



W.P.No.26201 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.26201 of 2021
and W.M.P. No.16665 of 2022
and W.M.P. No. 27656 of 2021

1.Dr.Mohammed Osman Pasha

2.N.Mohammed Faiyaz Ahmed

3.Dr.N.Nadeem Afroze

4.P.Yasser Arafath

... Petitioners

/vs/

1.The Directorate of Collegiate Education,
College Road,
Chennai – 600 006.

2.The Joint Director of Collegiate Education,
Vellore Region,
Vellore District.

3.The Secretary and Correspondent,
Islamiah College (Autonomous)
New Town Vaniyambadi,
Vellore District.

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent ending with Na.Ka.No.4941/A1/2020 dated 08.01.2021 and quash the same and consequently direct the respondents to disburse the annual increment payable to the petitioners from January 2018 with all other consequential monetary benefits.

For Petitioners ... Mr.N.A.Nassir Ahmed
Senior Counsel for
Mr.N.A.Nassir Hussain

For Respondents ... Mr.P.Sanjai Gandhi
Government Advocate for R1 and R2

Mr.Syed Aejaaz for
Mr.I.Kowser Nissar for R3

ORDER

This petitioners who have been appointed as the Assistant Professors in 3rd respondent College have filed this writ petition seeking to quash the order of the 2nd respondent dated 08.01.2021, which stipulates the condition of qualifying the Tamil examination sponsored by TNPSC and seeking direction against the 1st respondent not to withhold the increment.



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2.The learned counsel for the petitioners submitted that neither the appointment order nor the approval granted by the Government stipulates any condition that the petitioners ought to have qualified themselves by passing Tamil examination conducted by TNPSC and hence, the order dated 08.01.2021 is arbitrary and illegal.

3. In the impugned order dated 08.01.2021, there is a reference about the audit objection raised. In view of the audit objection, the Directorate of Collegiate Education has sent the impugned communication dated 08.01.2021, calling for the petitioners and like others to produce the passing of the Tamil qualifying examination. Since the appointment order itself does not contemplate any such pre-condition attached to their employment, it is unnecessary to expect the petitioners to produce any proof in respect of the Tamil qualification. In this regard, it is relevant to refer the judgment of this Court held in W.P.No.14658 of 1995, wherein, it has been held that even the approval of appointment itself cannot be withheld for not having studied Tamil or taken a test prescribed for Government servants. For the sake of clarity, the excerpts of the said judgment is extracted hereunder:



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“ 7.This Court in Paragraph 8 of the judgment pointed out that so far as the aided schools are concerned, the Rules cannot be treated as statutory rules framed under Article 309 Constitution as, the very Article is inapplicable to Private Schools. Rule 12A of the Tamil Nadu State and Subordinate Service Rules, therefore, cannot be regarded as statutory rule so far as the employees of the aided colleges are concerned. Moreover, the Government does not have the power under the Act to prescribe the qualification for the post. The Act specifically reserves that power to the University and it is the University which has to decide the qualification required to be possessed by the person appointed to the post in the aided colleges. Petitioner has those qualifications. The Government cannot withhold approval of his appointment on an extraneous ground, namely, his not having studied Tamil or taken a test prescribed for Government servants under the Rules governing and applicable to Government Servants. The impugned order is, therefore, set aside. The writ petition is ordered accordingly. WMP No. 23331 of 1995 is closed.”

4. The 1st respondent ought to have responded to the audit objection by citing the order of approval and also the judgment in W.P.No.14658 of



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1995, justifying the point that the petitioners are not expected to have any Tamil qualification and hence, the audit objection is not proper. Instead of resorting to such an exercise, the respondent had given the impugned communication seeking the petitioners to produce the proof for Tamil qualification.

5. The learned counsel for the 3rd respondent is present and he has stated that so far as the 3rd respondent is concerned, he did not insist for any Tamil qualification and it originated only from the office of the 1st respondent through the impugned communication. It is for the respondents to submit due clarification in the light of the earlier judgment and also the conditions for appointment instead of calling for the proof or Tamil qualification from the petitioners.

6. The learned Government Advocate submitted that in the order of approval dated 29.12.2015 issued by the first respondent, various conditions have been stipulated and among the said conditions, one of the condition is that the appointments made with the post of Assistant Professor ought to



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follow the educational and other qualification prescribed by UGC. It is further submitted that as per the Government Letter in Na.Ka.No.6569/G3/2022 dated 01.12.2022 issued by the first respondent it has been clarified that it is a mandate for the Assistant Professors who are appointed in Government Aided Colleges to qualify the II-level Tamil examination conducted by TNPSC.

7. Since the clarification has been given on 01.12.2022, that can come into effect only for future appointments. So far as the third respondent college is concerned it is an autonomous college and a minority institution. While giving the approval there is no quarrel as to the qualifications of the appointees suiting to the norms prescribed by UGC. Since none of the terms of approval contemplates the condition of future qualification in Tamil, the respondents cannot make it mandate through the clarificatory letter issued by him that the Assistant Professor appointed by the third respondent college ought to have got qualified by passing the prescribed II – level Tamil examination of TNPSC. However to avoid any future technicalities and also by taking inspiration from other similarly placed Assistant Professors, the



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petitioner and the rest of Assistant Professors listed in the impugned letter dated 08.01.2021 can make it possible to appear in the qualified Level II Tamil Examination conducted by TNPSC and pass the same. However it is made specific that this cannot be made as a condition for not releasing the increment benefit to the petitioner which would automatically follow at the declaration of the probation of the respective appointees.

8. In view of the above stated reasons, this writ petition is allowed and the impugned order passed by the 2nd respondent in Na.Ka.No.4941/A1/2020 dated 08.01.2021 is set aside and consequently, the respondents are directed to disburse the annual increment payable to the petitioners from January 2018 with all other consequential monetary benefits, within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

20.12.2023

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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R.N.MANJULA ,J.

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To

- 1.The Directorate of Collegiate Education,
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