



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.15674 of 2012

and

M.P. (MD)No.1 of 2012

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I.Jeyachandra ... Petitioner
vs.

1.The Government of Tamil Nadu,
represented by its Secretary,
Education Department,
Fort St.George, Chennai-600 009.

2.The Director of Collegiate Education,
College Road, Chennai-600 006.

3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Trivandrum Road, Tirunelveli-2.

4.The Correspondent,
Nesamani Memorial Christian College,
Marthandam, Kanyakumari District.

5.G.D.Biji ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the fourth respondent vide its proceeding Ref.No.CCM/2012:159, culminating in its order dated 19.03.2012, quash the same and to direct the fourth respondent to fix the petitioner's seniority above that of the fifth respondent as Lecturer in Zoology in the fourth respondent College.

For Petitioner	: Mr.Brijesh Kishore
For R-1 to R-3	: Mr.M.Linga Durai Government Advocate
For R-4	: Mr.Isaac Mohanlal Senior Counsel for Mr.S.Xavier Rajini
For R-5	: Mr.S.Arunachalam for M/s.S.Arunachalam Associates

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the fourth respondent, dated 19.03.2012 and to direct the fourth



respondent to fix the petitioner's seniority above that of the fifth respondent as Lecturer in the department of Zoology in the fourth respondent College.

2. Heard Mr. Brijesh Kumar, learned Counsel for the petitioner, Mr. M. Linga Durai, learned Government Advocate appearing for R1 to R3 and Mr. Isaac Mohanlal, learned Senior Counsel for Mr. S. Xavier Rajini, learned Counsel for the fourth respondent and Mr. S. Arunachalam, learned Counsel for the fifth respondent.

3. Brief facts set out in the affidavit filed in support of this Writ Petition are as follows:

3.1. The petitioner completed his graduation in B.Sc (Zoology) in April 1984 and M.Sc (Zoology) in April 1986 with I class. The petitioner also obtained M.Phil., degree in April 1987 and completed his Ph.D., degree from Kerala University in the year 1999. The petitioner was appointed as Lecturer in the department of Zoology in the fourth respondent College in the leave vacancy from 12.03.1992 to 11.04.1992. It is further stated that the petitioner was again appointed as Lecturer in the department of Zoology in the fourth respondent College with effect from 01.07.1992 against a permanent vacancy due to the retirement of another Lecturer on 31.05.1992. However, it is admitted that the second respondent declined to approve the petitioner's appointment by order, dated 16.07.1993, 27.03.1994 and 05.05.1997.

3.2. Though the petitioner filed a Writ Petition in W.P.No.1982 of 1998, challenging the order of second respondent refusing to approve the appointment of the petitioner, it is admitted that the said Writ Petition was dismissed by an order, dated 13.09.1999. Challenging the order in the Writ Petition, the petitioner also preferred an appeal before this Court in W.A.No.2453 of 1999. It is to be noted that by the time when the Writ Appeal came up for hearing, the appointment of petitioner and fifth respondent with effect from 30.10.1999 was approved. Since the learned Single Judge while dismissing the petitioner's Writ Petition made certain observations to give preference in favour of the fifth respondent herein, the Honourable Division Bench in the Writ Appeal, by judgment, dated 16.06.2006, made the following observation:

"Now, the only question remain is whether the finding given in the order passed by the learned single judge will have any effect in the issue relating to the seniority as among the petitioner as well as the 4th respondent herein. Since the prayer in the writ petition relates only to the regularization of the service of the petitioner herein, we are of the opinion, that any finding given with regard to the seniority or a preferential claim of the 4th respondent over and above, the petitioner should stand deleted. Both the petitioner as well as the 4th respondent are directed



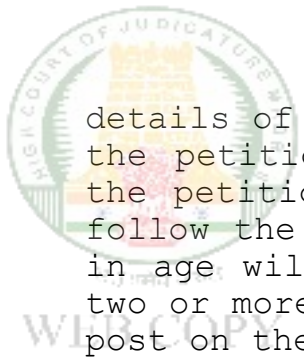
to submit a representation relating to their seniority to the 5th respondent within a period of two weeks from the date of receipt of a copy of this order and thereafter, within a period of eight weeks, the 5th respondent is directed to decide the issue and pass orders after providing opportunity to the petitioner and the 4th respondent."

