



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

**WP(MD)No.6768 of 2023
and
WMP(MD)No.6345 of 2023**

1.T.Mohammaed Jalaludeen

2.M.Mohamed Rashin

3.N.Syed Ajmal Khan

4.S.Mohamed Ali Raja

5.A.Mohamed Thanis Mohaideen

6.S.Syed Shameer Hussain

7.A.Umar Farook Ali

8.M.S.S.Vahith Ali

9.S.Syed Hasan Shazuli

... Petitioners

v.

1.The Joint Director of Collegiate Education,

Madurai Region, Madurai.

2.The District Collector / Secretary and Correspondent,

M.S.S.Wakf Board College, Madurai – 625 020.

3.The Secretary,

M.S.S.Wakf Board College,

K.K.Nagar, Madurai – 625 020.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the 2nd respondent to treat that the petitioners are deemed to have successfully completed the probation in terms of Sub Rule (2)(i) of Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 r/w clause 2 Form 7-C and consequently to direct the respondents to sanction the petitioners' yearly increment and other consequential monetary benefits and to consider the petitioners for further promotion in accordance with law within the time that may be stipulated by this Court.

For Petitioners : Mr.M.Ajmalkhan, Senior Counsel
for V.George Raja

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General assisted by
Mr.N.Satheesh Kumar,
Additional Government Pleader for R1&R2

Mr.S.A.Ajmal Khan for R3

ORDER

The petitioners herein are non-teaching staff working in Muqyyath Sha Sirguro Wakf Board College, K.K.Nagar, Madurai. When vacancies arose for various posts, the petitioners applied for the said posts. They were selected and appointed. Consequential approval was also granted by the affiliating university. The Director of Collegiate Education, Chennai also approved their appointments.

The service particulars of the petitioners are as follows :



NON- TEACHING STAFFS

S.No.	Name	Post	Date of appointment	Qualification	Date of Approval by Joint Director of Collegiate Education, Madurai
1.	T.Mohammed Jalaludeen	Junior Assistant	23.02.2018	B.E., (EEE)	21.03.2018
2.	M.Mohamed Rashin	Lab Assistant	23.02.2018	B.Com., MMS	21.03.2018
3.	N.Syed Ajmal Khan	Lab Assistant	23.02.2018	M.Sc.,(C.S)	21.03.2018
4.	S.Mohamed Ali Raja	Lab Assistant	23.02.2018	B.Sc., (Physics)	21.03.2018
5.	A.Mohamed Thanis Mohaideen	Record clerk	23.02.2018	B.Sc., (C.S) M.B.A.,	21.03.2018
6.	S.Syed Shameer Hussain	Record clerk	23.02.2018	M.C.A.,	21.03.2018
7.	A.Umar Farook Ali	Library Assistant	23.02.2018	B.Sc., (Physics)	21.03.2018
8.	M.S.S.Vahith Ali	Office Assistant	23.02.2018	S.S.L.C	21.03.2018
9.	S.Syed Hasan Shazuli	Office Assistant	23.02.2018	H.S.C	21.03.2018

2.The only question that arises for consideration is whether the petitioners are entitled to declaration that they have successfully completed their probation. Only if it is held that they have successfully completed their probation, they will be entitled to other monetary benefits such as yearly increment, etc., They would also be considered for further promotion only in that event. Since the authorities are taking the stand that the petitioners have not completed their probation, the present writ petition has been filed.

3.The learned Senior Counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.



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4.The respondents have filed counter affidavit and also the typed set of papers. The learned Additional Advocate General took me through their contents. The primary argument of the learned Additional Advocate General is that the appointments of the petitioners to the various non-teaching posts are vitiated by fraud. He drew my attention to the order dated 23.01.2019 in WP(MD)No.368 of 2019. One Sardar Basha filed the said writ petition for directing CBI to register an FIR based on his complaint. It was alleged that there was recruitment scam with regard to the appointment of teaching and non-teaching staff in M.S.S.Waqf Board College, Madurai. The learned Judge of this Court vide order dated 23.01.2019 directed registration of FIR. RC No. 229 2019 A009 of 2019 was registered on the file of the CBI/ACB, Madurai. The order of the High Court was put to challenge before the Hon'ble Supreme Court in SLP (Crl) No.2442 of 2019. The Hon'ble Supreme Court affirmed the order of this Court and declined to interfere. Subsequently, a positive final report was also filed and in the light of the investigation, the allegation made against the accused was well founded. It has been found in the investigation that the appointment of the petitioners is vitiated by fraud and corruption. Cognizance of the offences was yet to be taken by the competent court. The firm stand of the learned Additional Advocate General is that the appointment of the petitioners is under serious cloud and that action may be taken at any time to cancel the appointments and terminate their services. He further



submitted that it will not be proper to grant the relief of declaration sought for by the petitioners herein. He pressed for dismissal of this writ petition by invoking the maxim “fraud unravels everything”.

5.I carefully considered the rival contentions and went through the materials on record. The competent authority, namely, Joint Director of Collegiate Education, Madurai Region has already approved the appointment of the petitioners to the various non-teaching posts. Rule 11(2)(i) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 is as follows :

“The committee of every college shall enter into an agreement with the teachers in Form 7-A and with the employees other than teachers in Form 7-C. If the appointment is for a period not exceeding three months, the agreement shall be made in Form 7-B in the case of teachers and in Form 7-D in the case of employees other than teachers.”

The agreement entered into between the petitioners on the one hand and the management on the other is in statutory form and therefore, statutory consequences will ensue. It is stated therein that the appointee will be on probation for a period of one year. It can be extended to a further period of not exceeding one year. If such an order is not passed in writing within six months after the period of probation, the appointee shall be deemed to have completed his or her probation. In this case, quite a few years have elapsed.



If the petitioners had been terminated before the said period of two years, it would be a different matter altogether. Such is not the case here. In fact, no order extending probation period was passed. The statutory consequence is that the petitioners are deemed to have completed their probation. In fact, no formal proceeding or declaration from the management or the authority is required. It is a consequence that flows as a matter of course. Therefore, the declaration sought for by the petitioners is granted. The petitioners will be entitled to all consequential benefits. However, I need to clarify that grant of relief in this writ petition will not tie the hands of the authority from taking action as per law.

6.The writ petition is allowed. No costs. Connected miscellaneous petition is closed.

14.06.2023

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To

1.The Joint Director of Collegiate Education, Madurai Region, Madurai.

2.The District Collector / Secretary and Correspondent,

M.S.S.Wakf Board College, Madurai – 625 020.

3.The Secretary, M.S.S.Wakf Board College,

K.K.Nagar, Madurai – 625 020.



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G.R.SWAMINATHAN, J.

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