



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2022
PRONOUNCED ON : 06.06.2022

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CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.NO.3105 OF 2021

Dr.S.Selvakumari

...Appellant

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.
- 4.The Secretary,
Meston College of Education,
West Cott Road, Royapettah, Chennai-14.

...Respondents

Prayer : Writ appeal is filed under Clause 15 of the Letter Patents Act praying to set aside the order of this Court in W.P.No.83 of 2020 dated 12.03.2021

Prayer in W.P.No.83 of 2020 : Writ Petition filed 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 (i.e.) the date of completion of M.Phil Education Degree till the end of the academic year (i.e.) 31.05.2016 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 02.03.2010 and with all consequential monetary and terminal benefits.

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For Appellant : M/s.S.N.Ravichandran
For Respondents : Mr.V.Nanmaran
1 and 2 Additional Govt. Pleader
For Respondent 3 : No appearance
For Respondent 4 : Mr.V.Selvaraj
for M/s.Devadason and Sagar

JUDGMENT

MOHAMMED SHAFFIQ, J.

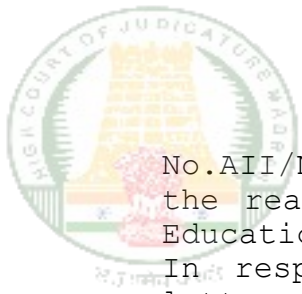
This intra Court appeal is filed against the order of the learned Single Judge rejecting the prayer of the appellant to approve her appointment as Lecturer (Tamil) in Meston College of Education (hereinafter referred to as "4th Respondent/College") with effect from 01.07.2008.

2. This is the third round of litigation. It may therefore be necessary to set out briefly the facts and history of the litigation:

i) The 4th Respondent/College is an 100% aided Minority College. It had 11 sanctioned posts, the appellant was admittedly appointed after the University of Madras had permitted to introduce Tamil as an optional subject for the academic year 2007-08. Pursuant to which, the 4th Respondent/College had called for application to the post of Lecturers in Tamil vide advertisement dated 20.05.2007.

ii) Pursuant to the above advertisement, the appellant herein had submitted her application to the 4th Respondent/College, which is a 100% Aided Minority Institution offering B.Ed. and M.Ed. courses. The University of Madras to which the 4th Respondent/College was affiliated, constituted a Selection Committee to conduct interview to the said post viz., Lecturer (Tamil). The Selection Committee vide Minutes of the Meeting dated 14.08.2007 submitted its recommendation in favour of the appellant to the Management, which was accepted and the appellant was appointed as Lecturer(Tamil) by order dated 17.08.2007.

iii) The Management forwarded its proposal to the University of Madras seeking approval of the appellant's qualification vide communication dated 17.08.2007 in Letter No.AI/Tamil Optional/Affiliation/2007. However, the same was declined by the Registrar, University of Madras vide Letter



No.AII/NR/Meston/Tamil/App.Qual/2007/1947 dated 07.09.2007, for the reason that the appellant did not possess M.Phil. /Ph.D in Education, which is the prescribed qualification for Lecturers. In response to the above, the 4th Respondent/ College vide letter dated 12.09.2007 intimated that the appellant was pursuing her M.Phil., from Periyar University, thus, the Management of the 4th Respondent/ College requested permission to allow the appellant to handle Tamil subject for the academic year 2007-08, which was granted by the University of Madras vide communication dated 12.12.2007.

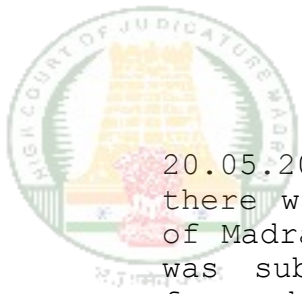
(iv) Pursuant thereto, the University of Madras granted permission to the 4th Respondent/ College to introduce Tamil as an additional optional subject in B.Ed., Programme from the academic year 2007-08 within the sanctioned strength of 120, subject to the condition that the appellant would appoint qualified teacher before the end of the academic year.

(v) The 4th Respondent/ College sent proposals to the Director of Collegiate Education/ 2nd Respondent requesting sanctioning of the post of Assistant Professor in Tamil. The University of Madras vide order dated 07.09.2007 informed the 4th Respondent/ College that the University is unable to consider the approval of qualification of the appellant for the appointment of Lecturer since she does not possess M.Phil. / Ph.D. in Education as per the qualification prescribed for the teachers in Education Colleges.

