



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.146 & 513 of 2016

and

W.M.P.No.1628 of 2022

P.Nazeer Hussain ... Petitioner in W.P.No.146 of 2016

1.Md.Rafeeq (died)

2.Hajeera Begum ... Petitioners in W.P.No.513 of 2016

(P-2 substituted as LR of the deceased sole petitioner
vide order dated 19.01.2022 in W.M.P.No.148 of 2022)

Vs.

1. The Secretary to Government,
Higher Education Department,
Fort St.George,
Chennai 600 009.

2. The Director of Collegiate Education,
Chennai 600 006.

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

4. The Secretary and Correspondent,
The New College,
Chennai 600 014.

... Respondents in both W.Ps

PRAYER in both W.Ps: Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to approve the appointment of the petitioners as Watchman and release the salary and all other attendant benefits with effect from the date of their appointment viz., 27.11.2000.

(Prayer amended vide order dated 15.12.2021 made in
W.M.P.No.3128 of 2020 in W.P.No.146 of 2016 and
W.M.P.No.7073 of 2020 in W.P.No.513 of 2016)



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For petitioners : Ms.Abhisha Issac George for
M/s.Issac Chambers

For Respondents : Mr.L.S.M.Hasan Fizal,
Additional Government Pleader

COMMON ORDER

These writ petitions have been filed to issue a Writ of Mandamus, to direct the respondents 1 to 3 to approve the appointment of the petitioners as Watchman and release the salary and all other attendant benefits with effect from the date of their appointment viz., 27.11.2000.

2. The facts that gave rise to filing of these writ petitions are briefly stated hereunder:

(i) The fourth respondent college is a private minority aided college, functioning under the control of the second and third respondents herein. The third respondent vide his letter dated 13.09.2000 called for proposal from all aided colleges within Chennai region for grant of approval of appointments of non-teaching staff in the colleges. Based on the letter sent by the third respondent, the fourth respondent college filled up the post of Watchman on 24.11.2000, by appointing the petitioners. Both the petitioners were appointed in regular vacancies after the retirement of the existing incumbents. They were put on probation with effect from 27.11.2000. After the appointment of the petitioners, the college has sent a proposal to the third respondent for formal grant of approval. However, according to the petitioners, the proposal sent by the college was returned by the third respondent vide letter dated 14.12.2000, raising certain queries. In particular, the appointments were stated to be made without getting prior permission from the second respondent.

(ii) At this, the College sent a reply dated 02.01.2001, quoting their earlier letter dated 13.09.2000, based on which, the appointments were made. Thereafter, some correspondences were exchanged between the college and the educational authorities concerned. In the meanwhile, the Government issued G.O.Ms.No.212 P&AR dated 29.11.2001, imposing a ban on recruitment. In view of the ban coming into force, all the proposal for grant of approval of the appointment in various colleges had been put on hold. However, these petitioners continued to work in the post of Watchman as their services were required as a part of the college administration.



(iii) The Government by subsequent G.O.Ms.No.14, P & AR dated 07.02.2006, had lifted the ban on recruitment. In view of the removal of ban, the college once again written a letter on 18.04.2007, to the third respondent seeking grant of approval for appointment of these petitioners as Watchman. The second respondent by order dated 31.05.2007, has also given permission to the college inter alia to fill up two posts of Junior Assistant, one post of Store Keeper, eight posts of Laboratory Assistant, Sweeper etc., as the Government was contemplating for filling up of these posts through outsourcing, in future. At this development, the college sent a proposal on 13.07.2007, for filling up of those posts as mentioned above. As far as the Watchman post was concerned, the same has been sanctioned as early as in the year 1977.

(iv) The third respondent however by his proceedings dated 21.11.2007, had approved the appointment of one Junior Assistant and by proceedings dated 05.12.2007, approved the appointment of another post of Junior Assistant and two posts of Laboratory Assistant. The second respondent surprisingly issued a letter dated 07.01.2008, communicated by the third respondent vide his letter dated 21.01.2008, to all the aided colleges, informing the decision taken by the second respondent in not giving approval to any pending proposals until further orders. In such circumstances, the proposal for approval of the petitioners' appointment once again kept on hold. Subsequently, citing the Government Orders, some appointments have also been approved in respect of other posts like Laboratory Assistant and Store Keeper.

