



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA  
AND  
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.Nos.987 and 988 of 2020

R.Ramesh ..Appellant in WA No.987/2020/  
Petitioner in WP No.20059/2014  
A.Dharmendra Kumar ..Appellant in WA No.988/2020/  
Petitioner in WP No.20060/2014

Vs.

1. Government of Tamilnadu  
rep. by its Secretary,  
Department of Higher Education,  
Fort St. George, Chennai-600 009.
  2. The Director of Collegiate Education,  
E.V.K.Sampath Maligai,  
College Road,  
Chennai-600 006.
  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/Respondents

Prayer : Writ Appeals filed under Clause 15 of Letters Patent against the common order dated 23.01.2020 in W.P.Nos.20059 and 20060 of 2014.

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 Appellants in : Mr.R.Subramanian  
both the appeals

For Respondents : Mr.C.Jayaprakash  
in both the appeals Government Advocate for RR 1-3  
No Appearance for R4

COMMON JUDGEMENT  
PUSHPA SATHYANARAYANA, J.

There are two writ appeals and the common issue arising in these appeals relates to the approval of appointment of non-teaching staff in the fourth respondent College.

2. The appellant in W.A.No.987 of 2020 is the unsuccessful writ petitioner in W.P.No.20059 of 2014, while W.A.No.988 of 2029 is filed by the unsuccessful writ petitioner in W.P.No.20060 of 2014.

3. The writ petitioner in W.P.No.20059 of 2014 was appointed as Laboratory Assistant by the fourth respondent on 10.01.1995 in a regular vacancy caused by the retirement of one Mr.Munusamy in the year 1989 and he joined duty on 13.01.1995. After the appointment, a proposal was sent by the fourth respondent to the third respondent on 04.08.1995. The said proposal was returned on 17.09.1996 stating that prior approval of the competent authority is to be obtained before making the appointment.

3.1. Earlier, the writ petitioner in W.P.No.20060 of 2014 was appointed as Junior Assistant on 01.04.1994 in a regular vacancy arose on account of promotion of one Mr.Bhoopalan and he joined duty on 29.04.1994. As the promotion of the said individual was not approved, the proposal sent to the third respondent was rejected on 25.08.1994.



3.2. The fourth respondent College, being a religious minority institution, prior permission for appointing a non-teaching staff is also not required. There had been exchange of communications between third and fourth respondents in this regard. In the meantime, there was a ban on appointment by the Government of Tamil Nadu from the year 2001 to 2006. Therefore, the approval could not come through. Once, the ban was lifted in the year 2006, the third respondent should have sent the proposal. However, after lifting of the ban, the fourth respondent by way of abundant caution thought it fit to issue fresh appointment orders on 20.08.2007 appointing once again the writ petitioners as Laboratory Assistant and Junior Assistant.

3.3. Though the writ petitioners were hesitant about the same, the management issued fresh appointment letters and sent the proposal to the third respondent, which was rejected on 16.11.2009. This time the rejection was on the ground that the writ petitioners were over-aged. The same were challenged by the writ petitioners in W.P.Nos.26764 and 26765 of 2009, which were allowed on 14.10.2011 directing the third respondent to consider and approve the appointment of the petitioners to the respective posts as expeditiously as possible.

3.4. Accordingly, representations were made to the third respondent and the third respondent granted approval for the appointment, which was made on 20.08.2007 prospectively. The petitioners also accepted the same without prejudice to their rights and once again made representations to the third respondent stating that they had been working from the date of original appointment in the year 1994 and 1995 and the approval could not be given by the authorities immediately and it was further withheld because of the ban on recruitment.

3.5. As the approval was given only from 20.08.2007, the present writ petitions in W.P.Nos.20059 and 20060 of 2014 were filed.

3.6. After hearing both the parties, learned Single Judge had dismissed the writ petitions on the following grounds : (i) the management had issued the fresh appointment letters on 20.08.2007 and sent the same for the approval to the Education Department, and therefore, the appointment was approved from 20.08.2007 ; and (ii) there was no reference with regard to earlier appointment order issued to the writ petitioners and the management cannot support the petitioners, as the appointment orders issued by them on 20.08.2007 were sent for approval.

