



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.01.2022

Pronounced on : 31.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

WEB COPY

W.P(MD) Nos. 12124 of 2011 and 9520 of 2014 and 207 of 2014 and
M.P(MD) .Nos.1 of 2011, 1 and 1 of 2014

S.A.K. Subaiyar Ali

:Petitioner in all W.Ps.

..VS..

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Higher Education Department, Secretariat,
Chennai - 9.
- 2.The Director Of Collegiate Education,
College Road, Chennai.
- 3.The Joint Director Of Collegiate Education,
Madurai Region.
- 4.The Secretary,
Dr.Zakir Hussain College,
(Minority Aided College),
Ilayangudi Post - 630 702,
Sivaganga District

... Respondents in WP(MD)No.12124 of 2011

- 1.The Director of Collegiate Education,
College Road, Chennai- 006.
- 2.The Joint Director Of Collegiate Education,
Madurai Region, Madurai- 020.
- 3.The Secretary/correspondent,
Dr.Zakir Husain College,
(Minority Aided College)
Ilayangudi Post-702,
Sivagangai District.
- 4.Mr.V.M.Jafarulla Khan,
Secretary/correspondent,
Dr. Zakir Husain College,
(Minority Aided College),
Ilayangudi Post- 702,
Sivagangai District

... Respondents in WP(MD)No.9520 of 2014

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



2.The Joint Director Of Collegiate Education,
Madurai Region, Madurai 020.

3.The Secretary,
Dr. Zakir Husain College,
(Minority Aided College),
Ilayangudi Post- 702,
Sivaganga District.

... Respondents in WP(MD)No.207 of 2014

PRAYER in W.P(MD).No.12124 of 2011: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Mandamus directing the respondents 1 to 3 to approve the appointment of petitioner as Librarian in 4th respondent's college from the date of appointment i.e., on 01.09.2008 based on the University Grants Commission Letter No.F.7-1/2004(PS), dated 14.03.2008 and the letter of 2nd respondent passed in Na.Ka.No.129780/S1/82 dated 01.02.1983 with all attendant and monetary benefits.

PRAYER in W.P(MD).No.9520 of 2014: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 3rd respondent in his proceedings No.451/2014, dated 01.04.2014 and quash the same and consequently direct the respondents to reinstate the petitioner in service as Librarian in 3rd respondent College with all attendant and monetary benefits.

PRAYER in W.P(MD).No.207 of 2014: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 3rd respondent in his proceedings No.451/2013, dated 08.09.2013 and quash the same and consequently direct the respondents to treat the period of suspension as duty period and to grant all attendant and monetary benefits.

For Petitioner in all W.Ps.: Mr.M. Saravanakumar

For R1 and R2 in W.P(MD).No.9520/14 & 207/14

For R1 to R3 in W.P(MD).No.12124/11

: Mr. N. Ramesh Arumugam

Government Advocate (Civil Side)

For R3 and R4 in W.P(MD).No.9520 of 2014

For R3 in W.P(MD).No.207 of 2014

For R4 in W.P(MD).No.12124 of 2011

: Mr. A. Sivaji

COMMON ORDER

W.P. (MD). No. 12124 of 2011 is filed for issuing a direction to the respondents 1 to 3 to approve the appointment of petitioner as Librarian in 4th respondent's college from the date of appointment i.e., on 01.09.2008 based on the University Grants



Commission Letter No.F.7-1/2004(PS), dated 14.03.2008 and the letter of 2nd respondent passed in Na.Ka.No.129780/S1/82 dated 01.02.1983 with all attendant and monetary benefits.

2. W.P.(MD).No.9520 of 2014 is filed to quash the impugned order passed by the 3rd respondent in his proceedings No.451/2014, dated 01.04.2014 and consequently direct the respondents to reinstate the petitioner in service as Librarian in 3rd respondent College with all attendant and monetary benefits.

3. W.P.(MD).No.207 of 2014 is filed to quash the impugned order passed by the 3rd respondent in his proceedings No.451/2013, dated 08.09.2013 and consequently direct the respondents to treat the period of suspension as duty period and to grant all attendant and monetary benefits.

4. The brief facts of the case is that the petitioner has completed B.Sc., (Chemistry) in the year 1993 and M.Lib.Sc., in the year 2005 and completed M.Phil., (Library and Information Science) in the year 2007 and he was doing Ph.D., Program in the discipline of Library and Information Science. The petitioner has qualified in the State Eligibility Test also. The petitioner was appointed on 11.07.2001 as Librarian Assistant in the Dr. Zakir Husain College (the 4th respondent College in W.P.(MD).No. 12124 of 2011). One K.N.E. Kasim was working as Librarian, retired from service on 31.07.2004 and the petitioner was appointed as Librarian on 31.08.2008.

