



W.P.(MD)No.12839 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2022

DELIVERED ON : 01.08.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12839 of 2014

and

W.M.P.(MD).Nos.1 of 2014 and 4801 of 2017

T.Asenath Benitta

... Petitioner

Vs

- 1.The Director of Collegiate Education,
Chennai – 600 006.
- 2.The Joint Director of Collegiate Education,
Tirunelveli – 7.
- 3.The Manomaniam Sundaranar University,
Abishekapatti,
Tirunelveli,
Represented by its Registrar.
- 4.The Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District,
Represented by its Correspondent/Secretary.
- 5.The Governing Board of the
Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District,
Represented by its Chairman,
the Bishop of Kanyakumari Diocese C.S.I.



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6.The Appointment Committee of the
Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District,
Pin:629 165,
Represented by the Chairman,
the Bishop of Kanyakumari Diocese, C.S.I.

7.Ajitha Sweethly

... Respondents

(R-7 is impleaded vide Court Order dated 01.08.2022 in W.M.P.(MD).No.4801 of 2017 in W.P.(MD).No.12839 of 2014).

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to grant qualification approval for the petitioner's appointment as Lecturer (in other words called Assistant Professor) in Physics in the fourth respondent College with effect from the forenoon of 03.09.2009, and approval of her said appointment, releasing and paying to her, her salary and all other benefits within a time to be fixed by this Court.

For Petitioner	: Mr.G.Sankaran, for Mr.G.Chandrasekar.
For R-1 and R-2	: Mr.V.Omprakash, Government Advocate (Civil Side).
For R-3	: Mr.Mahaboob Athiff, for M/s.Ajmal Associates.
For R-4 to R-6	: Mr.Isaac Mohanlal, Senior Counsel, for Mr.K.Ragatheesh Kumar
For R-7	: Mr.N.Dilip Kumar



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ORDER

This Writ Petition has been filed for Writ of Mandamus directing the respondents to grant qualification approval for the petitioner's appointment as Lecturer (Assistant Professor) in Physics in the fourth respondent College with effect from 03.09.2009 and grant appointment approval and consequently release the salary and other benefits.

2. The brief facts of the case are that the petitioner was qualified with M.Sc., M.Phil. in Physics and she has registered for Ph.D. in Physics and likely to submit her thesis for the same in December 2014. The petitioner belongs to Backward Class community and Nadar Christian. The fourth respondent College is a Christian Religious Minority recognized Government-Aided College. The fifth respondent is the Educational Agency of the fourth respondent College. The contention of the petitioner is that three vacancies of sanctioned posts to the post of Lecturers (Assistant Professor) Physics arose in the fourth respondent College due to the retirement of three lecturers namely, Saroja Lawrence, V.Sundersingh and Deva Kumar Samuel. The three persons namely, Racil Jaya Geetha, P.J.Jagan Babu and the petitioner namely, T.Asenath Benitta were appointed in the said



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vacancies. In the meeting held on 02.09.2009, the sixth respondent had selected the petitioner and others for the appointment and the same was ratified by the fifth respondent on 15.09.2009. Based on the minutes of the meeting, the petitioner was appointed vide order dated 03.09.2009. Regarding re-fixation of number of teachers on the basis of work load, the fourth respondent College vide communication dated 03.09.2010 furnished to the second respondent about the subject wise teachers work load. In the said communication, the fourth respondent stated the above said retirement of three Lecturers in Physics in the College with their respective dates of retirement and the requirement for three lecturers in Physics. Thereafter, as per proceedings dated 04.07.2014 of the second respondent, the fifth respondent College on 05.07.2014 resolved to appoint only two persons namely, Racil Jaya Geetha and P.J.Jagan Babu in the fourth respondent College with effect from 07.07.2014, in which the respondents had earlier appointed along with the petitioner.

3. The contention of the petitioner is that the petitioner's name was left out, however there are unfilled post among the three vacancies. This is evident from the resolution of the fifth respondent passed on 05.07.2014 and the third candidate was specifically left out. Even though the petitioner was qualified as M.Sc. and M.Phil., the respondents have deliberately left out the petitioner.



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According to the petitioner, she is fully qualified as on the date of appointment dated 03.09.2009 in the sanctioned post. Based on the proceedings of the first respondent, steps were taken for approval of the two candidates namely Racil Jaya Geetha and P.J.Jagan Babu. The petitioner was continuously working even thereafter ever since her appointment without any break and without any disciplinary proceedings. Aggrieved over the attitude of the respondents, the petitioner preferred Writ Petition in W.P.(MD).No.20206 of 2013. This Court vide order dated 13.12.2013 directed the fourth respondent to consider and pass orders. The petitioner also submits that there is one more order in W.P.(MD)No. 16886 of 1992 dated 07.07.1995 and based on these two orders, the respondents have not considered, hence the present Writ Petition is filed.

