

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Orders Reserved On 05.03.2021	Orders Pronounced On 12.03.2021
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Writ Petition No.83 of 2020
and
Contempt Petition No.1245 of 2019

W.P.No.83 of 2020 :-

Dr.S.Selvakumari, M.A., M.Ed.,
M.Phil (Tamil), M.Phil (Edn.), Ph.D.,
Assistant Professor (Retired),
Tamil Department,
Meston College of Education,
Royapettah, Chennai-600 014. ... Petitioner

-vs-

- 1.The Government of Tamil Nadu,
Rep., by its Secretary to Government,
Higher Education Department,
Fort St., George, Chennai-9.
- 2.The Director of Collegiate Education,
DPI Campus, College Road, Chennai-6.
- 3.The Registrar,
Tamil Nadu Teachers Education University,
Lady Willington College Campus,
Chennai-600 005.
- 4.The Secretary,
Meston College of Education,
No.14, West Cott Road,
Royapettah, Chennai-600 014. ... Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorarified Mandamus to call
for the entire records connected with the impugned order passed
by the second respondent vide his proceedings in
Na.Ka.No.23322/G1/2018, dated 01.08.2019 and quash the same and

consequently direct the second respondent to sanction the post and thereby approve the appointment of the petitioner as Lecturer (Tamil) in the fourth respondent College with effect from 01.07.2008 (ie) the date of completion of M.Phil Education Degree till the end of the academic year i.e 31.5.2016, as per G.O.Ms.No.350, Higher Education, dated 09.09.2009, on the basis of the proposal of the fourth respondent dated 17.06.2009 and 2.3.2010 and with all consequential monetary and terminal benefits.

For Petitioner : Mr.S.N.Ravichandran
For Mr.R.D.Ashok Kumar

For Respondents: RR1 & 2 - Mr.S.Karthikai Balan,
Government Advocate

: R3 - Mr.U.Venkatesan

: R4 - Mr.V.Selvaraj,
For Mr.George Graham

Contempt Petition No.1245 of 2019 :-

Dr.S.Selvakumari, M.A., M.Phil (Tamil),
M.Ed., M.Phil (Edn.), Ph.D.,
W/o. S.Solomon Petitioner/Petitioner

-vs-

1.Thiru.Mangat Ram Sharma, IAS,
Principal Secretary to Government,
Higher Education Department,
Fort St., George, Chennai-9.

2.Dr.C.Jothi Venkateswaran,
Director of Collegiate Education,
DPI Campus, College Road,
Chennai-6.

3.M.Lourdsamy,
Secretary,
Meston College of Education,
No.14, West Cott Road,
Royapettah, Chennai-600 014.

... Respondents

Petition under Section 11 of the Contempt of Courts Act, 1971 to punish the respondents for wilfully disobeying the common order and punish the respondents for non-compliance of the order passed in Contempt Petition No.2402 of 2018 in W.P.No.39010 of 2015 dated 26.10.2018.

For Appellant : Mr.S.N.Ravichandran
For Mr.R.D.Ashok Kumar

For Respondents: RR1 & 2 - Mr.S.Karthikai Balan,
Government Advocate
: R3 - Mr.V.Selvaraj,
For Mr.George Graham

COMMON ORDER

In W.P.No.83 of 2020, the petitioner has challenged the order passed by the Director of Collegiate Education, the second respondent dated 01.08.2019, rejecting the proposal sent by Meston College of Education (hereinafter referred to as "the respondent-College") seeking approval of the appointment of the petitioner as Assistant Professor in the Department of Tamil on the ground that no post was sanctioned to accommodate the petitioner and therefore, no grant is payable to the College and in turn, to the petitioner. The petitioner seeks for a consequential relief to approve her appointment as Lecturer in Tamil in the respondent-College with effect from 01.07.2008 on the date of completion of M.Phil., in Tamil till the end of the academic year, i.e., 31.05.2016 with all consequential monetary and terminal benefits.

2.Contempt Petition No.1245 of 2019 has been filed alleging wilful non-compliance of the order and direction in Contempt Petition No.2402 of 2018, dated 26.10.2019. The said contempt petition in Cont.P.No.2402 of 2018 was filed alleging wilful disobedience of the order dated 21.02.2017 in Writ Petition No.39010 of 2015, which was filed by the petitioner challenging the order passed by the University of Madras and directing the respondents therein to sanction the post of Lecturer in Tamil with effect from 14.08.2007 to the respondent/College and approve the appointment of the petitioner as Lecturer in Tamil with effect from 17.08.2007 with all monetary benefits till 09.09.2009 on the basis of the proposals of the respondent-College dated 17.06.2009 and 02.03.2010 and retirement and terminal benefits by considering her representations.

