



W.P(MD)No.10629 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10629 of 2021

and

W.M.P.(MD)Nos.8277 and 8281 of 2021

S.Christy Hem Leena

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Higher Education Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai – 600 006.
- 3.The Joint Director of Collegiate Education,
Palayamkottai – 627 002,
Tirunelveli District.
- 4.The Secretary,
St.Xavier's College (Autonomous),
Palayamkottai – 627 002,
Tirunelveli District.
- 5.S.P.Raja

... Respondents



W.P(MD)No.10629 of 2021

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 4th respondent in Ref.No.1G-4/NTS/NA/JA/17/2019 dated 01/07/2019 and the consequential order passed by the 2nd respondent in the proceedings in Na.ka.No.16320/F4/2020 dated 23/02/2021 insofar as the petitioner is concerned and quash the same and direct the respondents to promote the petitioner as Junior Assistant from the date on which the 5th respondent was appointed i.e on 01/07/2019 with all consequential benefits including pay and allowances and continuity of service in the promoted post.

For Petitioner : Mr.V.Panner Selvam

For Respondents : Mr.N.Satheesh Kumar,
Addl. Government Pleader for R1 to R3.
Mr.Isaac Mohanlal, Senior Counsel,
For M/s.Isaac Chambers for R4 & R5.

ORDER

Heard the learned counsel on either side.



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2.The writ petitioner is working in the fourth respondent institution as Office Assistant. The fourth respondent is an aided minority college. Vacancy arose in the post of Junior Assistant. The management appointed the fifth respondent to the said post vide order dated 01.07.2019. The said appointment was also approved by the competent authority on 23.02.2021. Challenging her non-selection, this writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned orders and grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned counsel took me through its contents and pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is true that the fifth respondent was appointed as



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Office Assistant in the year 1993 itself. But then, it was under self-financing scheme of the management. In other words, it was not against a sanctioned post. The petitioner joined the fourth respondent college under the self-financing category on 06.10.2005. Technically, the fifth respondent entered the fourth respondent college earlier point of time. But then, it was the petitioner who was regularly appointed as Office Assistant against a sanctioned post on 01.07.2016. Now the question that arises for consideration is whether the respondents were right in ignoring the petitioner's claim.

6.Rule 11(4)(i) of the Tamil Nadu Private Colleges (Regulation)

Rule, 1976 is as follows:-

“[11(4)(i) Promotions in respect of teaching staff shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal, and in respect of non-teaching staff promotions shall be made on seniority basis, provided other conditions regarding qualification are satisfied]”



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7.The Hon'ble Division Bench in the decision reported in **(2002) 2 MLJ 768 (M.Reethammal vs. State of Tamil)** had held that Rule 11(4)(i) and (ii) of Tamil Nadu Private Colleges (Regulation) Rule, 1976 is applicable to minority educational institutions also. The said decision was put to challenge by the college in S.L.P. (Civil) Nos.20756 and 20757 of 2002. The Hon'ble Apex Court dismissed the S.L.P. on 15.11.2002. The statutory mandate is that promotion in respect of non-teaching staff should be made on seniority basis subject to the candidate possessing the requisite qualification. Even though the fifth respondent might have entered the service of the institution earlier, the fact remains that it was the petitioner who is holding the regular post of Office Assistant. Therefore, the petitioner's claim could not have been ignored. In fact, the management was obliged to have considered the petitioner first. Not doing so is in breach of the aforesaid statutory rule. In this view of the matter, the selection of the fifth respondent is set aside and the fourth respondent is directed to appoint the petitioner as Junior Assistant.



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8.However, the equity obtaining in this case cannot be lost sight off. Obviously, the fifth respondent had been drawing regular salary in the post of Junior Assistant and directing him to repay the same would cause enormous hardship to him. Therefore, the question of the fifth respondent repaying the salary already drawn by him does not arise. It would also be unreasonable and inequitable to throw him out. Since I have held that the petitioner is entitled to be appointed as Junior Assistant, in the resulting vacancy, the fifth respondent can be accommodated. However, the petitioner's seniority in the post of Junior Assistant will date back to 01.07.2019 with all other consequential benefits. She will not be given salary arrears.

9.The fourth respondent is directed to issue proceedings appointing the petitioner as Junior Assistant on 01.07.2019 and submit the proposal to the second respondent. The second respondent is directed to approve the said proposal. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.



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10.This writ petition is allowed on these terms. No costs.

Consequently, connected miscellaneous petitions are closed.

16.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Secretary,
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G.R.SWAMINATHAN, J.

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**Pre-Delivery Order in
W.P(MD)No.10629 of 2021**

**16.06.2023
(1/2)**