



W.P(MD)Nos.2404 & 17009 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.2404 & 17009 of 2013

and

M.P(MD)Nos.1, 1 & 2 of 2013

W.P(MD)No.2404 of 2013:

J.Vijila

... Petitioner

Vs

- 1.The Secretary to the
Government of Tamil Nadu,
Education Department,
Secretariat,
Chennai.
- 2.The Director of Collegiate Education,
Chennai – 600 006.
- 3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli.
- 4.XXXX
*(R.4 is deleted vide order of this Court
dated 07.11.2022 in 2404 of 2013)*



W.P(MD)Nos.2404 & 17009 of 2013

5.The Bishop in Tirunelveli,
Manager and General Secretary of
T.D.T.A.Colleges,
Church of South India,
Diocesan Office,
Palayamkottai – 627 002.
Tirunelveli District.

6.The Secretary / Correspondent,
St.John's College,
Palayamkottai – 627 002.
Tirunelveli District.

7.The Principal,
St.John's College,
Palayamkottai – 627 002.
Tirunelveli District.

8.P.Augustus Robince

9.Ezhilmathi Sophia

10.Sheeba Rajakumari

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 5 and 6 to regularize and to forward a proposal for approval of the Petitioner's appointment as Lecturer in Zoology with effect from 29.05.2009 in the permanent vacancy caused by virtue of the Retirement of Mr.Jacob and Mr. Balasingh, which was sanctioned by the second respondent vide Proceedings in Na.Ka.No.26627/G3/2007 dated 26.07.2007 and consequently direct the respondents 1 to 4 to approve the petitioner's appointment and to Re-fix the salary and disburse the arrears of salary with effect from 29.05.2009.

For Petitioner : Mr.Ajmal Khan
Senior Counsel
Assisted by Mr.H.Mohammed Imran
for Mr.B.Anandan



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W.P(MD)Nos.2404 & 17009 of 2013

For Respondents : Mr.N.Satheeskumar
Additional Government Pleader
for R.1 to R.3

Mr.H.Mohammed Imran
for M/s.Ajmal Associates for R.4

Mr.Prabhu Rajadurai for R.5

Mr.P.P.Alwinbalan for R.6 & R.7

Mr.M.Saravanan for R.8

Mr.J.Barathan for R.9

Mr.S.Ramsundarvijayraj
for M/s.Veera Associates for R.10

W.P(MD)No.17009 of 2013:

L.Jansi Rani

... Petitioner

Vs

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W.P(MD)Nos.2404 & 17009 of 2013

For Petitioner : Mr.S.T.Sasidhara Tamilkani

For Respondents : Mr.N.Satheeskumar
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for M/s.Veera Associates for R.10

COMMON ORDER

Heard the learned counsel on either side.

2. The cases on hand pertain to appointment of Lecturers in Zoology in St.John's College, Palayamkottai, Tirunelveli District.

3. J.Vijila and L.Jansi Rani were appointed on 29.05.2009. Unfortunately, the College Management was riven by factional dispute. The Director of Collegiate Education, vide communication dated 26.07.2007 had permitted the College Management to fill up as many as 18 vacancies in

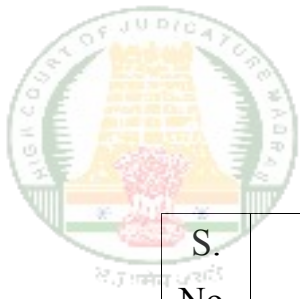


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various teaching posts. Out of the permitted vacancies, two pertained to Zoology Department. One faction appointed as many as 17 persons to various posts on 11.08.2008. Another group appointed as many as 18 persons to the same posts. This included the appointments of the writ petitioners also. Dispute arose as to which of the appointments would prevail. The matter was contested before the writ Court, the Hon'ble Division Bench and before the Hon'ble Supreme Court of India. It was finally held that the appointments made on 11.08.2018 were invalid and that the appointments made on 29.05.2009 would hold good.

4. The contention of the writ petitioners herein is that even though two vacancies in the Zoology Department in the post of Lecturer were permitted to be filled up by the Director of Collegiate Education, their appointments have not been approved till date.

5. The learned counsel appearing for the writ petitioners reiterated all the contentions set out in the affidavit filed in support of the respective writ petitions. The Department had filed a detailed counter affidavit. The table set out therein contains the key to the issue raised in these writ petitions. The table reads as follows :



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S. No.	Name	Date of Appointment	Date of Retirement
1.	Rajkumar Kovilpillai	27.08.1980	31.01.2010
2.	Mahilini	04.09.1980	31.03.2016
3.	Albert Rajendran	03.09.1981	31.07.2013
4.	Jawahar Samuel	28.03.1990	31.05.2022
5.	Mohanraj Ebenezer	13.12.1995	31.10.2014
6.	Suthakar Isaac	13.12.1995	31.01.2024
7.	M.Rajakumari	21.06.1999	31.05.2022
8.	Ezhilmathi Shophia	30.08.2006	31.07.2024
9.	Sheepha Rajakumari	30.08.2006	31.05.2026
10.	Augustus Robince	11.08.2008	31.07.2027
11.	Kerenap Evangeline	16.07.2001	30.06.2028

From the above table, one can safely conclude that the total number of sanctioned lecturer posts in the Department of Zoology was 11.