3.3.During the pendency of the Writ Petition in W.P.No.1982 of 1998, the second respondent by his proceedings, dated 28.09.1999 permitted the fourth respondent College to fill up three vacancies in the post of Lecturer in the department of Zoology. It is stated by the petitioner that pursuant to the order of second respondent, the fourth respondent College issued fresh appointment orders, dated 29.10.1999 appointing the petitioner and the fifth respondent as Lecturer in the department of Zoology with effect from 30.10.1999.

3.4.Based on the direction of this Court in W.A.No.2453 of 1999, the petitioner submitted representation, dated 11.07.2006 to the fourth respondent herein to fix his seniority. The fifth respondent also made a similar representation. Stating that the fourth respondent did not pass any order on the representation of the petitioner, the petitioner filed another Writ Petition in W.P (MD)No.5762 of 2010, for issuing a direction to the fourth respondent to fix the seniority between the petitioner and the fifth respondent. This Court, by order, dated 26.04.2010, directed the fourth respondent to pass orders on the representation of the petitioner and the fifth respondent.

3.5.The petitioner filed one more Writ Petition in W.P.(MD) No.11941 of 2012 before this Court for issuing a Writ of Mandamus to give similar direction to the second respondent to fix the seniority. This Court, by an interim order, dated 27.02.2012, directed the fourth respondent to comply with the order of this Court, dated 16.06.2016 passed in W.A.No.2453 of 1999, by an order dated 20.03.2012. Pursuant to the interim direction, the fourth respondent has passed the impugned order placing the fifth respondent over and above the petitioner in seniority in the department of Zoology. Challenging the said order, the above Writ Petition is filed.

4.The learned Counsel for the petitioner submitted that the petitioner joined in service in the department of Zoology as Lecturer in the fourth respondent College with effect from 01.07.1992, whereas, the fifth respondent was appointed in the regular vacancy only on 01.06.1998. Since the fourth respondent failed to note that the petitioner is senior in service to the fifth respondent in the department of Zoology, it is submitted by the learned Counsel for the petitioner that the impugned order is perverse, as the fourth respondent did not consider the service



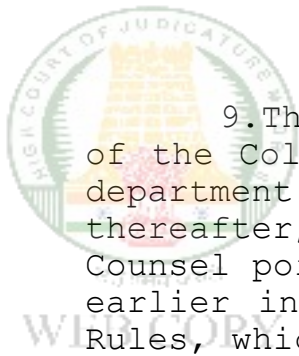
details of both parties before fixing the *inter se* seniority between the petitioner and the fifth respondent. The learned Counsel for the petitioner then submitted that the fourth respondent failed to follow the well established practice that the senior most candidate in age will be placed over and above the junior candidate in case two or more similarly qualified candidates are appointed to the same post on the same day.

5.The learned Counsel for the petitioner also submitted that the fourth respondent did not consider the length of service of the petitioner and the fifth respondent in the same College and passed the impugned order, which is nothing but arbitrary and whimsical. The learned Counsel for the petitioner relied upon the proceedings of the third respondent, dated 16.05.2018, by which the pay anomaly between the petitioner and the fifth respondent was removed. While passing the order, the third respondent has mentioned that the petitioner is senior to the fifth respondent and that therefore, the petitioner is entitled to the same pay, as it was disbursed to the fifth respondent.

6.In the counter affidavit filed by the the third respondent, except stating that it is the duty of the fourth respondent to fix seniority, no other point is focussed on merits.

7.A detailed counter affidavit as well as additional counter affidavit were filed by the fourth respondent, wherein, it is stated that the Writ Petition challenging the fixation of seniority between the Teachers in the private aided minority institution is not maintainable. It is further stated that the seniority between the petitioner and the fifth respondent was considered by the fourth respondent and the fourth respondent has cautiously fixed the seniority of the fifth respondent above the Writ Petitioner at the time of giving appointment to both and that the Writ Petition is not maintainable without challenging the resolution of the Special Appointment Committee, dated 29.10.1999, by which, the fifth respondent was appointed as Lecturer in the department of Zoology in the first vacancy, whereas, the petitioner was appointed with effect from 30.10.1999 in the second vacancy.

8.The learned Senior Counsel appearing for the fourth respondent further submitted that the fifth respondent was initially appointed as Lecturer in Zoology department in the fourth respondent College by an order, dated 07.05.1990 with effect from 01.06.1990, as against the vacancy arose due to the retirement of a Professor, by name, Chandra Sen. However, it is admitted that the appointment of the fifth respondent was by the Correspondent and the said order was not ratified by the College Governing Body subsequently. He further submitted that the College Governing Body in its meeting held on 12.05.1990 resolved to appoint another person in the vacancy with effect from 02.07.1990 and set aside the order of appointment of the fifth respondent.