(v) While matter stood thus, this Court in W.P.No.9398 of 2010, has held that the G.O.Ms.No.135 dated 12.06.2009, insisting prior permission to be taken before appointment, cannot be made applicable to the appointments made prior to the issuance of the Government Order, vide its order dated 25.11.2010. This Court has also granted the relief of approval to the petitioner therein from the date of initial appointment. In the meanwhile, six persons whose names sent for approval along with the names of these petitioners, filed W.P.No.2869 of 2014, seeking direction to regularize their services with effect from 27.11.2000, with all attendant benefits.

(vi) This Court vide order dated 05.02.2014, directed the petitioners therein to give representation to the third respondent and the third respondent was directed to consider the same in the light of the decision reported in 2014 (1) CWC 162. In pursuance of the direction, the authorities concerned passed orders regularizing the services of the petitioners therein with effect from 27.11.2000. Unfortunately, the case of the petitioners has been needlessly put on hold without any orders



being passed, though they had been appointed against the sanctioned posts.

(vii) Earlier, there was a misconception on the part of the educational authorities that prior permission was required before an appointment to be made by the aided colleges. However, Courts have held repeatedly that no prior permission was required for making appointments to the post of non-teaching post, particularly, such appointments were made against the sanctioned vacancies. In view of the non grant of approval, the petitioners have been denied various benefits that are applicable to regular staff of the college. As repeated representations have not evoked any response from the authorities concerned, the petitioners are before this Court.

3. The learned counsel Ms. Abhisha Issac George for M/s. Issac Chambers, appearing for the petitioners reiterated the above facts. According to her, the insistence of prior permission by the authorities was infact discountenanced by various decisions of this Court. Starting from the decision of the learned Division Bench of this Court, reported in 2013 (7) MLJ 641, which held that there was no such requirement stipulated in the Tamil Nadu Private Colleges (Regulation) Act and rules framed thereunder. Therefore, the insistence of such requirement was held to be invalid. Following the dictum laid down by the learned Division Bench, number of decisions have been rendered over the period of time. This Court is not inclined to refer to those decisions, as the legal position is well settled and admitted and not been disputed. The learned counsel in such circumstances, would submit that the issue is no more res-integra, as the appointments of the petitioners were made against the sanctioned vacancies which were well before the issuance of the G.O. imposing ban on recruitment. Further obtaining prior permission before making appointment against the sanctioned vacancies, was also held to be not necessary.

4. Even this Court in respect of similar claim, has passed orders directing the authorities to grant approval. The learned Additional Government Pleader therefore cannot dispute the legal position.

5. Counter affidavit has been filed on behalf of the respondents and this Court finds that in its entirety, no valid reasons have been spelt out for not granting approval. On the other hand, the same cliched stand has been taken by the official respondents which had been repeatedly repulsed and discountenanced by this Court.

6. In the course of oral submissions, on behalf of the official respondents, a proceedings dated 19.04.2022, has been



circulated. The copy of the same was also produced before this Court. From the contents of the proceedings, it could be seen that the principal claim of the petitioners herein has been accepted. However, the proceedings contains certain conditions to be fulfilled for regularizing the services of the petitioners.

7. According to the learned counsel for the petitioners, these conditions have been fulfilled by the petitioners. Therefore, there would not be further impediment in taking forward the claim of the petitioners towards their regularization with effect from 27.11.2000.

8. This Court, in the above circumstances, is of the view that the claims of the petitioners herein are fully covered by the earlier decisions of this Court and also by the very action of the officials concerned in granting approval to the appointment of the staff in the very same fourth respondent college. Therefore, this Court is inclined to allow the claim of the petitioners to declare that they are also entitled to grant of approval of their appointment from the date of their appointment on 27.11.2000, with all consequential benefits.

9. The official respondents are directed to grant approval to the appointment of these petitioners with effect from 27.11.2000, with all consequential and attendant benefits as extended to other similarly placed employees whose appointments have been approved by the very same officials, in the fourth respondent college. The competent authorities are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

10. Accordingly, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

gsk



To

1. The Secretary to Government,
Higher Education Department,
Fort St.George,
Chennai 600 009.
2. The Director of Collegiate Education,
Chennai 600 006.
3. The Regional Joint Director of Collegiate
Education,
Chennai Region,
Chennai 600 015.
4. The Secretary and Correspondent,
The New College,
Chennai 600 014.

+2ccs to M/s.Isaac Chambers, Advocate, S.R.No.27117

+1cc to the Government Pleader, S.R.No.27306

W.P.Nos.146 & 513 of 2016 and
W.M.P.No.1628 of 2022

AK(CO)
SU(06/05/2022)