3.Before we go into the correctness of the order impugned in the writ petition, the following facts would be relevant. The respondent-College is an aided minority institution offering B.Ed., and M.Ed., Courses. The Management of the respondent-College issued a publication in the daily Hindu dated 20.05.2007 inviting applications for the post of Lecturer in Tamil prescribing qualification of 55% mark in B.Ed./M.Ed. The petitioner applied for the said post by application dated 22.05.2007. The University of Madras (the then affiliating University) constituted Recruitment Committee consisting of

academic experts to conduct interview to the post, which was advertised by following the University Grants Commission Norms (UGC Norms). On the date of the application, the petitioner's qualification was M.A., M.Ed., M.Phil., in Tamil and Ph.D. The petitioner appeared for the interview and the Recruitment Committee, vide minutes dated 14.08.2007, submitted its recommendation in favour of the petitioner to the Management, which was accepted and the petitioner was appointed as Lecturer in Tamil by order dated 17.08.2007. The Management forwarded its proposal to the University of Madras seeking approval of the petitioner's qualification. The University of Madras declined approval for the reason that the petitioner did not possess M.Phil., in Education or Ph.D., in Education, which is the qualification prescribed for Lecturers in Teacher's Education Colleges. Since the petitioner was by then pursuing her M.Phil., in Education course, the Management requested permission from the University of Madras to allow the petitioner to handle the subject Tamil for the academic year 2007-08. By communication dated 12.12.2007, the University of Madras granted permission to the respondent-College to introduce Tamil as an additional and optional subject in the B.Ed., programme from the academic year 2007-08 with sanctioned strength of 120, subject to the condition to appoint qualified teacher before the end of the academic year. Since the petitioner was in the verge of completion of her M.Phil., (Education) degree course, the respondent-College Management addressed the University of Madras seeking extension of time till 31.12.2008 to appoint a qualified person to the post of Lecturer in Tamil. The petitioner obtained her M.Phil., degree in December, 2008.

4.The Government by G.O.Ms.No.256, dated 25.06.2008, established the Tamil Nadu Educational University and the matters dealt with by the University of Madras stood transferred to the Tamil Nadu Teachers Education University.

5.The petitioner is stated to have made several representations to the respondent-College requesting for approval of qualification, as she has secured her M.Phil., Education (degree) and also disburse the grant at least from the date on which she fulfils the requisite educational qualification. Based on the representations, the respondent-College sent proposals to the Director of Collegiate Education requesting sanctioning of the post of Assistant Professor in Tamil. Since there was a stalemate in passing orders and by then the petitioner had completed eight years of service, she was constrained to approach this Court by filing W.P.No.39010 of 2015 challenging the order passed by the University of Madras dated 07.09.2007 rejecting the approval of the petitioner's qualification and sought for approval of her appointment and consequential benefits. The said writ petition was dismissed by

order dated 21.02.2017, however, a direction was issued to the respondent-College to submit a fresh request to the Director of Collegiate Education setting out the facts and circumstances of the petitioner's case and the date when she acquired the requisite qualification and left it to the discretion of the Director of Collegiate Education to consider such proposal in accordance with law. The respondent-College had complied with the direction and submitted proposal, however, the same was rejected by the Director of Collegiate Education by order dated 28.08.2017.

6.The petitioner filed Contempt Petition No.2402 of 2018 on the ground that the order passed by the second respondent dated 28.08.2017 is in violation of the directions issued in W.P.No.39010 of 2015 dated 21.02.2017. The Court heard the Contempt Petition and found that the second respondent did not independently consider the proposal submitted by the respondent-College and rejected the same by referring to that portion of the order dismissing the writ petition. Therefore, by order dated 26.10.2018 in Contempt Petition No.2402 of 2018, the order passed by the second respondent dated 28.08.2017 was set aside and the matter was remanded to the second respondent to consider the issue afresh based on the information furnished by the respondent-College in the proposal dated 15.03.2007. Alleging that the second respondent did not pass any orders as per the directions and was dragging on the matter, the petitioner filed Contempt Petition No.1245 of 2019. After filing of the contempt petition, the Director of Collegiate Education by order dated 01.08.2019, rejected the proposal submitted by the respondent-College. The petitioner has filed W.P.No.83 of 2020 challenging the order of rejection dated 01.08.2019. Pursuant to orders passed by the Hon'ble The Chief Justice, the contempt petition and the writ petition have been clubbed to be heard by this Court.

7.We have elaborately heard Mr.S.N.Ravichandran, learned counsel assisted by Mr.R.D.Ashok Kumar, learned counsel for the petitioner; Mr.S.Karthikai Balan, learned Government Advocate appearing for the Government and the second respondent; Mr.U.Venkatesan, learned counsel appearing for the Tamil Nadu Teachers Education University; and Mr.V.Selvaraj, learned counsel for Mr.George Graham, learned counsel for the respondent-College.