3.7. Aggrieved by the above said order of the writ Court, these writ appeals have been filed by the writ petitioners.



4. Heard the learned counsel on either side and perused the materials placed before us.

5. The dismissal of the above-mentioned writ petitions is unsustainable, because in the earlier order passed in W.P.Nos.26764 and 26765 of 2009 itself, this Court had clearly and categorically held that the prior approval before the appointment is not required, as the college is a minority religious institution. The second appointment orders were issued to the writ petitioners, who were employed there only by way of abundant caution, in view of the ban on recruitment between 2001 and 2006. It would be apposite to extract the relevant paragraphs as hereunder :

"10. No doubt, the above Rule enables the Director of Collegiate Education to fix the teachers strength from time to time, with reference to the various norms. But on the facts of the present case, it is the definite case of the third respondent management that in the year 1999, the Director of Collegiate Education based on the students strength and other norms then exist has fixed the staff strength and that has never come down in the subsequent years and therefore, there was absolutely no occasion for the educational authorities to re-consider the strength of the teaching strength of the third respondent college. Under such circumstances, as a minority institution, certainly the third respondent, has got a right to administer the Private Institution, within the ambit of Article 30 of the Constitution of India. Of course, the person appointed is having the required qualification. It is not in dispute that the petitioner is fully qualified for the appointment to the post of lecturer in history and it is also not in dispute that the appointment of the petitioner made in the third respondent college was within the sanctioned strength, since admittedly the appointment was made in a vacancy, caused due to the retirement of the previous incumbent. In that view of the matter, there is absolutely no reason to come to the conclusion that the third respondent should have obtained prior permission for filling up of the post.

11. Further, contention of the learned Government Advocate about the maintainability of the writ petition, is purely technical and unsustainable. It is admitted that the petitioner was appointed to the third respondent college on



WEB COPY

16.07.2001 and in the said post he has been continuing based on an interim order passed in his favour in the earlier writ petition filed by him, where the third respondent management has given an undertaking that the petitioner's service would not be terminated. By virtue of the impugned order of the first respondent, the person, affected is the petitioner, who has been rendering service in the said college from the year 2001 and therefore, it cannot be said that the petitioner has no locus standi to maintain the writ petition."

6. So far as the process of approval of appointment of non-teaching staff is concerned, when they are made within the sanctioned strength, the said approval is not required as has been held by various Division Benches of this Court, one of which dated 06.01.2010 in W.A.Nos.93 and 94 of 2008 was relied upon by this Court in the order dated 14.10.2011, wherein, it was 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, dated 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."

In the instant case also, it is not in dispute that the appointments made were within the sanctioned strength.

7. The Hon'ble First Bench of this Court in the judgment dated 07.01.2021 in W.A.(MD)No.1022 of 2020, (The Director of School Education DPI Campus, College Road Chennai 600 006 V. S.Murugan), while dealing with a similar situation in the School Education Department, held as follows :

"6. What is of importance is whether an aided School is required to obtain prior permission from any authority to undertake the process of appointment upon a vacancy arising in a sanctioned non-teaching post. The appellants have not been able to indicate any Rule or Notification or the like requiring prior permission to be sought before



undertaking the exercise to look for a replacement upon a sanctioned post falling vacant in the non-teaching category.

WEB COPY

7. It is possible that there may be surplus staff in other Government-aided Schools in the District or nearby areas. It is equally possible that the Government may require the surplus staff to be deployed at other aided Schools upon vacancies in similar post arising thereat. However, there has to be a mechanism which has to be put in place for such purpose and the process has to be certain. It would not do for the Department to refuse an appointment merely because at the time of appointment, the Department finds surplus staff of similar description in other aided Schools in the District or the locality. The position as to surplus staff ought to exist at the time when the vacancy arose or, at any rate, prior to the process of appointment being initiated. Once the appointment process is undertaken and a person is identified, it may no longer be open to the Department to refuse the appointment and undo the process by citing surplus staff.