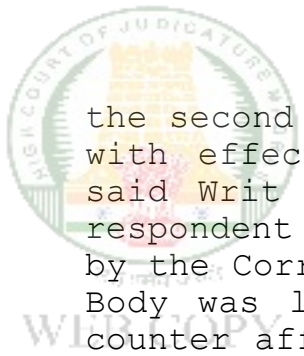


9.The learned Senior Counsel also referred to the resolution of the College Governing Body to fill up the future vacancy in the department of Zoology first by appointing one Mrs.D.Malar and thereafter, by appointing the fifth respondent. The learned Senior Counsel pointed out that the temporary appointment of the petitioner earlier in the year 1992 was by the Correspondent contrary to the Rules, which authorise only the College Governing Body, which is the competent authority, to appoint any Teacher. Stating that the application for approval of appointment of the petitioner was declined and that the Writ Petition filed by the petitioner was also dismissed, the learned Senior Counsel for the fourth respondent submitted that the petitioner cannot claim any benefits based on his earlier appointment.

10.The learned Senior Counsel then pointed out that the fifth respondent was initially appointed as Lecturer in the department of Zoology in the fourth respondent College with effect from 01.06.1990 as against the regular vacancy arose due to the retirement of one Chandra Sen. Though the appointment of fifth respondent was also by the Correspondent, the learned Senior Counsel admitted that the appointment of the fifth respondent was irregular. The learned Senior Counsel then submitted that the fifth respondent should be considered as senior even if the seniority should be taken from the date of initial appointment. The learned Senior Counsel though admitted that the seniority of the petitioner cannot be considered with reference to the date of initial appointment, pointed out a few circumstances to sustain the impugned order.

11.The fifth respondent was initially appointed as Lecturer with effect from 01.06.1990 by an order of appointment dated 07.05.1990 as against the regular vacancy. It is admitted that the said appointment was issued by the Secretary of the College expecting ratification from the College Governing Body. However, the College Governing Body in its meeting dated 12.05.1990 resolved to appoint another candidate, by name, Mr.Johnson, in the regular vacancy with effect from 02.07.1990 and set aside the order of appointment issued in favour of the fifth respondent by the Correspondent. However, in the same resolution, it is pointed out that the College Governing Body resolved to fill up the future vacancy in the department of Zoology by first appointing one Mrs.D.Malar, and thereafter, by appointing the fifth respondent.

12.The learned Senior Counsel for the fourth respondent relied upon the order passed by this Court in W.P.No.17373 of 1990 filed by the fifth respondent. As pointed out earlier, the College Governing Body refused to ratify the appointment of fifth respondent as Lecturer in the fourth respondent College by order of the then Secretary of the College. However, the application for the approval appointing the fifth respondent was pending before the second respondent. Hence, the fifth respondent filed a Writ Petition in

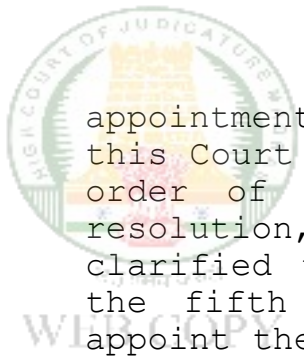


the second respondent therein to approve his appointment as Lecturer with effect from 01.06.1990 with salary and other benefits. The said Writ Petition was contested by the management of the fourth respondent College on the ground that the appointment order issued by the Correspondent without the resolution of the College Governing Body was liable to be cancelled. It is pointed out that in the counter affidavit filed by the College management in W.P.No.17373 of 1990, the management ensured that the fifth respondent would be absorbed in the next immediate available regular vacancy. It is pertinent to refer to the order passed by this Court, dated 20.07.1993, which reads as follows:

"3..... In response to the request the learned counsel for the 4th respondent says that they have already filed an affidavit on 29.09.1992 wherein it is stated that the writ petitioner will be absorbed in service in the 4th respondent college in the next immediate available vacancy. Till then, the 4th respondent also undertakes to appoint the petitioner in the M.Sc.(Zoology) self-financing department of the college. In other words the 4th respondent is willing to appoint the petitioner under the self-financing schemes which means that the petitioner will not get government scale of pay. It may be so for a short period. But since the 4th respondent is willing to absorb the petitioner as and when the regular vacancy arise in the concerned subject, I am of the opinion that sufficient protection has been given to the petitioner. Recording the above statement of the 4th respondent college, I dismiss the writ petition subject to the above observation. There will be no order as to costs."