(vi) It is the case of the appellant that subsequent thereto, the appellant had acquired the requisite qualification and made several representations to the 4th Respondent/ College requesting approval of her qualification as she had acquired her M.Phil., Education Degree and to sanction the post, disburse the grant and fix the scale of pay in terms of UGC norms and other benefits from the date on which she fulfilled the requisite educational qualification.

(vii) A writ petition in W.P.No.39010 of 2015 was filed by the appellant challenging the order of the University of Madras vide Letter No.AII/NR/Meston/Tamil/App.Qual/2007/1947 dated 07.09.2007 to quash and direct the Respondents therein to sanction the post of Lecturer in Tamil w.e.f. 14.08.2007 and approve the appointment of the appellant as Lecturer in Tamil w.e.f. 17.08.2007 with all monetary benefits.

(viii) Further, it was found by the learned Single Judge in W.P. No.39010 of 2015, that Clause 1.4.3 of Appendix-33 of the University of Madras Regulations prescribes the minimum qualification for various posts. The Tamil Nadu Teachers Education University prescribed the requisite qualification with effect from 18.09.2000 for various posts. It was also found by the learned Single Judge that in terms of the above stipulation, the minimum qualification is a Ph.D. in Education which admittedly, the appellant did not possess on the date when the advertisement was issued by the 4th Respondent/ College i.e., on



20.05.2007. It was thus concluded by the learned Judge that there was no error in the order dated 07.05.2007, of University of Madras, rejecting the prayer of the appellant. However, as it was submitted by the 4th Respondent/ College that they had forwarded a proposal to the 2nd Respondent/ Director of Collegiate Education on 02.03.2010 which was a reminder of the earlier proposal for the approval of the appointment of the appellant and others and the same was pending with the 2nd Respondent/ Director of Collegiate Education.

Considering the above submission, the learned Single Judge directed the 4th Respondent/ College to submit a fresh request to the 2nd Respondent/ Director of Collegiate Education along with a copy of the order setting out the facts and circumstances of the case and the date on which the appellant acquired the requisite qualification and a direction was given to the 2nd Respondent to consider such proposal in accordance with law.

(ix) In the meanwhile, Government of Tamil Nadu vide G.O.Ms.No.256 dated 25.06.2008 established the Tamil Nadu Teachers Educational University and the matters dealt with by the University of Madras stood transferred to the Tamil Nadu Teachers Educational University.

3. The appellant and the 4th Respondent/ College submitted representation to the 2nd Respondent pursuant to the directions of this Court in W.P.No.39010 of 2015, thereafter, the 2nd Respondent/ Director of Collegiate Education vide order dated 28.08.2017 on the representation dated 15.03.2017 made by the 4th Respondent/ College rejected the request/ prayer for sanctioning the post and to fix the pay scale in terms of UGC in terms of orders of this Court in W.P.No.39010 of 2015.

4. Aggrieved by the same, the appellant filed a Contempt Application in Cont.P.No.2402 of 2018 wherein this Court was pleased to find that the 2nd Respondent has merely reiterated the earlier reasons for rejecting the appellant prayer and has completely overlooked the second part of the directions issued by the learned Single Judge in W.P.No.39010 of 2015 which requires the 2nd Respondent to independently consider the representation made. In view of the same, the learned Judge was pleased to direct the 2nd Respondent to reconsider the representation dated 15.03.2017 and set aside the order dated 28.08.2017. Thereafter, the 2nd Respondent vide order dated 01.08.2019 rejected the request made by the 4th Respondent/ College vide its communication dated 29.05.2019 on the following premise:

" In the allotment of 11 posts made by the Director of Collegiate Education vide his Proc.D.Dis.No.54927/G1/99, dated 28.10.1999, there was no post of Lecturer for Tamil. This College without getting the permission of the Government to appoint a



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Lecturer in Tamil, filled up a new post on its own volition. It is recommended that this cannot be accepted. Also, it has been understood that as per the disbursement of wages register of the College, attendance register and annual diaries, the individual was treated as Management staff. It is the responsibility of the Management for not showing her as the Management staff in the appointment order and similarly, in such cases, if other aided institutions if allowed appointing persons by creating posts on their own accord and without getting the permission of the Government, later if they approach for grant of aid and permitted, the same would result in acute financial strain to the Government."

