



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19..07..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.32971 of 2022

&

W.M.P.No.32369 of 2022

and

Writ Petition No.29174 of 2022

&

W.M.P.Nos.28459 of 2022 & 1019 of 2023

W.P.No32971 of 2022

A.Adaikalaraj

..... Petitioner

-Versus-

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
- 2.The Chief Educational Officer,
Krishnagiri District,
Krishnagiri.
- 3.The Manager,
RC Schools,
Dharmapuri & Krishnagiri District,
Kalai Aruvi Diocesan Animation Centre,
Erangattukottai, Anna Sagaram,
Dharmapuri District 636 704.



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

4.The Correspondent,
St. Antony's Higher Secondary School,
Elathagiri Post,
Bargur Taluk,
Krishnagiri District 635 108.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to issue an order of appointment to the petitioner, appointing him as P.G. Assistant (Zoology) in the 4th respondent School in the retirement vacancy arose on 01.07.2022, in accordance with the decision taken by the Education Council Meeting of Dharmapuri Diocese as stated in the representation of the petitioner dated 11.06.2022, within a time frame to be fixed by this court.

W.P.No.29174 of 2022

B. Arulanandan

..... Petitioner

-Versus-

- 1.The Director of School Education,
DPI Campus,
College Road,
Chennai 600 006.
- 2.The Chief Educational Officer,
Krishnagiri District.
- 3.The Manager,
R.C. Shools,
Dharmapuri & Krishnagiri Districts,
Kalai Aruvi Diocesan Animation Centre,
Behind BSNL GM Office,
Erangattu Kottai, Annasagaram – 636704.



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

4.The Correspondent,
St. Antony's (Aided Minority) Higher Secondary School,
Elathagiri & Post,
Bargur Taluk, Krishnagiri District.

5.The Head Master,
St. Antony's (Aided Minority) Higher Secondary School,
Elathagiri & Post,
Bargur Taluk, Krishnagiri District.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent to approve the appointment of the petitioner as Post Graduate Assistant (Zoology) with effect from the date of initial appointment and give all consequential benefits by receiving the proposal from the respondents 4 & 5.

For Petitioner : *Mr.G.Sankaran,*
Senior Counsel for
Mr.S.Nedunchezhiyan
for petitioner in W.P.No.32971 of
2022
Mr.C.Vediappan
for petitioner in W.P.No.29174 of
2022

For Respondents : *Mr.P.Baladhandayutham,*
Spl. Government Pleader
for RR1 and 2 in both Writ
Petitions
Dr.Xavier Arulraj,
Senior Counsel for
M/s.Father Xavier Associates
for RR4 in W.P.No.32971 of 2022
and RR4 & 5 in W.P.No.29174 of
2022
No Appearance for R3 in both



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

Writ Petitions

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COMMON ORDER

B. Arulanandan filed Writ Petition No.29174 of 2022 seeking a writ in the nature of mandamus, directing the 2nd respondent to approve the appointment of the petitioner as Post Graduate Assistant (Zoology) with effect from the date of initial appointment and give all consequential benefits by receiving the proposal from the respondents 4 & 5, while A. Adaikalaraj filed Writ Petition No.32971 of 2022 seeking a writ in the nature of mandamus, directing the respondents to issue an order of appointment to the petitioner, appointing him as P.G. Assistant (Zoology) in the 4th respondent School in the retirement vacancy arose on 01.07.2022, in accordance with the decision taken by the Education Council Meeting of Dharmapuri Diocese as stated in the representation of the petitioner dated 11.06.2022, within a time frame to be fixed by this court.

2. The 4th respondent school is a Government Aided Minority institution coming under the Corporate Management of RC Management for Dharmapuri and Krishnagiri District and it is governed by the provisions of Tamil Nadu Private School (Regulations) Act and Rules made thereunder.

3. The case of the petitioner in W.P.No.29174 of 2022 is that he is qualified in B.Sc., (Environmental Zoology) which is equivalent to B.Sc.,



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

Zoology, M.Sc., (Zoology) and B.Ed. He is eligible to be appointed as P.G.

