



W.P.No.32837 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:14.06.2023

Delivered on: 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.32837 of 2018

&

W.M.P.Nos.38045 and 38046 of 2018

Mrs.E.Jeba Bella Mercily
Steno typist
Scott Christian College (Autonomous)
Nagercoil-629 003

... Petitioner

Vs.

1. The State of Tamil Nadu
rep by its Secretary to Government
Higher Education Department
Fort St.George,
Chennai-600 009

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

3.The Joint Director of Collegiate Education
Thirunelveli-2



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4.Scott Christian College
Nagercoil-629 003
Rep by its Secretary
(cause title amended
as per order of this Court
dated 19/12/2019 made in
W.M.P.No.21909/2019
in W.P.No.32837/2018)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent issued proceedings in Mu.Nu.No.29330/F2/2018 dated 04.10.2018 quash the same and consequently direct the respondents to approve the appointment of the petitioner as Steno typist with salary and other benefits from 24.02.2016.

For Petitioner : Mrs.P.Mahalakshmi

For Respondent : Mrs.Meera Arumugam, AGP for R1 to 3

Mr.S.Bharathirajan for R4

ORDER

The petitioner seeks issuance of a Writ of Certiorarified Mandamus to quash the order of the 2nd respondent in Mu.Nu.No.29330/F2/2018 dated 04.10.2018 and to consequently direct the respondents to approve the



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appointment of the petitioner as Steno-typist together with salary and other benefits from 24.02.2016.

2. Brief facts as set out by the petitioner in her affidavit in support of the Writ Petition are that she passed B.A.History in the year 2001 from Annamalai University besides also Typewriting Senior Grade in English and Tamil and Shorthand Senior Grade in Tamil and Shorthand Junior Grade in English. She was appointed to the 4th respondent college which is an aided minority college. More than 3000 students are studying in this college. One Mr.S.Arulkumar who was working as Steno-typist was promoted and transferred as Assistant on 24.02.2016 and the petitioner was absorbed in the permanent sanctioned vacancy that arose on 24.02.2016. A Governing body resolution was passed in this regard on 20.02.2016. Moreover, the petitioner is fully qualified to be appointed as Steno-typist. The case of the petitioner is that the 4th respondent Management also sent proposals for approving the appointment of the petitioner. However, the 3rd respondent, in and by proceedings dated 01.12.2016, returned the proposal citing G.O.Ms.No.135



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dated 12.06.2009. Thereafter, the 4th respondent clarified that the appointment was made only in a permanent sanctioned vacancy and therefore reiterated the proposal to appoint the petitioner as Steno-typist. Infact, the non teaching staff of the said college filed a Writ Petition No.9252 of 2017, to consider the proposal submitted by 4th respondent and this Court by order dated 09.04.2018 also directed the respondents to consider the proposal submitted by the Management and pass orders in respect of appointment of the petitioner. However, thereafter the 2nd respondent passed the impugned order which is under challenge in the present Writ Petition on the ground that the post was a permanent sanctioned post and only when the earlier Steno-typist, one Arulkumar was promoted and transferred, vacancy arose and the petitioner was entitled to be appointed, especially when she was fully qualified. Moreover, the 4th respondent is an aided college where more than 3000 students are studying and already only one Steno-typist post is sanctioned for the entire college and the institution cannot effectively be administered without a Steno-typist.



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3. The 2nd respondent has filed a counter stating that the post Steno-typist was categorized as a vanishing post as per G.O.Ms.No.135, Higher Education Department dated 12.06.2009, and the request of the petitioner cannot be entertained.

4. The 4th respondent college has filed an affidavit through its Correspondent stating that there are 3742 students studying in their college and for effective and proper administration of the institution which is functioning as a 'A' Grade college, a Steno-typist was necessary. The 4th respondent supported the case of the Writ Petitioner and prayed for the Writ Petition being allowed.

5. The only reason assigned by the respondents while passing the impugned order is placing reliance on G.O.Ms.No.135, Higher Education Department dated 12.06.2009. The object of the said G.O.Ms.No.135, was to fill up non teaching vacant posts and in the said G.O, the Government has decided that certain posts are unnecessary and therefore chosen to remove 82



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non-teaching posts out of which 18 of them were Steno-typist which were vacant as on 22.08.2008 and that it is also seen that the object of categorizing certain posts as vanishing posts were only because the posts were considered unnecessary. The action of the respondents have to be in line with their objects. Admittedly, there is no quarrel with regard to the fact that the post of Steno-typist was a permanent and sanctioned post. In other words it is a regular post which has to be necessarily filled up. It is seen that one Arulkumar was a Steno typist in the 4th respondent's institution as on 24.02.2016 and as a result of his promotion and transfer, the said permanent sanctioned post became vacant. Even placing reliance on G.O.Ms.No.135, it is seen that it has been passed on 12.06.2009 and admittedly, on the said date the post was not vacant and it was occupied by the predecessor of the petitioner viz., Arulkumar. Only in February 2016, the post became vacant and therefore, it is highly improper on the part of the respondents to cite G.O.Ms.No.135 dated 12.06.2009 and categorize the post of Steno-typist as a vanishing post and deny appointment to the petitioner. Moreover, in the light of pronouncements of this Court in W.P.No.9252 of 2017 dated 09.04.2018



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and in the case of B.Arul Ananda Ganesh and another Vs. The Secretary to Government, Education Department, State of Tamil Nadu and Ors, reported in 2017 1 WLR 51, this Court has time and again held that under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules framed there under, there is no requirement to seek prior permission to fill up vacant post in an aided college, provided such post has already been sanctioned.

6. In the present case also, there is no quarrel with regard to the fact that the post is a sanctioned post and a person who was holding the said post even as late as February 2016. Only in order to fill up the said vacant post, the petitioner was sought to be absorbed and the Management sent a proposal for approval of the appointment of the petitioner. Even from this angle, when this Court has already held that even permission is not required in the first place to fill up a vacant post and admittedly the 4th respondent institution being an aided college, there is absolutely no justification on the part of the respondents to cite G.O.Ms.No.135 and deny appointment to the petitioner. The very exercise undertaken by the 4th respondent in seeking approval from



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the respondents 1 to 3 was itself an unnecessary exercise.

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7. In fine, the Writ Petition is allowed and the impugned order passed by the 2nd respondent in Mu.Nu.No.29330/F2/2018 dated 04.10.2018 is set aside. Consequently, the petitioner's appointment to the post of Steno-typist by the 4th respondent stands approved and the petitioner shall be entitled to attendant salary benefits with effect from 24.02.2016. No costs. Consequently, connected miscellaneous petitions are closed.

23.06.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
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Pre-delivery order in
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