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W.P.Nos.14192, 14193 & 1419



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.Nos.14192, 14193 & 14194 of 2010
and M.P.Nos.1, 1 & 1 of 2010

M.Sathish Kumar
G.Janin Jaji
T.Eliza Kumaran

...Petitioner in W.P.No.14192 of 2010
...Petitioner in W.P.No.14193 of 2010
...Petitioner in W.P.No.14194 of 2010

vs.

1.The State of Tamilnadu rep. by its
Secretary to Government,
Higher Education Department,
Fort St. George, Chennai – 600 007.

2.The Director of College Education,
College Road, Chennai – 600 006.

3.The Joint Director of College Education,
Tirunelveli – 2.

4.Scott Christian College,
Nagercoil – 629 003.
rep. by its Secretary.

...Respondents in all WPs

Prayer in W.P.No.14192 of 2010: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to approve the appointments of the petitioner (1) as sweeper from 01.11.2001 to 21.06.2007 and lab assistant from 22.06.2007 and consequently pay salary to the petitioner as sweeper from 01.11.2001 to 21.06.2007 and as lab assistant from 22.06.2007 to 11.06.2009.



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Prayer in W.P.No.14193 of 2010: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to approve the appointments of the petitioner as Gardener from 01.07.2001 to 21.06.2007 and lab assistant from 22.06.2007 and consequently pay salary to the petitioner as sweeper from 01.07.2001 to 21.06.2007 and as lab assistant from 22.06.2007 to 11.06.2009.

Prayer in W.P.No.14194 of 2010: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to approve the appointment of the petitioner as Record Clerk from 22.06.2007 to 11.06.2009 and consequently pay salary to the petitioner as Record Clerk from 22.06.2007 to 11.06.2009.

For Petitioners in all WPs : Ms.P.Mahalakshmi

For Respondents in all WPs : Mr.S.Ravichandran for R1 to R3
Additional Government Pleader
R4 – No appearance

COMMON ORDER

The petitioners have filed these Writ Petitions with regard to approval of the sanctioned posts to which they are appointed.

2.Heard Ms.P.Mahalakshmi, learned counsel appearing for the petitioners
and Mr.S.Ravichandran, learned Additional Government Pleader appearing for



the respondents 1 to 3. There is no representation on the side of the fourth respondent.

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3.Ms.P.Mahalakshmi, learned counsel appearing for the petitioners would submit that these petitioners were originally appointed in the services of the fourth respondent College in the sanctioned posts. But, however, in spite of the request made by the fourth respondent to approve their appointments, no orders were passed. In the interregnum, on 14.05.2007, the second respondent herein in its Proceedings Na.Ka.No.17378/F2/2007 sanctioned 5 posts to the fourth respondent College. Pursuant to the sanctioned posts, the petitioners were appointed as Lab Assistants/Record Writer.

4.Pursuant to the sanction, the petitioners were appointed by the College to the said sanctioned posts on 22.06.2007. Such appointments were notified to the respondents, the third respondent herein had sought for certain clarifications which was also replied to by the fourth respondent. The petitioners have also made various representations in the interregnum to the respondents seeking to grant approval for their appointments, so that they will be entitled to the monetary benefits. But, however, the second respondent by its Communication dated 10.08.2009 had intimated the fourth respondent College that their appointments could be regularized from 12.06.2009 on which date the

Government had issued G.O.Ms.No.135, Higher Education Department, dated



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12.06.2009 permitting appointment of non-teaching staffs to the institution and by Communication dated 23.12.2009 had approved such appointments only from the Forenoon of 12.06.2009. Hence, the petitioners have approached this Court by these Writ Petitions seeking for respective prayers.

5.Learned counsel appearing for the petitioners would submit that it is neither the fault of the petitioners nor the fault of the fourth respondent College. The petitioners were appointed on 22.06.2007 and immediately thereafter, the fourth respondent College had forwarded the order of appointments for approval. She would further submit that the said appointments have been made pursuant to the sanction of 5 posts by the second respondent in its Proceedings dated 14.05.2007. The second respondent had sanctioned the posts in May 2007 and the fourth respondent after completing all the necessary formalities had appointed the petitioners on 22.06.2007 and had forwarded the appointments for approval as early as in July 2007. The third respondent had also sought for certain clarifications, it is not open to the respondent to contend their appointments could only be approved pursuant to the Government Order in the year 2009. She would submit that such a stand taken by the Government defeats the rightful claim of the petitioners since their appointments have all been made pursuant to the order of sanction by the second respondent.



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6. She would further submit that as regards to the petitioners in W.P.Nos.14192 & 14193 of 2010, the prayers are also to approve the sanctioned posts in which they were originally appointed in the year 2001. Since such proposals were also kept pending with the Authorities, there shall be a direction to approve such appointments which would benefit the petitioners.