13.The learned Senior Counsel further pointed out that the College Governing Body in its meeting held on 03.04.1998 had resolved to appoint the fifth respondent as Lecturer in the department of Zoology with effect from 01.06.1998. It is further stated that the fifth respondent joined in the regular post with effect from 01.06.1998. The learned Senior Counsel then pointed out that the proposal for the approval of appointment of the fifth respondent was pending consideration. It is further stated that the Directorate of Collegiate Education fixed the cadre strength in the College and permitted the fourth respondent College to fill up three posts in the department of Zoology. Though the appointment of the fifth respondent in 1998 was valid, it is stated by the learned Senior Counsel that at the insistence from the office of the Joint Director of Collegiate Education, a fresh order of appointment in favour of the fifth respondent was given.

14.The learned Senior Counsel for the fourth respondent submitted that considering the fact that the fifth respondent was appointed by the management pursuant to the earlier resolution of the College Governing Body much prior to the petitioner's



appointment and that the management has given an undertaking before this Court earlier to give preference to the fifth respondent in the order of appointment, the Special Appointment Committee in its resolution, dated 29.10.1999, while appointing the fifth respondent, clarified the position of seniority as between the petitioner and the fifth respondent in express words that is by resolving to appoint the fifth respondent in the first vacancy and the petitioner in the second vacancy.

15. In response to the arguments advanced by the learned Counsel for the petitioner referring to the proceeding of the third respondent, dated 16.05.2018, regarding the removal of pay anomaly, the learned Senior Counsel for the fourth respondent submitted that the observation of the third respondent regarding the petitioner's seniority over the fifth respondent was by mistake. The learned Senior Counsel for the fourth respondent referring to the additional counter affidavit submitted that as per the executive orders of the Government, a Lecturer possessing M.Phil., degree was entitled to two incentive increments and that a Lecturer possessing M.Phil and Ph.D., is entitled for four incentive increments. It is stated that the Writ Petitioner for possessing M.Phil and Ph.D., is entitled to four incentive increments as against the fifth respondent, who possesses only M.Phil degree. Hence, it is stated that the petitioner may be receiving more pay than the fifth respondent because of additional incentive increments. However, the learned Senior Counsel for the fourth respondent submitted that it is not decisive for fixing *inter se* seniority between the petitioner and the fifth respondent. The petitioner and the fifth respondent were appointed on the same day and therefore, the third respondent settled the pay anomaly. The order removing pay anomaly cannot be taken as an order fixing the seniority of petitioner above the fifth respondent. The fifth respondent was not heard and the issue was whether the pay anomaly should be removed or not.

16. This Court considered the arguments of the learned Counsel for the petitioner and the learned Senior Counsel appearing for the fourth respondent.

17. The appointment of the petitioner earlier in 1992 was by the Correspondent of the College and hence, the proposal for approval of appointment of the petitioner is not possible. When the Writ Petition filed by the petitioner was dismissed holding that the appointment of the petitioner in 1992 is irregular, the petitioner cannot claim his seniority based on his initial appointment in 1992. As pointed out by the learned Senior Counsel for the fourth respondent, even if the *inter se* seniority between the petitioner and the fifth respondent has to be considered, based on the initial appointment, the fifth respondent should be considered as Senior as his initial appointment in the fourth respondent College was in 1992, much prior to the appointment of the petitioner. It is



admitted that both the petitioner and the fifth respondent were appointed on the same day in 1999.

18.It is also demonstrated that the fifth respondent was appointed as Lecturer in the department of Zoology against a regular vacancy by the College Governing Body, as seen from the order of appointment, dated 27.05.1998. Though it is admitted that the appointment order, dated 27.05.1998, was ignored, it is to be seen that the appointment order issued pursuant to the decision of the College Governing Body is perfectly in order. The management much to the prejudice of the fifth respondent proceeded to issue fresh appointment order probably due to avoid any technical objection by the educational authorities. It is specifically stated in the counter affidavit filed by the fourth respondent that the College Governing Body in its meeting held on 03.04.1998 resolved to appoint the fifth respondent with effect from 01.06.1998. When no prior permission is required for filling up the regular vacancy in the minority institution and the proposal for approval of appointment of the petitioner was stated to be pending, this Court is unable to find any valid reason for giving fresh appointment to the fifth respondent. However, the fifth respondent appears to be happy to get salary atleast with effect from 30.10.1999.

