



WA(MD)No.512 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.06.2023

CORAM

The Honourable Mr. Justice **R.SURESH KUMAR**
and
The Honourable Mr. Justice **K.K.RAMAKRISHNAN**

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P.Augustus Robince

.. Appellant

Vs.

1.The Director of Collegiate Education
Chennai 600 006.

2.The Joint Director Collegiate Education
Tirunelveli Region,
Tirunelveli.

3.The Bishop
Church of South India,
Diocese of Tirunelveli
Diocesan Office,
Palayamkottai 627 002.
Tirunelveli District

4.The Secretary
St. John's college,
Palayamkottai,
Tirunelveli District

.. Respondents

Appeal is filed under Clause 15 of Letters Patent Act against the order



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dated 25.04.2012 passed by this Court in WP(MD) No.3903 of 2008.

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For Appellant : Mr.M.Saravanan
For Respondents : Mr.A.Kannan for R1&R2
Additional Government
Pleader
Mr.P.P.Alwin Balan for
R3&R4

JUDGMENT

[Judgment of the Court was delivered by **R.SURESH KUMAR, J.**]

This intra court appeal has been directed against the order passed by the learned Judge dated 25.04.2012 in WP(MD) No.3903 of 2008.

2. The appellant is a Post Graduate in Zoology and also possess M.Phil degree. With that qualification, he was appointed as a Lecturer in Zoology on 22.03.2000 in the leave vacancy at the 4th respondent college.

3. Thereafter one Dr.D.Jones Nelson, who was the Head of the Department, in Zoology, retired from service. Therefore, one post of Lecturer in Zoology has become vacant in the college. In order to fill up the same, applications were called for. The appellant also applied. Considering



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his application, after conducting interview, the 4th respondent college management has appointed him as Lecturer in Zoology on 05.12.2001, since then, he has been continuously working in that place.

4. In this regard, the appointment order issued by the 4th respondent College dated 05.12.2001 states the following:

“I am pleased to inform you that you are selected and temporarily appointed as Lecturer in Zoology, in this college with effect from 14.12.2001 in a post to be sanctioned by the Director of Collegiate Education and in the post vacated by Dr.D.Jones Nelson, Head of the Department of Zoology on his retirement, in the scale of pay Rs.8000-275-13500 with usual allowances permissible under the rules.

Your appointment is subject to the approval of the University and the Department of Education. You will be paid the salary as and when the amount is received from the department of education.

You may be transferred to any one of the Colleges managed by the Tirunelveli Diocesan Trust Association. You will be subject to the rules and regulations governing the conduct and work of the teaching staff of the college.

You are asked to join duty on the forenoon of 14.12.2001.”



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5. With that strength, the appellant, since had been continuously working in the college, his appointment was not approved immediately and this position was continued till 2008, where the concerned University, namely, Manonmaniam Sundaranar University has given approval of the qualification of the appellant only with effect from 11.08.2008. Subsequently his appointment had been approved only with effect from 11.08.2008 by the competent authority, ie., the official respondents.

6. Therefore, for all practical purposes, the job of the appellant was considered to be the Lecturer only with effect from 11.08.2008, but not from 05.12.2001, the date on which he was initially appointed. Therefore, the appellant approached the writ Court by filing W.P.(MD) No.3903/2008 seeking for a writ of mandamus to approve the appointment of the appellant/petitioner as Lecturer in the department of Zoology in the 4th respondent college and disburse the salary and attendant benefits with effect from 14.12.2001.

7. 14.12.2001 is the date on which initially the appellant joined in the



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said post, therefore from that date, he sought for approval and consequential disbursement of salary.

8. The learned Judge, who heard the said writ petition, had disposed the same on 25.04.2012, where a direction was issued by the learned Judge to the Joint Director of Collegiate Education, who stood as second respondent in the said writ petition, to approve the appointment of the petitioner from 11.08.2008 as Lecturer in Zoology and also to pay the arrears pursuant to the approval within a period of eight weeks. Felt aggrieved over the said order, as his appointment from 05.12.2001 is not directed to be approved and consequently no salary had been directed to be given with effect from the said date of 05.12.2001, the appellant preferred this intra-court appeal against the said order dated 25.04.2012.