Assistant. On 05.01.2005, he was appointed as P.G. Assistant (Science) by the 3rd respondent to work in John Britto Higher Secondary School (Aided School) at Anandanagar in Krishnagiri District on consolidated pay and he was working as such till 30.06.2012. On 02.07.2012, he was directed to join as P.G. Assistant (Zoology) at Sacred Heart Higher Secondary School, Sellampatti. Accordingly, he joined duty. As his name was in the 1st place, he was selected and appointed in the post of P.G. Assistant (Zoology) by the 2nd respondent on 20.08.2022 in a regular sanctioned aided post that fell vacant due to the incumbent's retirement from service on 30.06.2022 at St. Antony's Aided Minority Higher Secondary School, Elathagiri in Krishnagiri District. When the petitioner was about to join duty, he was not permitted to join the service. The Education Committee of Dharmapuri District, under the leadership of Dharmapuri District Bishop had convened meetings on 20.07.2022, 28.07.2022, 09.08.2022 and 20.08.2022. He could not join duty at St. Antony's Aided Minority Higher Secondary School, Elathagiri nor continue in the old post. One Adaikalaraj, who is a native of the same village, with the help of his relatives restraining him (petitioner) from joining duty. Despite several representations, there was no response. Hence, this writ petition.



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

4. Pending W.P.No.29174 of 2022, Adaikalaraj, the petitioner in W.P.No.32971 of 2022 has filed a miscellaneous petition in W.M.P.No.1019 of 2023 seeking to implead him as party respondent in the other writ petition in W.P.No.29174 of 2022.

5. The case of the petitioner in W.P.No.32971 of 2022 is that he is qualified in B.Sc., (Zoology), M.Sc., (Zoology) and B.Ed., and he is eligible to be appointed as P.G. Assistant (Zoology). He was appointed as B.T. Assistant on 16.10.2003 in Denkanikottai St. Joseph High School and thereafter, he has been transferred to RC Fathima Boys High School, Krishnagiri, on 01.08.2007 and he is presently working there. He is the senior most eligible person to be considered for appointment as P.G. Assistant (Zoology) as per the seniority maintained by the Diocese of Dharmapuri and Krishnagiri District. On 01.07.2022, a vacancy arose due to the retirement of of incumbent on 30.06.2022. Accordingly, he submitted an application for consideration for appointment as PG Assistant (Zoology) on regular basis in the sanctioned post. The Educational Council Meeting of Dharmapuri Diocese headed by Bishop was convened on 29.07.2022 wherein a decision was taken to appoint him in the existing vacancy. But, the petitioner was not issued with any order of appointment by the 3rd respondent. In these circumstances, he submitted a



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

representation dated 22.09.2022 but the same has not been considered by the

respondents till date. Hence, this writ petition.

6. The 4th respondent in W.P.No.32971 of 2022 – Correspondent, St. Antony's Government Aided Higher Secondary School, Elathagiri, has filed his counter affidavit inter alia contending that the writ petition is not maintainable; the petitioner was appointed on 16.10.2003 in the unaided management post in St. Joseph's High School at Denkanikottai on a private contract and on consolidated pay. There is no public law involved in the said appointment. The petitioner was appointed as against management post (unaided post) which is not a sanctioned post and he is continuing as such. His appointment squarely falls under private contract and does not form a service under a statute or public law. A post of P.G. Assistant (Zoology) fell vacant on 01.07.2022 due to retirement of one Xavier Gnanadoss from St. Antony's Higher Secondary School at Elathagiri on 30.06.2022 and therefore, by way of resolution dated 20.07.2022, the Diocesan Board of Education resolved to select and appoint A. Arulanandan as P.G. Assistant (Zoology) in the said school w.e.f. 22.08.2022. However, an unruly mob from the village, objected to the appointment of the said A. Arulanandan. Thereafter, Bishop was forced to orally promise that the said resolution would be reviewed. However, the said promise which was made



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

under duress was not acted upon as Bishop had expressed his mind in the Diocesan Board of Education on 09.08.2022. The decision of the Diocesan Board has become final. There was no separate resolution passed on 29.07.2022, favouring the selection and appointment of Adaikalaraj, the petitioner herein.

6. It is further contended that Arulanandan stands on a better footing to teach in Higher Secondary because he had completed his UG, PG and B.Ed., courses through regular stream of education whereas Adaikalaraj had completed his PG only through distance education. That apart Arulanandan had completed his PG in 2003 while Adaikalaraj had completed his PG only in 2016. The comparison of merits in respect of academic performance, the period as a post-graduate, the mode of education and their performance stand in favour of Arulanandan and accordingly, he was selected and appointed. The decision of the Parish Committee dated 14.08.2022 has no enforceability under law. It cannot override the decision of the Manger Bishop and the Chairman of the Governing Body. There was no resolution on 29.07.2022 as claimed by the petitioner and what is referred to as a proposal by the petitioner has been overruled by a subsequent resolution dated 09.08.2022. In the subsequent board meeting the claim of the petitioner was rejected in its entirety.