8.The petitioner's challenge to the impugned order is mainly on the ground that the second respondent, without any proper appraisal of facts and law, only with a view to avoid being proceeded under the Contempt of Courts Act, hurriedly passed the impugned order without due application of mind. It is further

submitted that the impugned order is in gross violation of the directions issued in W.P.No.39010 of 2015 dated 21.02.2017. It is further submitted that the impugned order has been passed on the ground that no post has been sanctioned to the respondent-College to accommodate the petitioner and such ground was never raised at any earlier point of time. It is submitted that in the impugned order, two reasons have been set out. Firstly, there are only 11 sanctioned teaching posts for the respondent-College and the post of Lecturer in Tamil is not one among them. Secondly, it is stated that the respondent-College did not seek for prior permission for appointment of the petitioner to the post of Lecturer in Tamil. It is submitted that the rejection of the approval is not tenable, because the prayer sought for in the earlier writ petition itself is for sanctioning the post and granting approval and since the respondent-College is a minority institution, prior permission is not required. It is further submitted that the petitioner had been working in the College from 2007 and retired in the year 2016 and paltry amount was paid by the Management as consolidated pay and as of now, she is aged about 68 years and she has been driven from pillar to post for her rightful claim for approval of her appointment.

9.The Joint Director of Collegiate Education (Finance) has filed a counter affidavit on behalf of the second respondent inter alia stating that the Secretary of the respondent-College, during the personal hearing, has stated that the petitioner has been appointed as the Management staff only and therefore, the Government cannot be compelled to pay the salary to the petitioner. Further, it is submitted that the petitioner has been working in a self-financing post, with consolidated pay, and she has retired on superannuation and the order of rejection of the approval is perfectly valid. Further, the question of granting approval of the appointment would not arise because the petitioner has not been appointed to any sanctioned post in the respondent-College.

10.The respondent-College, in their counter affidavit, has stated about the recruitment process, which was followed while recruiting the petitioner and that she was appointed as Lecturer in Tamil by order dated 14.08.2007 and the Management paid consolidated amount of Rs.8,000/- per month. The details regarding the proposal sent by the Management seeking her approval has also been set out. Further, it is stated that repeatedly the Management has been submitting representations to the second respondent for sanction of the post and the last of such representation was sent on 02.03.2010 and there has been no response from the Department. It is submitted that the consolidated pay of the petitioner was increased to Rs.9,500/- during the academic year 2010-11 and thereafter, periodically increased and her last drawn salary was Rs.24,180/-. Further,

it is submitted that if the petitioner's appointment is approved and grant is paid by the Government, then only she can claim the benefits demanded by her and the Management has paid salary as per the offer of appointment and took all steps for obtaining approval which did not fructified.

11.The respondent-University has stated that it is granting affiliation to eligible Colleges of Education and conducting exams for the students admitted in Teacher Education Programme in the affiliated colleges, that apart, the qualifications of teaching staff are being verified and granted approval to eligible staffs as per UGC and University Regulations.

12..So far as the prayer sought for by the petitioner to disburse UGC scale for the period from 17.08.2007 to 31.05.2016 is concerned, the same is not within the purview of the respondent-University and the University has no role in disbursing the UGC scale of pay to the petitioner. The fact that the respondent-College issued a paper publication calling for applications for appointment of eligible candidates to the post of Lecturer in Tamil is not in dispute. The petitioner was one of the applicants. The University of Madras, the then affiliating University of the respondent-College, formed a Selection Committee for recruitment of Lecturer in Tamil. The panel, consisting of nine members, interviewed three candidates and unanimously selected the petitioner and recommended for appointment as Lecturer in Tamil. The respondent-Management appointed the petitioner by order dated 14.08.2007 on a consolidated pay of Rs.8,000/- per month payable by the Management. Thus, it is clear that the petitioner was not accommodated or appointed in a sanctioned post, but was appointed by the Management and salaries to be paid by the Management. When the petitioner's qualification was sent for approval, since the petitioner did not possess M.Phil., in Education or Ph.D., in Education at the relevant time, the University of Madras rejected the approval by order dated 07.09.2007. There has been correspondence between the respondent-College and the University of Madras. In the mean time, the respondent-College had submitted a proposal dated 17.06.2009 to the Director of Collegiate Education requesting for sanction of five more teaching posts and also for permission to fill up the nine teaching and nine non-teaching posts, which were lying vacant. However, this proposal has not been considered till date. In the mean time, the petitioner continued to work as a Lecturer in Tamil in the respondent-College and was paid salary by the Management. Since nothing happened till 2015, the petitioner filed W.P.No.39010 of 2015 challenging the order passed by the University of Madras

rejecting approval of the petitioner's qualification and sought for further relief to approve her appointment and paid all monetary benefits.