5. The contention of the petitioner is he has completed 5 years of service as Librarian in the said college and the 4th respondent College has submitted several letters to the respondents 1 and 3 to approve the appointment of the petitioner as Librarian as well as one more appointment of another person who was appointed as Physical Education Director. The University Grants Commission (Minimum Qualifications required for the appointment and career advancement of teachers in universities and Institutions affiliated to it) (Second Amendment Regulations 2006) issued a notification on 14.06.2006 and held that "NET shall remain the compulsory requirement for appointment as lecturer for those with post-graduate degree. However, the candidates having Ph.D., Degree in the concerned subject, are exempted from NET for PG level and UG level teaching. The candidates having M.Phil., Degree in the concerned subject are exempted from NET for UG level teaching only. The first respondent sanctioned one Librarian post to the 3rd respondent college on 19.03.2010 but the college without sending fresh proposal with the request to approve his appointment as Librarian, contrarily the 4th respondent college issued paper publication on 28.03.2011 and invited the candidates from open market to the post of Librarian. Therefore, the petitioner filed W.P.(MD).No.12124 of 2011 and this Court granted interim injunction on 04.01.2012. The third



respondent filed a petition to vacate the interim injunction, this Court vide order dated 29.11.2012 directed the respondents to consider the petitioner's claim and pass orders. The third respondent issued show cause notice on 11.02.2013 stating that the petitioner has made defamatory statements against the Management. The petitioner submitted an explanation on 12.02.2013 denied all the allegations. Another, show cause dated 24.02.2013 was issued stating the petitioner has produced bogus experience certificates. Thereafter, the petitioner submitted an explanation and denied the allegations and the petitioner also submitted before the fourth respondent college stating that his case has to be recommended for approval and since the petitioner is working as Librarian from 01.02.2005 onwards. Without considering the same, the respondent college was making reckless allegation against the petitioner.

6. Without considering all these pleas the third respondent issued suspension order on 08.09.2013 and thereafter the respondent college has not paid any subsistence allowance from the date of suspension. The petitioner submitted a representation to the respondents on 18.11.2013 with the request to disburse the subsistence allowance since the same was denied by the third respondent vide letter dated 20.11.2013. Aggrieved over the same the petitioner has filed the Writ Petition in WP(MD).No.207 of 2014 to quash the suspension order and consequently direct the respondents to treat the period of suspension as duty period and to grant all attendant benefits.

7. The petitioner filed another Writ Petition in W.P. (MD). No. 9520 of 2014 wherein the petitioner is seeking to quash the impugned order dated 01.04.2014 and consequently direct the respondents to reinstate the petitioner in service as Librarian in the respondent college and to grant all monetary benefits. Based on the show cause dated 24.02.2013 with an allegation the petitioner has produced bogus experience certificates, the college passed the present impugned termination order without issuing any charge memo and without conducting any enquiry.

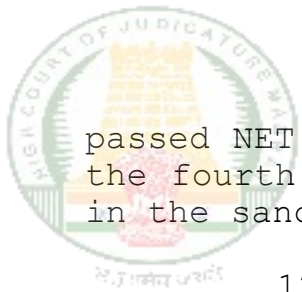
8. The contention of the petitioner is the said impugned order was passed based on the enquiry committee report dated 10.10.2013. Immediately the petitioner submitted a representation under Right to Information Act on 25.04.2014 and requested the copy of the Enquiry Committee Report dated 10.10.2013. But the college has replied vide letter dated 22.05.2014 that the petitioner has claimed wrong information. The petitioner preferred an appeal before the first respondent on 06.06.2014 and the same is pending. The petitioner alleges that since he has obtained interim injunction before this Court, in order to penalize him the respondent has taken steps to suspend him and recklessly alleged the petitioner and passed an order of termination.



9. The petitioner filed W.P.(MD).No.12124 of 2011 with a prayer to directing the respondents to approve the appointment of petitioner as Librarian in the 4th respondent college from the date of appointment i.e., on 01.09.2008 based on the University Grants Commission Letter dated 14.03.2008 and the letter of the 2nd respondent passed on 01.02.1983 with all attendant and monetary benefits.