9. Heard the learned counsel for the appellant, who would submit that the appellant though initially was appointed in the year 2000 in the leave vacancy in the 4th respondent college subsequently on the sanctioned vacancy, which caused due to the retirement of the Head of the department of Zoology, he was called for interview and thereafter selected and



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appointed on 05.12.2001, pursuant to which, he joined service on 14.12.2001. Therefore, from that date, approval should have been given and based on which the salary on par with the regular Lecturer, which in fact, has been mentioned in the very appointment order itself, should have been paid.

10. Even though the University had given approval of qualification only from 11.08.2008, the fact remains that such a qualification had already been acquired by the appellant and therefore, at the time of joining initially in the institute, since the appellant was holding the qualification, subsequent approval in a fictitious date cannot be taken into account. Therefore, in this context, the approach of the learned Judge of the writ Court by giving direction to the 2nd respondent therein to approve the appointment of the appellant only with effect from 11.08.2008, ie., the date on which or with effect from which the qualification of the appellant has been approved by the University and not from 05.12.2001, the date on which he originally joined and had been continuously working, needs interference.



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11. Therefore, the learned counsel for the appellant seeks indulgence of this Court to modify the order impugned passed by the writ Court.

12. Per contra, the learned counsel for the respondents 3 and 4 would submit that in fact in the year 2000, the appellant was engaged only in the leave vacancy and even in 2001, since there has been a ban for making appointment on permanent basis, the management of the college could not make any permanent appointment, decided to make temporary appointment on a consolidated pay and that is how the appellant was appointed on 05.12.2001 only on temporary basis with consolidated pay.

13. In this context, the learned counsel for the respondents 3 and 4 also contended that this position has been accepted by the appellant himself at the time of joining on 14.12.2001, where he has stated the following:-

“நான் தூய யோவான் கல்லூரியில் 14.12.2001 இன்று விலங்கியல் துறையில் விரிவுரையாளராகப் பணியில் சேருகிறேன். இந்தப் பணியிடம் கல்லூரிக் கல்வி இயக்குநர், சென்னை அவர்களால் என்று ஒப்பளிக்கப்படுகிறதோ (sanction) அன்று முதல் எனது ஊதியத்தை பெற்றுக்கொள்வேன். நான்



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நிர்வாகத்தை எதிர்த்து நீதிமன்ற நடவடிக்கையோ மற்றும்
எந்தவிமான நடவடிக்கையிலும் ஈடுபட மாட்டேன் என்று இதன்
மூலம் உறுதியளிக்கிறேன்.□

14. Therefore, it was the understanding between the college management and the appellant that the appointment that has been made on 05.12.2001 was purely temporary, that too, on consolidated pay and thereafter, whenever such appointment is approved by the competent authority, the teaching grant would be paid by the Government only from that date. Therefore, after getting such approval only, the pay would be paid on par with the post, for which, he was appointed and only with that understanding he worked up to 2008.

15. However, till such time, the qualification acquired by the appellant since was not approved by the University concerned, the appointment could not be approved by the competent authority and therefore, only after getting such an approval of qualification with effect from 11.08.2008, such approval for which the appellant, since would become eligible, that was given. Therefore, if at all he is entitled to get the



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salary that would be only from 11.08.2008 and not from 05.12.2001.

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16. Moreover in the very averments made in the affidavit before the writ Court, the appellant has admitted that he was paid only a consolidated pay of Rs.3,000/- per month. When that being the position, at no stretch of imagination, he can turn around and say now that from 2001 onwards, he is entitled to get full salary unmindful of approval in the year 2008, because of the approval granted by the University concerned.

17. Therefore, the learned counsel for the respondents 3 and 4 would submit that the appellant is not entitled for full salary except the consolidated pay, which he had already received for the period from 2001 to 2008. This has been taken into account by the learned Judge, who made a right approach in this aspect and accordingly given direction to the competent authority to approve the appointment only with effect from 11.08.2008, the date on which, the qualification is approved by the University and not prior to that. This of the view taken by the learned Judge in the order impugned is sustainable. Hence, he wants to sustain the said order by dismissing the writ appeal.



