



W.P(MD)No.10633 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

CORAM

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

W.P(MD)No.10633 of 2021

and

W.M.P(MD)Nos.8285 & 8286 of 2021

M.Antony Raj

... Petitioner

Vs.

- 1.The State represented by
The 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.G.Suresh Kumar

... Respondents



W.P(MD)No.10633 of 2021

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the fourth respondent in Ref.No. 1G-4/NTS/RC/26/2020 dated 01.04.2020 and quash the same and direct the respondents to promote the petitioner as Record Clerk from the date on which the fifth respondent was appointed i.e., on 01.04.2020 with all consequential benefits including pay and allowances and continuity of service in the promoted post.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader
for R.1 to R.3

Mr.K.Ragatheesh Kumar
M/s.Isaac Chambers for R.4

ORDER

Heard the learned counsel on either side.

2. St.Xavier's College is an aided minority institution. The writ petitioner / M.Antony Raj was appointed as Office Assistant on 01.07.2016. The private respondent G.Suresh Kumar was appointed as water man on 01.07.2016. Both the posts are in the same scale of pay (Rs.15,700/- – Rs.50,000/-). Proposals were submitted by the Management for approving the said appointments. The department had rejected the proposal of the Management. Questioning the



W.P(MD)No.10633 of 2021

same, the Management filed W.P(MD)No.507 of 2019. The prayer in the writ petition was follows:

*“For the reasons stated in the accompanying affidavit, the petitioner humbly prays that this Hon'ble Court may be pleased to issue a Writ, Order or Direction in the nature of a **WRIT OF CERTIORARIFIED MANDAMUS** calling for the records relating to the impugned proceeding issued by 3rd respondent Joint Director in O.Mu.No.11319/U2/2016 dated 01.12.2016, **QUASH THE SAME**, and further direct the 3rd respondent Joint Director to approve forthwith the appointment of 24 non-teaching staff (Name List annexed) in the petitioner's college and disburse the grant-in-aid towards their salary and allowances w.e.f. the respective dated of their appointments, and pass such further or other suitable Order / Orders as this Hon'ble Court may deem fit and proper in the circumstances of the case, and thus render Justice.”*

Vide order dated 23.04.2019, this writ petition was allowed and the rejection order was set aside and the authorities were directed to approve the appointment of the non-teaching staff on the basis of the proposal send by the Management. This was to be done within a period of eight weeks form the date of receipt of a copy of this order.



W.P(MD)No.10633 of 2021

WEB COPY

3. It appears that the department did not adhere to the time limit. While the appointment of M.Antony Raj was approved, the appointment of G.Suresh Kumar as water man was kept pending. Probably to address this, when vacancy arose in the post of Record Clerk Suresh Kumar was appointed in the said post. The post of Record Clerk is in the pay scale of Rs.15,900/- to Rs.50,400/-. Though the rules are not quite clear, the learned Additional Government Pleader states that all along the practice is to treat the post of Record Clerk as promotion post from the feeder grade of Office Assistant and Waterman. As already pointed out, the post of Record Clerk is in higher scale of pay.

4. The primary argument of the learned counsel appearing for the petitioner is that when G.Suresh Kumar was appointed as Record Clerk on 01.04.2020, his appointment as Waterman had not been approved. Therefore, he could not have been appointed as Record Clerk particularly when M.Antony Raj was very much available. This argument would have definitely commanded my acceptance but for the order dated 23.04.2019 made in W.P(MD)No.507 of 2019. This Court had already directed the authority to approve the appointments of not only M.Antony Raj but also G.Suresh Kumar. Both were appointed on the same day. Therefore, the non-approval of G.Suresh Kumar's appointment on 01.04.2020 is irrelevant. In any event, now that G.Suresh



W.P(MD)No.10633 of 2021

Kumar's appointment has been approved, this contention pales into insignificance.

5. The other argument of the learned counsel for the petitioner is that M.Antony Raj as Office Assistant ranked senior to G.Suresh Kumar who was only a waterman. There is nothing on record to show that the post of Office Assistant ranks above Waterman because both are in the same scale of pay. Both were appointed on the same date. In such circumstances, certain parameters can be used to determine one's seniority. In service jurisprudence, the person who is elder is often treated as senior provided there is parity in other respects. In this case, G.Suresh Kumar had entered service in a temporary capacity on 01.07.2005 itself. M.Antony Raj had entered service as temporary Office Assistant only on 01.09.2008. The Management cannot be faulted for having taken this into account. The only point is that some non-arbitrary and reasonable yardstick must be employed to determine seniority. In all other aspects, the candidates are on the same footing. I therefore do not find any merit in the challenge mounted by M.Antony Raj.



W.P(MD)No.10633 of 2021

6. This writ petition is dismissed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

19.06.2023

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

MGA

To

- 1.The 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.



WEB COPY



W.P(MD)No.10633 of 2021

G.R.SWAMINATHAN, J.

MGA

W.P(MD)No.10633 of 2021
and
W.M.P(MD)Nos.8285 & 8286 of 2021

19.06.2023