5. Aggrieved by the above order, the appellant had filed yet another writ petition in W.P.No.83 of 2020 which was disposed of, by the learned Judge rejecting the same inter alia on the following grounds viz.,

i) The appellant was appointed and worked in a self financing post with a consolidated pay and retired on superannuation. The Management of the Respondent/ College appointed the appellant vide order dated 14.08.2007 on a consolidated pay of Rs.8,000/- per month which was admittedly payable by the Management, which would clearly show that the appellant was not appointed or selected to a sanctioned post but was appointed by the Management and salaries were paid by the Management. In other words, she was appointed to a self-financing post. There has been correspondence between the 4th Respondent/ College and the University of Madras for sanctioning of more teaching posts and for filling up teaching and non-teaching posts which has been lying vacant, which is under consideration even at the time when the writ petition was decided. The appellant having not been appointed to any sanctioned post, the Respondents were justified in rejecting the request made by the appellant.

ii) Though the appellant's qualification was approved by the University that would not ipso facto result in approval of her appointment, for they are two different and distinct aspects.

iii) Admittedly, on the date when the appellant was appointed as Lecturer, she did not possess the requisite qualification and she was also not appointed to a sanctioned post. It may not be permissible for the appellant to claim as a matter of right and to compel the Government to provide her appointment.

iv) That merely because the Selection Committee of the University was also involved and the recruitment process was followed and conducted by the University of Madras would not by itself be indicative of the fact that the post was sanctioned by the University. In the absence of a sanctioned post, the



6. The Writ Appeal is filed challenging the above order of the learned Single Judge inter alia on the following grounds:

b. That the University of Madras had granted permission to the 4th Respondent/ College to offer Tamil as an additional optional subject for B.Ed. Degree course and when grant-in-aid is given to the entire B.Ed. Degree course, imparting of one subject viz., Tamil under self-financing scheme is unsustainable.

d. That the appellant had a vested right to claim salary from the Government grant, once University grants permission to introduce Tamil as an additional subject in B.Ed. course then irrespective of whether the post to which a candidate is appointed is sanctioned or otherwise the grant must be extended.

8. Heard both sides, perused the materials available on record.

a. It is an admitted fact that there were only 11 sanctioned post to the Respondent/ College. The College had appointed the appellant without obtaining sanction from the 4th Respondent/ College for the post of Lecturer for Tamil.

c. The claim of grant is contrary to the provisions of Tamil Nadu Private Colleges (Regulation) Act and Rules, 1976 and Grant in Aid Code of the Tamil Nadu Education Department governing



the payment of grant to Private Colleges. In this regard, it may be relevant to refer to the following Sections of the Tamil Nadu Private Colleges (Regulation) Act, 1976, which reads as under:

"a. Section 10: Payment of grant

(1) Subject to such rules as may be prescribed, the Government may pay to the private college grant at such rate and for such purposes as may be prescribed.

(2) The Government may withhold permanently or for any specified period the whole or part of any grant referred to in sub-section (1) in respect of any private college -

i) which does not comply with any of the provisions of this Act or any rules made or directions issued thereunder insofar as such provisions, rules or directions are applicable to such private college, or

ii) in respect of which the pay and allowances payable to any teacher or other person employed in such private college are not paid to such teacher or other person in accordance with the provisions of this Act or the rules made thereunder, or

iii) which contravenes or fails to comply with any such conditions as may be prescribed.

(3) Before withholding the grant under sub-section (2), the Government shall give the educational agency an opportunity of making its representations."

Tamil Nadu Private Colleges (Regulation) Rules, 1976:

"7. Payment of grant. - (1) Subject to the orders and instructions issued by the Government from time to time, every college may be paid grants specified in sub-rule (2). No grant shall be paid to any college, the affiliation/approval of which has been withdrawn by University concerned for the period of such withdrawal of affiliation/approval.

(2) Subject to such terms and conditions and at such rates as may be approved by the Government from time to time, grants may be paid to any college for the purposes of teaching, construction of buildings, purchase of building site, playground, furniture, books and appliances.

(3) Subject to the provision of sub-section (2) of section 10, the Government may withhold permanently or for any specified period, the whole or part of any grant, if any of the conditions specified below or directions or orders issued by the Government or the Director or his subordinate officers from time to time, are contravened or not complied with-

(a)

(b)



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(c) The educational agency shall carry out the instructions issued by the Government or by the Director with a view to maintain academic standards and to safeguard the interests of the teachers and the students;

11. Conditions of service, etc. of teachers and other persons in college. - (1) The number of teachers employed in a college shall not exceed the number of posts fixed by the Director, from time to time, with reference to the academic requirements and norms of work load prescribed by the respective Universities and overall financial considerations.

.....

(5) Service register shall be maintained for every teacher or other person ' employed in a college in the Form prescribed for Government servants, from time to time, showing among others, the date of appointment, the scale of pay on which the teacher or other person employed in a college, was appointed, the increments given, from time to time, the leave at credit and the leave granted and other relevant entries such as awards and punishments, etc.