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18. Similar arguments were advanced by the learned Additional Government Pleader for the official respondents, who would also submit that until the qualification of teaching faculty is approved by the concerned University, the question of approving such appointment does not arise. This appointment is rightly approved from 11.08.2008 that was taken into account by the learned Judge, who gave a direction to approve from that date alone, that in fact was complied with by the competent authority. Therefore, from 11.08.2008 only the appellant is entitled to get the salary and that salary also since has been paid, no further grievance can be espoused by the appellant and therefore, this writ appeal is deserves to be rejected, as devoid of merits. Hence, the learned Additional Government Pleader seeks dismissal of this writ appeal.

19. We have heard the learned counsel for the appellant, learned counsel for the respondents 3 and 4 and the learned Additional Government Pleader for the official respondents and perused the materials available on record.



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20. Insofar as the approval that has been given with effect from 11.08.2008, for which, direction had already been given by the learned Judge through the impugned order since had been complied with, there could be no quarrel from 11.08.2008 till date.

21. The only grey area is between 05.12.2001 and 11.08.2008.

22. During this period, since the appellant had been working as Lecturer in the Department of Zoology, which is a permanent vacancy, where he was appointed, whether he is entitled to get the full salary and emoluments is the question.

23. In this context, if we look at the appointment order given by the management dated 05.12.2001, the language used therein is that he has been appointed temporarily as Lecturer in Zoology with effect from 14.12.2001 in a post to be sanctioned by the Directorate of Collegiate Education and in the post vacated by one Dr.D.Jones Nelson, Head of the Department of Zoology on his retirement in the scale of pay of Rs.8000-275-13500 with usual allowances permissible under the Rules.



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24. Further the appointment order shows that the appointment is subject to the approval of the University and the department of education, he will be paid salary as and when the amount is released from the department of education.

25. From the reading of the said appointment order, pursuant to which he joined on 14.12.2001, where he has given an undertaking also that he would receive the salary only after it is sanctioned by the Government.

26. Therefore, the understanding between the appellant and the 3rd and 4th respondents college is that he was selected and appointed in a permanent vacancy caused by the present incumbent one Dr.D.Jones Nelson and in that permanent vacancy since he has been selected and appointed, the salary would not be given by the management and it would be given only by the Government, but that will take effect only from approval of such appointment.

27. That means once the order of approval is given, then only the



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salary can be claimed by the management and that would be paid to the appellant.

28. If that being the understanding between the two, as no other communication suggesting anything differently had been filed before this Court, the appointment that has been made in respect of the appellant by the college or its management is on permanent vacancy not as a leave or temporary vacancy.

29. In this context, the stand taken by the college and its management has been made specifically and unambiguously in Paragraph No.4 of the counter affidavit, which reads thus:

“4.I respectfully submit that the writ petitioner was temporarily appointed as Lecturer in the Zoology Department, with effect from 22.03.2000, in the leave vacancy caused by the deputation of Mr.B.Jawahar Samual, Lecturer in Zoology to undergo his Ph.D course under the UGC IX plan FTP scheme. Thereafter, by order dated 05.12.2001 the writ petitioner was appointed as Lecturer in the Zoology



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Department in a permanent vacancy caused due to the retirement of Dr.D.Jones Nelson, the head of the department of Zoology. The petitioner joined the services on 14.12.2001 and he has been working in our college.”

30. The averment made by the college in the said counter is that he was appointed temporarily as Lecturer in Zoology department with effect from 22.03.2000 in the leave vacancy caused by one B.Jawahar Samuel, Lecturer in Zoology to undergo his Ph.D., degree course. Thereafter, by order dated 05.12.2001, the writ petitioner was appointed as Lecturer in the Zoology department in a permanent vacancy caused due to the retirement of one Dr.Jones Nelson, head of the Department.

31. Therefore, initially the appellant was appointed in a leave vacancy, which caused by one Jawahar Samuel, who wanted to pursue his Ph.D., programme and that is how the leave vacancy had arisen wherein, he was appointed on temporary basis.