8. In such a scenario, the Department may do well to either bring in Rules that would require aided Schools to obtain permission from the relevant District Educational Officer before undertaking an appointment procedure and the District Educational Officer being required to respond to the request within a fixed time, so that the relevant School can fill up the vacancy without undue delay. In the alternative, the relevant District Educational Officer may circulate the description and number of the surplus staff at various levels to all Schools for such Schools to be able to fill up any vacancy that arises from the surplus staff at the relevant post. In the absence of either, an aided School cannot be faulted for undertaking the exercise of appointing a person to a sanctioned post or seeking the appointment. The permission that is sought is not permission to fill the post as such, but permission to enable the District Educational Officer to scrutinise whether the appointment procedure was alright and whether the incumbent fits the bill."

(emphasis supplied by us)



The above decision of the Hon'ble First Bench of this Court observed that the appellants therein, the Government authorities, have not been able to indicate any Rule or Notification or the like requiring prior permission to be sought before undertaking the exercise to look for a replacement upon a sanctioned post falling vacant in the non-teaching category. Similar is the position that is applicable to the Collegiate education, as well.

8. The next question that arises for consideration is as to whether the approval granted by the authorities from the year 2007 is correct, when the original appointments were made in the year 1994 and 1995.

9. The original proposal for the writ petitioner in W.P.No.20060 of 2014 was sent on 06.05.1994, as the appointment was made on 29.04.1994 in the vacancy arose upon the promotion of Bhoopalan. Similarly, the writ petitioner in W.P.No.20059 of 2014 was appointed as Laboratory Assistant in the Chemistry Department on 10.01.1995 in the regularly vacancy in the place of S.Munusamy, who retired on 31.07.1989. It is also not in dispute that the proposals for approval of appointment of both the writ petitioners' were sent to the third respondent and they were returned and re-presented several times. In the meanwhile, the ban on recruitment was announced between 2001 and 2006. Thereafter, when the ban was lifted in the year 2006, a fresh proposal was sent on behalf of the writ petitioners. However, based on the new appointment order issued in the year 2007, the said proposal was returned on the ground of over-aged.

10. This Court, while dealing with the same in the earlier writ petitions, had specifically found that it was only by way of abundant caution, the fresh appointment orders were issued, which has already been extracted above. In the earlier writ petitions, while dealing with the overage of the petitioners, this Court had observed as follows :

"15. The facts relating to their first appointments have been narrated in the preceding paragraphs and it is not in dispute that the said appointments were also forwarded to the Department for approval. In such circumstances, to take a stand that the petitioners have become over aged that too after nearly 15 years they were appointed, is wholly unreasonable and arbitrary. Admittedly, petitioners were accommodated as against the available posts. In fact the petitioner in W.P.No.26765 of 2009 has been reverted to the post of Record Clerk with effect from 20.8.2007, by way of abundant caution and it is in the same post he was originally appointed in the year 1994.



WEB COPY

Therefore, for all the above reasons, this Court is of the view that the stand taken by the respondent Department is wholly unsustainable and following the decisions referred supra, the petitioners are entitled to succeed."

11. Against this order, the Government had not preferred any appeal and allowed it to become final. So, the finding that the writ petitioners were appointed in the year 1994 and 1995, the proposals were sent immediately and they were kept pending till 2011, after which, the approval could not come through because of the ban and a fresh appointment letters were sent by the fourth respondent only by way of abundant caution were all accepted by the authorities to the proceedings. While so, it would not be proper for the third respondent to approve their appointment only from the year 2007. The best person to speak about their continuity of service from the date of original appointment is the fourth respondent management and they have not raised any objection for approving their appointment from 1994 and 1995.

12. We are of the view that if the writ petitioners are eligible for appointment from the date of their initial appointment, the intervening circumstances will not in any prejudice their rights.

13. In view of the above discussion, we are of the view that the order of the learned Single Judge requires interference. Accordingly, the common order dated 23.01.2020 passed by the writ Court is set aside and the writ appeals are allowed. As a corollary, the orders impugned in the writ petitions are also set aside. The third respondent is directed to grant approval of the appointment of the writ petitioners/appellants in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gg

To

1. The Secretary,  
Department of Higher Education,  
Fort St.George, Chennai - 9.



2. The Director of Collegiate Education,  
E.V.K. Sampath maligai.

3. The Joint Director of Collegiate Education,  
Chennai Region, Chennai - 15.

WEB COPY

+2cc to Mr.R.Subramanian, Advocate, (S.R.No.32205 & 32206)

W.A.Nos.987 and 988 of 2020

AK-II(CO)

RGA(23/07/2021)