7. Countering her arguments, Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the Government had issued a ban order in G.O(Ms)No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001 for filling up vacant posts. According to him, the said Government ban order was lifted by G.O.(Ms)No.135, Higher Education Department, dated 12.06.2009 and therefore, there could be no appointment in the interregnum. He would also submit that the petitioners have all voluntarily given up their claim for approval for the appointment made in the year 2001 and only after relinquishment of their right not to claim any right of approval of their earlier appointments, their requests had been considered and approvals were granted as Lab Assistants/Record Writer. Therefore, he would submit that there is no infirmity in granting approval only from 12.06.2009, on which date the Government had lifted the ban of appointment. He would submit that the Writ Petitioners would not be entitled to seek approval from the original date of appointments as the



College Management was prohibited from making any appointment in view of G.O.Ms.No.212 issued in the year 2001. Therefore, he would seek dismissal of these Writ Petitions.

8.I have considered the rival submissions made by the learned counsel appearing for the respective parties and also perused the materials available on record.

9.It could be seen that the prayers in W.P.Nos.14192 & 14193 of 2010 are to approve the appointment as Gardener/Sweeper from 2001 till 2007 and to approve their appointments as Lab Assistants from 22.06.2007. The prayer in the Writ Petition in W.P.No.14194 of 2010 is to approve her appointment as Record Writer from 22.06.2007. The common prayer in all these Writ Petitions is to pay the arrears from the date of the actual appointments.

10.As regards in the aforesaid Writ Petitions, I do not propose to entertain their claims for their appointments in the year 2001 since both the petitioners have all relinquished their rights even as early as in the year 2007 when they sought approval for the posts as Lab Assistants in the year 2007. Even though the contention had been raised by the learned counsel for the petitioners that such relinquishment was on the coercion of the College Management, I do not find any merits in the said submission as the petitioners immediately upon such



alleged coercion had not made any representations to the Government stating such relinquishment had been obtained by the fourth respondent by coercion.

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11. With regard to their claims for approval from the date of the initial appointments, the following facts would be relevant to be considered:

It is an admitted fact that on 14.05.2007, the second respondent herein had sanctioned 5 posts which includes 2 Lab Assistants and 1 Record Writer. The said sanctioned posts had been accorded taking into consideration the necessity of such appointments in the fourth respondent College. If there was a ban as claimed by the respondents, there is no necessity in issuing such sanction. Sanctioned orders having been issued taking the impediment which necessitated appointment of staff to the fourth respondent College. Further when originally the appointments were sent for approval, the same had not been rejected by the third respondent on the question of ban. But, however, had sought for certain clarifications which had also been given by the fourth respondent College, but without passing any orders, had kept the claim of the approval pending. On the Government issuing G.O.Ms.No.135 in the year 2009, a Communication had been sent indicating that such appointments will be approved from 12.06.2009, the date on which the said Government Order was issued and thereafter, the order of approval had been accorded only from the



date of 12.06.2009 and not from the date of original appointment viz.,
22.06.2007.

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12.As stated above, it is the second respondent who had sanctioned posts, considering the necessity of the appointments in the fourth respondent College. Therefore, the ban order could not be put against the requirement of approval. When there is a necessity, it is always an impediment for the appointment to be made. The fourth respondent is an Educational Institution and only considering the necessity for such appointments, sanction had been accorded. If such sanctions were not accorded, these petitioners were not appointed, it would have affected the running of an Educational Institution which would affect the students studying in such Institutions.

13.Further when originally the fourth respondent College had sent proposals for approval as early as in July 2007, the same was not returned or rejected on the ground that there was a ban on appointment but on the other hand, the third respondent raised certain clarifications for processing the request of the College for approval.

14.The order of approval had been made subsequently on the plea that the ban had been lifted only on 12.06.2009 and therefore they would only approve



the appointment on 12.06.2009 is without any merits since the appointments have all been made pursuant to the order of sanctioned post dated 14.05.2007.

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15.In view of the aforesaid reasonings, there shall be a direction to the third respondent to approve the appointment of the petitioners on and from 22.06.2007 and pay the monetary benefits that would have been accrued to the petitioners. Such exercises shall be undertaken by the third respondent within a period of twelve (12) weeks from the date of receipt of a copy of this order.

16.With the aforesaid directions, the Writ petitions are disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

07.11.2023

Index: Yes/No
Speaking order: Yes/No
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W.P.Nos.14192, 14193 & 1419



K.KUMARESH BABU, J.

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To

- 1.The Secretary to Government,
Higher Education Department,
Fort St. George, Chennai – 600 007.
- 2.The Director of College Education,
College Road, Chennai – 600 006.
- 3.The Joint Director of College Education,
Tirunelveli – 2.

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