32. However, subsequently one Jones Nelson, who was the head of



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the department of Zoology retired from service, therefore, the permanent vacancy caused due to his retirement, wherein, the appellant has been selected and appointed. Therefore, it has become clear that the appointment that has been made on 05.12.2001 in favour of the appellant was a permanent appointment in a permanent vacancy caused, which is a sanctioned vacancy also in respect of the 3rd and 4th respondent college.

33. However, due to the disqualification or delay in approval of the qualification acquired by the appellant, that has been made belatedly by the university concerned only in the year 2008, that approval was given by the competent authority only from that date, but this position having been considered by the learned Judge in the impugned order itself, the learned Judge has observed that insofar as the period between 2001 and 2008 is concerned, it is for the appellant, who was the petitioner in the said writ petition, to approach the respondent management and to claim such salary and emoluments for the whole period between 2001 and 2008, where he worked in the permanent vacancy and his services had been fully utilized by the college. It is the further contention of the appellant, as he quoted in the affidavit filed in support of the writ petition that though he was appointed



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on 05.12.2001 and had been continuously working in the permanent vacancy, he was not paid the salary that has been mentioned in the appointment order, instead, he was paid only a sum of Rs.3,000/- per month.

34. Merely because the college management had paid Rs.3,000/- per month as consolidated pay, it cannot be construed that the appointment has been made on the basis of consolidated pay. The reason being nowhere in the appointment order, it has been mentioned that this appointment has been made only on consolidated pay.

35. The undertaking given by the appellant at the time of joining, ie., on 14.12.2001 that he would get salary once it is sanctioned by the competent authority means either the authority, who would sanction his salary after approval or till such time, the salary equal to the same would be paid by the management.

36. This must be the arrangement, otherwise, no teaching faculty that too in an UG level college can be expected to serve that too in a permanent vacancy.



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37. If that being the position, if we look at the subsequent development, after passing the impugned order, it is brought to our notice by the learned counsel for the appellant that he has given representation on 12.06.2013 to all the respondents both official respondents as well as 3rd and 4th respondents college.

38. In the said representation, the appellant had sought for treating his service from 14.12.2001 till 10.09.2008 as a continuous and approved service for which he is entitled to get salary due and the said service also be taken into account as a continuous service for pensionary benefits.

39. Insofar as the said plea is concerned, it is a larger issue, which was not dealt with by the learned Judge in the order impugned. Therefore, we are refrained from making a comment to such a plea raised by the appellant. However, his representation that has been made on 12.06.2013 to the 3rd respondent, ie., the Secretary, St. Johns College, Palayamkottai, Tirunelveli District, is concerned, the said representation can be considered by the said college in the light of the aforesaid facts and circumstances and



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accordingly, they can come out with a negotiated solution of this issue with regard to the full salary of the appellant for the period between 2001 and 2008.

40. Apart from this issue, no other issue is available before us for adjudication and in this context, the approach made by the learned Judge with the said observation giving liberty to the appellant to approach the college for the said period between 2001 and 2008 is a right approach and therefore, absolutely there is no error in the order impugned passed by the learned Judge.

41. In the result, this writ appeal is disposed of with the following order:

“that the impugned order is sustained. Hence, the writ appeal fails and therefore, it is liable to be dismissed, accordingly, dismissed. However, the dismissal of this writ appeal would not preclude the appellant to pursue his endeavour, which started from his representation dated 12.06.2013 addressed to the third respondent and the appellant would be entitled to press for the same to get a early decision from the college management, as



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they are liable to settle the salary due of the appellant for the period between 14.12.2001 and 10.09.2008. The said issue shall be settled by the respondents 3 and 4 within a period of eight weeks from the date of receipt of a copy of the judgment.” No costs.

(R.S.K.,J.) (K.K.R.K.,J.)
09.06.2023

Index : Yes/No

Internet : Yes

RR

To

1.The Director of Collegiate Education
Chennai 600 006.

2.The Joint Director Collegiate Education
Tirunelveli Region,
Tirunelveli.



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and
K.K.RAMAKRISHNAN,J.

RR

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