19.It is to be noted that the fourth respondent has given assurance before this Court to give preference to the fifth respondent in the matter of appointment to the post of Lecturer in future vacancy. In such circumstances, this Court considered the appointment of fifth respondent as per the Governing Body decision, dated 03.04.1998 as an incident favourable to the fifth respondent to claim seniority over the petitioner as he was appointed to full fill the moral obligation of the fourth respondent in terms of assurance given by the fourth respondent before this Court in the Writ Petition filed by the fifth respondent. It is also admitted that the fifth respondent joined duty. The Special Appointment Committee, by order, dated 19.03.2012, has resolved as follows:

"5.Department of Zoology

Resolved to appoint Mr.G.D.Biji, M.Sc., M.Phil., as Lecturer in the Department of Zoology, N.M.Chritian College, Marthandam in the first vacancy with effect from 30-10-1999 as per the proceedings of the Director of Collegiate Education, Chennai, Pa.Mu.No.45175/F.4/99, dated 28-10-1999.

Resolved to appoint Dr.I.Jeyachandra, M.Sc., M.Phil., Ph.D., as Lecturer in the Department of Zoology, N.M.Chritian College, Marthandam in the second vacancy with effect from 30-10-1999 as per the proceedings of the Director of Collegiate Education, Chennai, Pa.Mu.No.45175/F.4/99, dated 28-10-1999.



Resolved to appoint Dr.D.Moni, M.Sc., M.Phil., Ph.D., as Lecturer in the Department of Zoology, N.M.Chritian College, Marthandam in the third vacancy with effect from 30-10-1999 as per the proceedings of the Director of Collegiate Education, Chennai, Pa.Mu.No.45175/F.4/99, dated 28-10-1999."

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20.From the order of appointment itself, it is clarified that the appointment of the fifth respondent was in the first vacancy and the appointment of the petitioner was in the second vacancy, which indicates that the fifth respondent was placed senior to the petitioner in the post of Lecturer in the department of Zoology. Though the appointment of the petitioner and the fifth respondent was with effect from the same day, the *inter se* seniority between the petitioner and the fifth respondent cannot be fixed ignoring the order of appointment issued to the petitioner and the fifth respondent conveying in unmistakable terms that the fifth respondent was placed as senior. In the absence of any regulation covering the issue, this Court has no hesitation to hold that the fifth respondent should be placed as senior to the petitioner, which has been rightly done by the fourth respondent by the impugned order.

21.This Court has already held that the appointment of the petitioner and the fifth respondent previously in the year 1992 and 1990 respectively by the Correspondent has no relevance, as the appointments were irregular. Since the appointment was by an incompetent person and the second respondent has declined to approve the appointment of the petitioner earlier, there is no question of treating the petitioner or the fifth respondent having been appointed much earlier. However, the appointment of the fifth respondent with effect from 01.06.1998 will have some relevance, as the fifth respondent joined in service with effect from 01.06.1998. Since no prior permission is required for filling up regular vacancy in minority institution, the management ought to have submitted proposal for the approval of the appointment of the fifth respondent with effect from 01.06.1998. However, to the prejudice of the fifth respondent, a fresh appointment order was issued giving appointment to the fifth respondent with effect from 30.10.1999. This Court has already held that the order of appointment itself gives a clear indication about the *inter se* seniority between the petitioner and the fifth respondent. In such circumstances, the impugned order, which is not in violation of any of the rules or regulations, cannot be interfered with by this Court.

22.Having regard to the chronology of events, this Court has no reason to accept the case of the petitioner that he should be placed above the fifth respondent in seniority. Therefore, this Court find that the Writ Petition is devoid of merits and liable to



be dismissed. Accordingly, this Writ Petition is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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To

- 1.The Secretary,
Government of Tamil Nadu,
Education Department,
Fort St.George, Chennai-600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai-600 006.
- 3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Trivandrum Road, Tirunelveli-2.

+1 CC to M/s.N.RAJAN, Advocate (SR-32793[F] dated 27/10/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-32609[F] dated 26/10/2021)

Order made in
W.P. (MD)No.15674 of 2012
25.10.2021

SJ(CO)
GC/PM(18.11.2021) 10P 6C