10. The respondents have filed detailed counter in W.P. (MD). No. 12124 of 2011. The third respondent, Joint Director of Collegiate Education has filed counter on behalf of the 1 to 3 respondents and has stated that the petitioner has not fulfilled the qualification required for the post of Librarian as per the revised norms fixed by the UGC. As per the revised norms, the candidates should possess minimum 55% marks in the relevant P.G Degree with a pass in NET / SLET or Ph.D., As per the information from the college, the petitioner has not fulfilled the educational qualification for the post of Librarian. The post of Librarian cannot be categorized as UG level or PG level. Hence, the contention of the petitioner is not sustainable and valid as per law. As per the UGC guidelines there is no provision to relax the minimum qualification for appointment to the post of Librarian. The petitioner was appointed purely on consolidated basis and in order to avoid hardship to the students and the petitioner cannot claim transfer of service as teaching staff as a matter of right. The petitioner was neither a permanent employee of the college for considering transfer of service nor the petitioner fulfilled revised qualification as prescribed by the UGC. Hence, there is no material in the petitioner's writ petition.

11. The fourth respondent / College had filed counter stating the petitioner was appointed as Librarian on 31.08.2008 in the self-finance scheme. At the time of appointment, the Government of Tamil Nadu issued an order to fill up the vacancies in Lecturer post with the M.Phil., Degree. From 01.12.2005 a post was vacant for Physical Education Director and from 01.08.2004 the Librarian post was vacant. In order to look after the welfare of the students the petitioner was appointed the petitioner on Contract basis for the post of Librarian. From 2010 as per new UGC norms the petitioner is not qualified for the post of Librarian since he has not passed SLET and NET examinations. Even the petitioner has not submitted a representation to the UGC to exempt him from passing SLET or NET examination, he himself admits that he is not qualified and sought for exemption. The petitioner was granted one year time to pass NET and SLET Examinations. But the petitioner has not passed requisite qualification. After the post was sanctioned, a Notification was issued to fill up the vacancy as stated in the notification. The educational qualification for the post of Librarian in the Self Finance Quota is P.G degree whereas the education qualification for the post of Librarian in the Government Quota is that he should have

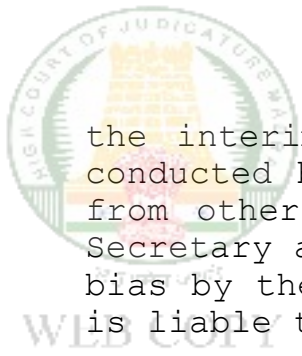


passed NET / SLET or Ph.D. The petitioner has no *loco standi* to ask the fourth respondent to send proposal to appoint to the petitioner in the sanctioned post.

12. The contention of the petitioner that the college is seeking exemption in the qualification is incorrect. The respondent has sought only one year extension so that the petitioner can pass exemption and get a qualification as per norms. Since the petitioner has not availed the concession of granting time to qualify himself as per new UGC norms, thereafter, the said sanctioned Librarian post is filled up with suitable candidates. If the post is not filled up, then the post would be automatically lapsed. Then, the college would be seriously prejudiced, therefore, without waiting for the petitioner to acquire the requisite qualification, college has filled up the post with eligible candidate and the qualified person is still working in the college.

13. As far as W.P. (MD) No.9520 of 2014 is concerned the third respondent has filed counter stating one M. Manohar was appointed as a Librarian as additional charge in the aided course w.e.f. 10.07.2005. The writ petitioner was appointed as Librarian (self-finance course) w.e.f. 01.09.2008 to assist the said Manoharan. The petitioner earlier was appointed as Clerk in the Computer Science Department from 09.07.2001 and he was not appointed as Librarian on 11.07.2001. The order dated 31.08.2003 will indicate that the petitioner was appointed as Library (in-charge) in the self-financing post. The petitioner is instrumental in not only filing the cases himself but also instigate the members of the third respondent society to make false complaints and forged records and filed the same before this Court in W.P. (MD) No.12124 of 2011. The petitioner has not correctly quoted the purpose of the order passed on 29.11.2012. Since the petitioner preferred various petition, the college was directed by the official respondents to submit the proposal to the official respondents and in obedience of the said direction, the proposal was sent to the Joint Director and it was returned stating that the petitioner is not qualified. The typed set of papers filed by the petitioner were perused and thereafter it was found that that experience certificate filed is not genuine and it is forged one. Hence, show cause notice dated 22.04.2013 was issued and the petitioner has submitted admitting his guilt. Based on the materials criminal complaint was lodged and the impugned order was passed on 01.04.2014. The subsistence allowance due to the petitioner was also paid on 31.12.2014. Therefore, the college prayed to dismiss this petition.

14. The official respondents have filed counter stating that the Writ Petitioner has admitted the offence of forging signature and filing the same before this Court. The college has filed a counter stating that based on the forged documents, the petitioner has obtained the interim order of stay and thereafter,



the interim order of stay ought to be vacated. The interview was conducted by the committee of 5 members in which 3 members will be from other college and university and remaining 2 members will be Secretary and Principal of the College. Therefore, the allegation of bias by the petitioner is false and the W.P. (MD). No. 9520 of 2014 is liable to be dismissed.