4. The learned counsel for respondents 4 to 6 had submitted the typed set of papers and made their oral submission. The official respondents have filed a counter.

5. Heard Mr.G.Sankaran, learned counsel for the petitioner, Mr.V.Omprakash, learned Government Advocate (Civil Side) for the first and second respondents, Mr.Mahaboob Athiff, learned counsel for the third



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respondent, Mr.Isaac Mohanlal, learned Senior Counsel, for respondents 4 to 6 and Mr.N.Dilip Kumar, learned counsel for the seventh respondent.

6. The learned counsel for the petitioner submitted that the petitioner is qualified as M.Sc., and M.Phil. and she was appointed on 03.09.2009. As per the UGC Regulations for the period from the year 2006-2009, the qualification was the Post Graduate with M.Phil. is eligible. Admittedly, the petitioner is not having the qualification of Ph.D., or NET, SLET in the year 2009. The learned counsel for the petitioner relied on the UGC regulations dated 14.09.2006 wherein it is stated as under:

“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”.

Since there is an exemption, the claim of the petitioner is that she is eligible to be appointed in the year 2009. Moreover, she relied on the advertisement dated 25.06.2009 in the paper. If that is so, the process for appointing in the said vacancy started from 25.06.2009 and the qualification fixed by the UGC vide its notification dated 04.06.2006 is applicable.



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7. The learned Senior Counsel for the fourth respondent submitted that admittedly, the UGC has given a relaxation for the period from 04.06.2006 and the said relaxation was in force until 10.07.2009. However, the subsequent notification was issued on 10.07.2009 and the said relaxation was deleted. Even then, the petitioner could not be appointed in the sanctioned vacancy because the State Government has not granted any permission to appoint the candidate in the said vacancy.

8. The learned Government Pleader for the first respondent submitted that the approval was granted for the vacant post in the entire Tamil Nadu only in the year 2014. If it is so, even though there was vacancy, the fourth respondent College could not appoint the petitioner in the available vacancy during 2009. When the Director has given sanction / permission in the year 2014, the College has considered all the available and eligible candidates in its meeting dated 02.09.2009. When the petitioner candidature was considered in the year 2014, the UGC regulations has specifically held that the persons who have completed Ph.D., or NET, SLET alone will be eligible to the appointment. Since the petitioner has not having any Ph.D., or NET, SLET during the year 2014, her



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candidature cannot be considered, hence she was not granted any appointment in the sanctioned vacancy. However, the petitioner is still continuing in the Self-Financing post in the same College, as and when any vacancy arises, the petitioner would be accommodated in future. Since the petitioner has submitted the Provisional Certificate for completing her Ph.D., in the year 2018, she will be considered in future.

9. The learned counsel for the petitioner relied on the extract of handbook and calendar of Nesamony Memorial Christian College, Marthandam and submitted that the petitioner was appointed in the aided post only and not in Self Financing, where the petitioner name has been kept under the category of Physics faculty awaiting approval. The petitioner also compared with another set of Professors under the Head Chemistry faculty, where five persons were kept under aided, three persons were kept under awaiting approval and again five persons were kept under Self Finance. Since the petitioner's name is not under Self Finance, the petitioner has been appointed in the aided only.

10. The learned counsel for the College submitted that the statement of the petitioner is incorrect. The petitioner was kept under Self Finance only because



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there was no permission from the State Government to appoint any Lecturers from the year 2006 onwards and the Government has granted permission only in the year 2014. In fact, the Director Proceedings dated 04.07.2014 clearly states that 3120 teacher posts are vacant in the Government Aided Colleges. A proposal was submitted to the Government and the Government has granted permission to fill up the vacancies which arose from 01.06.2008 to 31.05.2011.

11. Therefore, this Court is of the considered view that the statement of the fourth respondent is right, since the Government has granted to fill up the 3120 posts vide letter dated 04.07.2014. Therefore, the appointment of the petitioner is only under the Self Finance and not under the Aided. When the petitioner's candidature was considered in the year 2014, unfortunately she was not having the qualification fixed by the UGC Regulations. When her candidature was considered in the year 2014, she was not having Ph.D., NET or SLET, admittedly, the petitioner has completed Ph.D., on 24.08.2018. The Learned Counsel for the College had submitted that based on her Ph.D., which was completed in the year 2018, her candidature will be considered in future vacancy.



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12. Therefore, the claim of the petitioner cannot be entertained.

However, the respondents 4 to 6 are directed to consider the petitioner's candidature in future vacancy without fail. With the above observations, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

01.08.2022

Index : Yes / No

Internet : Yes

Nsr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Director of Collegiate Education,
Chennai – 600 006.
- 2.The Joint Director of Collegiate Education,
Tirunelveli – 7.



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S.SRIMATHY, J

Nsr

Pre-delivery Order made in
W.P.(MD)No.12839 of 2014

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