6. The learned Senior Counsel appearing for J.Vijila fairly states that he is not questioning the appointment of Ezhilmathi Sophia and Sheeba Rajakumari (Respondents 9 and 10). He would train his guns only on the appointment of Augustus Robince. He also states that Augustus Robince was appointed on 11.08.2008. All the appointments made on the said date were eventually nullified. Therefore, Augustus Robince cannot have any claim and once he is removed from the scene, the appointment of J.Vijila can very well be approved.



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7. There is one technical difficulty in accepting the aforesaid contention advanced by the learned Senior Counsel appearing for Vijila. As rightly pointed out by the learned counsel appearing for Augustus Robince, his appointment was already directed to be approved by this Court vide order dated 25.04.2012 in W.P(MD)No.3903 of 2008. The prayer made in the said writ petition was as follows:

“PRAYER: Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the second respondent to approve the appointment of the petitioner as Lecturer in Department of Zoology in the fourth respondent college and disburse the salary and attendant benefit with effect from 14.12.2001, on the basis of petitioner's representation, dated 05.04.2008.”

8. The specific stand of the learned counsel appearing for Augustus Robince is that a regular vacancy arose on 14.12.2001 and that he was validly appointed by the then Management and without approval, he was continuing to work till 2008. It is true that even though the name of Augustus Robince figured in the list of appointments made by the faction which was eventually nullified, Augustus Robince was not a party to the said writ proceedings. That apart, he did not anchor his claim on the order of appointment dated 11.08.2008 but rather on the appointment made in the year 2001. Since certain factual



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controversies arose, a learned Judge who allowed the writ petition chose to direct the Department to approve his appointment with effect from 11.08.2008 and also to pay the arrears pursuant to the approval. The said order has since been complied with. He is working in the approved post and the management is standing by him. The order dated 25.04.2012 made in W.P(MD)No.3903 of 2008 is very much within the knowledge of both J.Vijila as well as L.Jansi Rani. Neither of them had chosen to file a review or writ appeal challenging the said order. On the other hand, Augustus Robince is said to have filed writ appeal seeking relief in respect of the disallowed portion. In these circumstances, in the present proceedings, it will be thoroughly improper for this Court to undertake the collateral review. I have to necessarily proceed on the footing that order dated 25.04.2012 in W.P(MD)No.3903 of 2008 is holding the field.

9. Looked at from that prespective, I have to necessarily come to the conclusion that in the light of the particulars set out in the aforesaid table, vacancies arose only on 31.01.2010 following the retirement of Rajkumar Kovilpillai and again on 31.07.2013 following the retirement of Albert Rajendran. Therefore, the writ petitioners herein if at all can be accommodated only as against the said resulting vacancies.



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10. Both J.Vijila as well as L.Jansi Rani were appointed on the same date by the same Management. Question arises as to whose appointment has to be approved against which vacancy. It is seen that J.Vijila was born on 05.05.1977 while L.Jansi Rani was born on 04.05.1980. I am, therefore, of the view that the person elder in age can be accommodated in the vacancy which arose earlier. I direct the College Management to send proposal for approving the appointment of J.Vijila as Assistant professor in Zoology Department with effect from 31.01.2010 in the vacancy arising out of the retirement of Rajkumar Kovilpillai and the proposal for approving the appointment of L.Jansi Rani as Assistant professor in Zoology Department with effect from 31.07.2013 in the vacancy arising out of the retirement of Albert Rajendran. These proposals shall be sent within a period of two weeks from the date of receipt of a copy of this order. The competent authority, namely, Joint Director of Collegiate Education, Tirunelveli Region is directed to approve the same and also pay the arrears pursuant to the approval within a period of twelve weeks thereafter and continue to release the salary grant.

11. It is a fact that both J.Vijila as well as L.Jansi Rani have worked from the dates of their original appointment. While I grant seniority to J.Vijila that cannot result in deprivation of the dues payable to L.Jansi Rani. Therefore, while disbursing the arrears, J.Vijila will have to part with 50% of



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the salary arrears payable to her from 31.01.2010 till 31.07.2013. The said amount shall be paid to L.Jansi Rani.

12. These writ petitions are disposed of on these terms. Consequently, connected miscellaneous petitions are closed. No costs.

07.11.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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