15. Heard Mr. M. Saravanakumar, the learned Counsel for the petitioner, Mr. A. Sivaji learned Counsel appearing for fourth Respondent college and Mr. N. Ramesh Arumugam, learned Government Advocate (Civil Side) and perused the materials available on record.

16. The prayer in W.P.(MD)No.12124 of 2011 is concerned the petitioner has sought for issuance of Writ of Mandamus directing the respondents to approve the petitioner as Librarian in the 4th respondent college from the date of his appointment on 01.09.2008 and to grant attendant and monetary benefits is concerned. The college has produced communication sent by the Deputy Director of Collegiate Education dated 29.01.2013, wherein it has been clearly stated for the post of Librarian, UGC has prescribed Education qualification as Master in Library Science with SLET / NET / SET or PD.D. Therefore, the petitioner who is working as Librarian in the self-finance college could not be appointed as Librarian under the government aided post. Based on this communication this Court is of the considered view that the petitioner cannot claim to appoint him as Librarian under the government aided post, since he is not having requisite qualification. As far as, the appointment under minority aided college in self finance post, the official respondents have no right to interfere in the appointment of minority colleges. This Court and the Hon'ble Supreme Court has repeatedly held the recruitment or appointment in minority aided colleges, the college has every right and any direction by the official respondents would amount to interference in the internal administration of the minority aided college. **Therefore, this Court is dismissing the Writ Petition in W.P. (MD) No.12124 of 2011.**

17. As far as W.P. (MD) No.207 of 2014 is concerned the petitioner has challenged the suspension order and by the consequential prayer to treat the suspension period as duty period and grant all attendant and monetary benefits. The petitioner was suspended from service on 08.09.2013. Thereafter, the petitioner was dismissed from service on 01.04.2014. It is seen from the counter of the respondents that the petitioner was already paid with subsistence allowance on 31.12.2014. Recording the said submission this Court is of the considered opinion that the petitioner has received all the monetary benefits for the suspension period. As far as the suspension, it has ended up by issuing charge memo and thereafter, the petitioner was dismissed from service. Therefore, nothing survives for adjudication in this Writ Petition. **Hence, W.P. (MD) No.207 of 2014 is dismissed.**



18. As far as W.P. (MD) No.9520 of 2014 is concerned the petitioner has challenged the order of termination stating the enquiry was not conducted properly and charge sheet was not issued and the respondents alleges that the petitioner has forged the signature and submitted the forged document. It is also seen from the records that FIR is filed against the respondents for the alleged forgery. The petitioner has submitted an appeal before the Director of Collegiate education on 06.06.2014. When the writ petitions were taken up for hearing, the respondents have stated the Director of Collegiate Education has also passed an order but the same was not placed before the court. Therefore, this Court is of the considered view that the Director of Collegiate Education shall consider the entire issue whether appropriate enquiry has been conducted or whether sufficient opportunity was granted to the petitioner. All these aspects shall be considered and speaking order shall be passed in the appeal submitted by the petitioner. If any order is passed by the Director, the copy of the same shall be served to the petitioner. The petitioner is at liberty to challenge the same as per law.

19. The petitioner contended before this Court inspite of the interim order the college has appointed third person and therefore, college has committed contempt. It is seen that the petitioner has not filed any contempt petition before this Court. The college represented by learned counsel Mr. A. Sivaji, submitted that the petitioner gainfully employed elsewhere but the petitioner submitted it is not any permanent post and he is employed for a meagre amount.

20. Considering all these facts and circumstances, this court is of the considered view that the petitioner is entitled to some benefits. Therefore, the college is directed to pay three months salary to the petitioner. **Accordingly, W.P. (MD) No.9520 of 2014 is disposed of.** No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)

trp



To

1. 1.The Secretary to Government,
Higher Education Department, Secretariat,
Chennai - 9.

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

3.The Joint Director of Collegiate Education,
Madurai Region, Madurai - 625 020.

+1 CC to M/s.M.SARAVANAKUMAR, Advocate SR-15519

+1 CC to Mr.A.SIVAJI, Advocate SR.No. 15844

+1 CC to Mr. Special Government Pleader, SR.No. 16086

Order made in
W.P(MD) Nos. 12124 of 2011 and
9520 of 2014 and 207 of 2014 and
M.P(MD).Nos.1 of 2011, 1 and 1 of 2014
31.03.2022

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TR(12.04.2022) 9P 7C