13.The writ petition was dismissed upholding the order of the University of Madras refusing to approve the qualification of the petitioner. Thus, the order passed by the University of Madras was upheld. The Court took into consideration the submission of the respondent-College that they have forwarded a proposal on 02.03.2010 to the second respondent seeking approval of the appointment. Taking note of this submission and that the petitioner was working since 2007, a direction was issued to the respondent-College to submit a fresh proposal and the second respondent to consider the same. An order was passed rejecting the proposals solely based on the ground that the writ petition was dismissed without noting the fact that there was a direction issued to the Department to consider the fresh proposal. Therefore, in Contempt Petition No.2402 of 2018 dated 26.10.2018, the order was set aside and the matter was remanded to the Director of Collegiate Education for fresh consideration. Upon such remand, the impugned order has been passed. The respondent-College has been sanctioned only with eleven posts of Lecturer and no post of Lecturer in Tamil has been sanctioned. Therefore, on the date when the Management issued the advertisement dated 20.05.2007, calling for applications for the post of Lecturer in Tamil, there was no such approved post in the respondent-College. Therefore, it goes without saying that the Management advertised the said post under the Management category post and the salary payable to the incumbent has to be made by the Management.

14.The petitioner seeks to link the approval of her qualification by the University with that of approval of her appointment. These two are two different and distinct aspects. The approval of the qualification has to be done by the University. Admittedly, on the date when the petitioner was appointed by the Management as Lecturer in Tamil, she did not possess the requisite qualification. Therefore, the approval was rejected and the said order was upheld by this Court. Therefore, technically, the second limb of the prayer sought for by the petitioner in the earlier writ petition cannot be construed to be a consequential relief to the main relief, that is, to quash the order of the University of Madras. Had the petitioner been appointed to a sanctioned post, then the situation would have been different. However, if the respondent-Management had advertised for filling up the post without a sanctioned post, then it is undoubtedly a post to be funded by the Management and the petitioner cannot compel the Government to approve her appointment, which was made without even sanction of a post.

15.The argument of Mr.V.Selvaraj, learned counsel for the respondent-College is that Selection Committee was constituted by the University of Madras and a proper recruitment process was conducted and an optional course was introduced, which goes without saying that the post should be sanctioned.

16.In my considered view, such a broad proposition cannot be laid down. Sanction of post by the Government for an aided institution is based upon certain norms and one of the factors would be the number of students who are being imparted education. With regard to the schools, twice a year, there is a review being done to assess the number of posts required for an aided school. It appears that no such review had been done, insofar as the respondent-College is concerned.

17.Be that as it may, in the absence of a sanctioned post, the petitioner cannot claim any vested right that she should be paid salary from the Government grant. There is no obligation on the part of the Government to sanction any amount for payment towards the salary of the petitioner because, there was no post of Lecturer in Tamil sanctioned for the respondent-College. Presumably, the respondent-College was confident of obtaining approval and advertised the post. If that had been done, then the respondent-Management has done so at its own peril and that can hardly be a reason for the petitioner to seek to compel the Government to sanction grant and pay her salary from the Government grant. In the counter affidavit filed by the respondent-College, it has been stated that they have been repeatedly submitting representations for sanction of the post and the last of such representation was sent on 02.03.2010. Therefore, it was for the respondent-College to follow the proposals submitted by them and since there was no sanctioned post available with the respondent-College on the date when the petitioner was appointed, viz., 14.08.2017, no direction can be issued to the State to pay her salary from the Government grant.

18.For the above reasons, the writ petition fails and is dismissed. Consequently, the contempt petition is also dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

abr

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Higher Education Department,
Fort St., George, Chennai-9.
- 2.The Director of Collegiate Education,
DPI Campus, College Road, Chennai-6.
- 3.The Registrar,
Tamil Nadu Teachers Education University,
Lady Willington College Campus, Chennai-600 005.
- 4.The Principal Secretary to Government,
Higher Education Department,
Fort St., George, Chennai-9.
- 4.The Secretary,
Meston College of Education,
No.14, West Cott Road,
Royapettah, Chennai-600 014.

Copy to

The Section Officer,
Contempt Section,
High Court, Madras-104.

+lcc to Mr.S.N.Ravichandran, Advocate Sr.15999
+lcc to M/s.Devadason & Sagar, Advocate Sr.16302
+lcc to the Government Pleader Sr.16375

सत्यमेव जयते

Writ Petition No.83 of 2020
and Cont.P.No.1245 of 2019

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srg 31/03/2021

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