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

7. Heard both sides.

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8. Mr.G.Sankaran, learned senior counsel appearing for the petitioner in W.P.No.32971 of 2022 would submit that as per resolution dated 29.07.2022, petitioner Adaikalaraj was appointed by the 4th respondent as PG Assistant. However, the committee has now sought to project as if Arulanandan was appointed as PG Assistant. He would further contend that as per seniority list maintained, the name of the petitioner was at Sl.No.1 whereas Arulanandan was placed at Sl.No.2. Though the petitioner was working as PG Assistant on consolidated pay in unaided post, in the matter of appointment in respect of a sanctioned post in the aided school, the Educational Agency will have to follow the procedure, in particular, the seniority list which was overlooked in the instant case and the petitioner should be appointed as PG Assistant (Zoology) in a sanctioned aided post.

9. Mr.C.Vediappan, learned counsel appearing for the petitioner in W.P.No.12974 of 2022 would submit that the petitioner Arulandan has been appointed as PG Assistant in a regular vacancy position and his appointment should be approved by the Chief Educational Officer, Krishnagiri on receiving the proposal from the school.

10. Dr.Xavier Arulraj, learned enior counsel appearing on behalf of the



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

School would on the other hand contend that there was no resolution passed on 29.07.2022 as alleged by Adaikalaraj. In fact, the education committee has passed a resolution appointing Arulanandan as PG Assistant (Zoology) taking note of his educational qualifications and experience in teaching in PG. The writ petition filed by Adaikalaraj is not maintainable in law. In support of his contentions, he placed reliance on the judgement of the Supreme Court in the case of **St. Mary's Education Society v. Rajendra Prasad Bhargava, (2023) 4 SCC 498**

11. This court considered the rival submissions and also perused the records carefully.

12. On perusal of the entire materials, it could be seen that the dispute is mainly with regard to appointment to the post of PG Assistant (Zoology) in the 4th respondent school in a regular and sanctioned aided post due to the vacancy arose on 01.07.2022 on the retirement of the incumbent. This fact is not dispute by either side.

13. It is relevant to note that for filling up the said vacancy, the educational committee headed by Bishop had passed a resolution dated 20.07.2022 to select and appoint A. Arulanandan as P.G. Assistant (Zoology) in the said school w.e.f. 22.08.2022. As rightly pointed out by the learned



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

senior counsel Dr.Xavier Arulraj, the materials placed before me would go on to

show that though the petitioner-Adaikalaraj's was senior to Arulanandan, Adaikalaraj was not considered for appointment for the reason that Arulanandan stood on better footing than Adaikalaraj on merits as he had obtained graduations in a regular stream of education and had experience in teaching as PG Assistant. Arulandan had completed PG in 2003 and whereas Adaikalaraj had completed his PG only in 2016. Even seniority list is taken into account, though Adaikalaraj was placed at Sl.No.1, he has been shown under UG Category only whereas Arulanandan whose name was at Sl.No.2 in the seniority list has been shown under PG category. Thus, this court finds justification in the arguments of Dr.Xavier Arulraj in the matter of appointment of PG Assistant. Though seniority was taken into account by the education committee, on merits Arulanandan was found suitable to the post of PG Assistant than Adaikalaraj. That was the reason, the education committee headed by the Bishop taken a decision to appoint Arulanandan as PG Assistant (Zoology). The petitioner in W.P.No.32971 of 2022 cannot as a matter of right seek the education committee to select and appointment him in the post of PG Assistant (Zoology) merely based on his seniority.

14. Insofar as the relief sought for in W.P.No.29174 of 2022 is



W.P.No.32971 of 2022 & W.P.No.29174 of 2022

concerned, this court is of the view that it is for the respondent school to seek approval of appointment of Arulanandan as PG Assistant (Zoology) and therefore, this court is not inclined to entertain the writ petition in W.P.No.29174 of 2022.

15. In the light of the discussions made above, this court do not find any merit in both the writ petitions and the same deserve only to be dismissed. Since Adaikalaraj, the petitioner in M.P.No.1019 of 2023 has filed W.P.No.32971 of 2022 and both W.P.No.32971 of 2022 and W.P.No.29174 of 2022 were heard together and disposed of by this common order, the request for impleading Adaikalaraj in W.P.No.29174 of 2022 as a party respondent, in the considered opinion of this court, is unnecessary. Therefore, the W.M.P.No.1019 of 2023 is dismissed.

16. In the result, both the writ petitions are dismissed. W.M.P.No.1019 of 2023 is dismissed. No costs. Consequently, the other two WMPs are closed.

19..07..2023

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To

- 1.The Director of School Education, DPI Campus, College Road, Chennai 600 006.
- 2.The Chief Educational Officer, Krishnagiri District, Krishnagiri.



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W.P.No.32971 of 2022 & W.P.No.29174 of 2022

N.SATHISH KUMAR.J.,

kmk

W.P.Nos.32971 & 29174 of 2022

19..07..2023