nd appointment orders were issued to the petitioners on 29.08.2007 & 20.08.20017 respectively and the same were challenged before this Court in W.P. No. 26764 & 26765 of 2009. The relevant portion of the order in paragraphs 14 & 15 are extracted below;

"The proposition was followed by Mr. Justice S.RAJESHWARAN in the order in W.P.Nos. 4960 & 14450 of 1997, dated 10.07.2007, wherein the learned Judge after referring to Rule 11(1) of the Rules, has set aside the rejection order, which was made on the ground that

prior approval was not obtained and directed the educational authorities to grant approval.

15. The said Judgment of the learned Single Judge, came to be questioned by the educational authorities in W.A.Nos. 93 and 94 of 2008, which came to be decided by a Division Bench of this Court and in the Judgment dated 06.01.2020, while the Division Bench confirmed the stand of the learned single judge, has held as follows;

"The learned single Judge has dealt with both the above said writ petitions together and by following the decision of this Court, rendered in W.P.No. 28396 of 2004, dated 29.03.2006, the learned Judge has categorically held that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission from the Director of Collegiate Education is required. While holding so, the learned Judge has quashed the impugned proceedings, date 28.02.1997 and directed the appellants to approve the writ petitioner's (C.Karunakaran) appointment from 02.07.1990 with all consequential service benefits.""

8. Based on the aforesaid order of this Court, the respondent had passed order dated 20.08.2007, approving the appointment of the petitioners. The proposal was sent to the 3rd respondent by the 4th respondent college and the said proposals were returned vide proceedings in Na.Ka. No. 4191 /A2/06, dated 17.09.1996. Subsequently, 4th respondent management issued fresh appointment order dated 20.08.2007 to the writ petitioners and directed to report for duty on or before 31.08.2007. Further in the said appointment order, it is stated that if this appointment is not approved by the Joint Director of Collegiate Education, Chennai Region, for any reason, the management is not liable for any consequences including continuance of his service. It is further stated that the employee shall execute an Agreement in favour of the College agreeing to abide by the Terms and Conditions of service applicable to him. The employee shall sign the duplicate copy in token acceptance of the appointment.

9. The 4th respondent management has sent explanation and reason for relaxation of upper age limit to the educational authority, wherein the management requested to extend upper age limit for giving approval to the petitioner who was appointed in

the year 1995 and due to Government ban on appointment, his appointment could not be regularised, though they continued to work in the same post. The said explanations were considered by the education authority and the same was rejected by order dated 16.10.2012. The aforesaid decision was challenged by the writ petitioners, but the management has not challenged the aforesaid rejection order.

10. On going through the order passed by this Court in W.P. Nos. 26764 & 26765 of 2009 dated 14.10.2011, the 3rd respondent's request seeking relaxation in upper age limit were allowed by directing the respondent department to consider and approve the appointments of the petitioners to their respective posts with all benefits as expeditiously as possible.

11. It is the contention of the petitioners that in the aforesaid order this Court had directed to consider the writ petitioners service from the date of initial appointment. The 4th respondent management had objected the stand taken by the department, but the learned counsel for the 4th respondent is not in a position to answer why the management has not proceeded with the earlier appointment order, and sent fresh proposal on 20.08.2007 for approval to the education department by incorporating the conditions to execute agreement with the college. Based on the aforesaid appointment order and in compliance to the order passed by this Court, the writ petitioner's service was approved by the authority. Thus, this Court is unable to accept the contentions raised by the petitioner.

12. Admittedly, the management issued second appointment orders to the writ petitioners, therefore, the management cannot support to the claim made by the petitioners that they are entitled to the benefits from the date of original appointment.

13. In view of the above, it is clear that the management had passed fresh appointment orders on 20.08.2007 in favour of the writ petitioners and the same was sent for approval to the educational authority. In the aforesaid order, it has been specifically incorporated the condition to execute an agreement in favour of the college, to abide by the terms and conditions of service as per Rules. Further, in the said order, there is no reference with regard to the earlier appointment order issued to the writ petitioners. Therefore, the petitioners cannot rely upon the first appointment order and the same is unsustainable and liable to be rejected.

14. At this stage, the learned counsel for the petitioners has requested before this Court to consider for granting notional service benefits from the period of initial appointment till the approval by the department only for the purpose of notional pensionary benefits. The said request cannot be considered in the present writ petitions. However the petitioners are at liberty to approach concerned authorities, if permissible under the law and in the light of Full Bench Judgments of this Court reported in 2019-5 LW-673 in W.A.No.158 of 2006 etc., batch dated 03.12.2019.

15. In the result, these writ petitions are dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Department of Higher Education,
Fort St. George, Chennai-600009.
- 2.The Director of Collegiate Education,
E.V.K. Sampath Maligai,
College Road, Chennai-600006.
- 3.The Joint Director of Collegiate Education,
Chennai Region,
Chennai - 600 015.

+2cc to Mr.R.Subramanian, Advocate SR.4967, 4967
+2cc to Mr.R.Mahesh, Advocate SR.4971, 4972
+1cc to the Government Pleader SR.5307

LN(CO)
CB(01/10/2020)

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