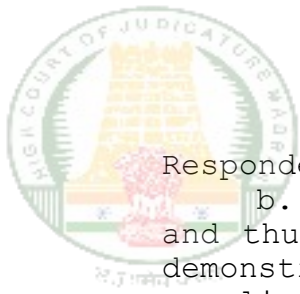
(6) The scales of pay and other allowances of every teacher and other person employed in a college shall be as approved by the Government, from time to time.

(7) Every teacher and other person employed in a college shall be governed by the leave rules approved by the Government, from time to time, in respect of them.

(8) Every teacher in a college shall be governed by the rules under the Teachers Provident Fund Scheme and the committee shall ensure that all the teachers who are eligible for admission to the said Scheme are admitted to the Scheme.

(9) Every teacher or other person employed in a college shall, subject to the orders issued by the Government, from time to time, be eligible for pension."

On a cumulative reading of Section 10 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 read with Rules 7 and 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 would reveal that the number of teachers to be employed shall not exceed the post fixed by the Director from time to time. Admittedly, there were only 11 sanctioned posts and the post of Lecturer (Tamil) was not sanctioned. As a matter of fact, there was a prayer to sanction the post of Lecturer(Tamil) in W.P.No.39010 of 2015 which would clearly show that the post occupied by the appellant was not a post sanctioned by the 4th



Respondent/ College but instead it is a self-financing post.

b. It is settled that grants are in the nature of concession and thus, to be entitled to the concession/ benefit, it must be demonstrated that the conditions precedent ought to be strictly complied with. Grant-in-aid to a college is not a right conferred on the private college. The word 'may' occurring in sub-section(1) makes it clear that the power to give grant-in-aid to any private college is a discretionary power vested in the Government. Grant is given subject to Government orders and instructions issued from time to time, under Rule 7 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976. A grant is given to the college, which impliedly means that the college accepted the conditions subject to which the grant is given and therefore having accepted the conditions and terms, if the institution does not carry out the instructions, the Government will have the right to withhold the grant-in-aid. In this regard, it may be relevant to refer to the decision of the Hon'ble Supreme Court reported in AIR 1977 SC 2145 wherein while referring to the decision of the Hon'ble Supreme Court in the case of State of Assam vs. Ajit Kumar Sharma reported in AIR 1965 SC 1196, it was held as under:

"4.No right is conferred on the teachers or the institution to ask that a particular condition of the grant should not be enforced. "

10. The petitioner not possessing the necessary qualification on the date of appointment and having not been appointed to a sanction post, the claim of grant is thus contrary to the provisions of Tamil Nadu Private Colleges (Regulation) Act and Rules, 1976 and Grant in Aid Code of the Tamil Nadu Education Department and thus unsustainable.

11. Before concluding, it may be necessary to deal with the decision of the Division Bench of this Court in the case of P.Ravichandran vs. State of Tamil Nadu reported in (2013) 7 MLJ 641, on which reliance was sought to be placed by the learned counsel for the appellant. The question that arose for consideration was whether "prior permission" from the Department/ Director is required for filling up vacant "sanctioned post". It was held that no prior approval is necessary for filling "sanctioned posts" in Private Aided Colleges and that it was not permissible to contend that vacant sanctioned post can be filled up by the Management only after getting prior permission. Reliance on the above judgment is wholly misconceived inasmuch as in the case before the Division Bench, the post was a sanctioned post unlike in the instant case where admittedly it was not a sanctioned post, if one bears in mind the above distinction, it would be clear that the above judgment would have no bearing to the facts of the present case and thus reliance thereon is wholly misconceived.



12. Keeping the above facts in mind and also the admitted fact that the appellant was not appointed to a sanctioned post, the prayer to sanction the post subsequent to the appointment of the appellant is clearly unsustainable, any leniency shown would produce unintended results, for it would then enable the Colleges to appoint teachers/ staff beyond the sanctioned strength and claim grants which is impermissible for grant as stated supra is a concession and a burden borne by the government.

13. We make it clear that if any representation is pending with the Government, it is needless to state that the authority concerned shall pass orders in accordance with law.

14. For all the reasons stated above, the Writ Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

mka

To:

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

2.The Director of Collegiate Education,
DPI Campus, College Road,
Chennai-6.

+1cc to Mr.S.N.Ravichandran, Advocate Sr.No.32102

+1cc to M/s.Devadason & Sagar, Advocate Sr.No.32113

W.A.No.3105 of 2021

SMI (CO)

RVM(29/06/2022)