



W.P.(MD)No.10442 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.10442 of 2019
and
W.M.P.(MD)Nos.8026 and 8027 of 2019

1.M.Joseph Salter Singh
2.J.Joseph Smillin
3.J.Shamilin Joseph

... Petitioners

vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
Department of Higher Education,
Fort St. George, Chennai-600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai-600 006.
- 3.The Joint Director of Collegiate Education,
Tirunelveli Region, Tirunelveli-627 002.



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4.The Manonmaniam Sundaranar University,
represented by its Registrar, Abhisekapaati,
Tirunelveli-627 012.

5.The Correspondent/Secretary,
Women's Christian College,
Nagercoil-629 001,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent Director of Collegiate Education in Na.Ka.No.16802/F2/2016, dated 16.05.2018, to quash the same and further, to direct respondents to approve the appointment of the 1st petitioner's wife namely Dr.V.Gilda Rani as the Assistant Professor in History in the 5th respondent college namely, Women's Christian College, Nagercoil, Kanyakumari District for the period between 02.01.2012 and 23.06.2014 and disburse the grant-in-aid towards her salary with all attendant benefits to the petitioners.

For Petitioners	: Mr.S.Xavier Rajini
For R1 to 3	: Mr.D.Sadiq Raja Additional Government Pleader
For R4	: Mr.M.Mohammed Rafi for M/s.Ajmal Associates
For R5	: No appearance



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ORDER

This writ petition was filed for writ of Certiorarified Mandamus, to quash the impugned proceedings dated 16.05.2018 issued by the 2nd respondent Director of Collegiate Education, and to direct respondents to approve the appointment of the 1st petitioner's wife namely Dr.V.Gilda Rani as the Assistant Professor (History) in the 5th respondent college namely, Women's Christian College, Nagercoil, Kanyakumari District for the period between 02.01.2012 and 23.06.2014 and disburse the grant-in-aid towards her salary with all attendant benefits to the petitioners.

2. Unfortunately, the 1st petitioner's wife died on 01.10.2018 due to liver failure and the petitioners have spent huge money to the tune of Rs.40 Lakhs/- as medical expenses and the employee has left the family consisting of the husband (petitioner) and two unmarried daughters. The 5th respondent School is a Private Aided Minority institution administered by the Diocese of the Church of South



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India. One post of Assistant Professor (History) became vacant on 01.06.2011 due to the retirement of the incumbent namely, Nalina Jeyaseelan on 31.05.2011. In order to fill up the post, the 5th respondent College invited applications from the eligible candidates on 02.07.2011, vide daily newspaper advertisement. The 1st petitioner's wife applied for the said post and she was found to have merit, ability and suitability. She was appointed by erstwhile Correspondent, vide appointment order, dated 22.12.2011 and she joined the service on 02.01.2012. Thereafter, the new Correspondent of the 5th respondent college took charge from January 2013. Again, the 5th respondent College formally issued another appointment order, dated 10.01.2013, indicating that the deceased employee was appointed by the then Correspondent and she joined duty on 02.01.2012. The 4th respondent University approved the deceased employee's qualification, vide proceedings, dated 16.04.2015. Thereafter, the 3rd respondent Joint Director approved the appointment and disbursed the grant-in-aid, however, only with effect from 24.06.2014, vide proceedings, dated 09.09.2015. The Joint Director



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has not approved the deceased employee's appointment from 02.01.2012 to 23.06.2014 without any reasons.

3. The contention of the petitioner is that, since the earlier period was not approved, the deceased employee would be forced to work under juniors and also would lose the promotional opportunity as Head of the Department. Therefore, the deceased employee filed W.P.(MD)No. 5903 of 2016 and this Court directed the respondents to consider and pass orders. The 2nd respondent after considering the appeal, the respondent dismissed the appeal and declined to grant salary for the period from 02.01.2012 and 23.06.2014 and the reasons cited is that on 02.01.2012, the Correspondent has not issued any appointment order. The appointment order was issued only on 28.03.2017 stating that the deceased employee has joined duty on 02.01.2012 cannot be accepted and also there is no resolution in the Government Council of the College. For these reasons, the said period was not recognized. Aggrieved over the same, the present writ petition is



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filed.

4. The respondents 1 to 3 has filed a counter affidavit stating that the 5th respondent College Secretary has not submitted any full-fledged proposal seeking approval of the appointment of Late M/s.Gilda Rani for the period from 02.01.2012 to 23.06.2014. The deceased employee approached this Court for issuance of a writ of Mandamus and this Court directed the respondents to consider and pass orders. The 2nd respondent examined the proposal in detail and vide proceedings, dated 03.07.2017, rejected the proposal on the ground that there was no documentary evidence to substantiate the claim. The deceased employee approached the respondents again with the same prayer. The 2nd respondent reviewed the appeal again and rejected the proposal, vide proceedings, dated 16.05.2008 and cited various reasons. Therefore, it is clear from the above stated facts that, Late M/s.Gilda Rani was not at all appointed in the aided post on 02.01.2012. Therefore, for these reasons the respondents



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rejected the claim of the deceased employee. The petitioners in paragraph 14 of the affidavit claim that the deceased employee was appointed, vide appointment order, dated 22.12.2011, with reference No. WCC/646/11/SF/AO for which the respondents submitted that the appointment order pertains to the self-finance stream of the college for which the deceased employee cannot claim Government grant. Therefore, the counter affidavit states that for these reasons, the deceased employee is not entitled to approval for the earlier period.

5. Heard Mr.S.Xavier Rajini, the Learned Counsel appearing for the petitioner, Mr.D.Sadiq Raja, the Learned Additional Government Pleader for the 1 to 3 respondents, Mr.M.Mohammed Rafi, for M/s.Ajmal Associates the Learned Counsel appearing for the 4th respondent and perused the materials on record.



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6. The contention the petitioner is that the deceased employee was appointed from 02.01.2012 onwards through the selection process conducted by the College, wherein the deceased employee was considered as meritorious candidate and she was appointed and hence the respondents ought to approve the appointment. But the respondents refuted this contention and submitted the college has not submitted any proposal in full shape supported by relevant documents. It is seen from the records after the alleged appointment, the College has not submitted any proposal enclosing the relevant records for approval. It at all the employee was appointed, the College ought to have submitted a proposal at the earliest point of time with documents. The list of documents that was not submitted is stated in the counter and the same is extracted hereunder:

“i)No appointment order was issued to Mrs. Gilda Rani on the claimed date of appointment i.e. 02.01.2012.

ii)In the resolution cum proceedings No:WCC/NGL/A.O/2008/2017 dated 28.03.2017, it was stated that the appointment of Mrs.Gilda Rani was regularized with effect from 02.01.2102 in the vacancy caused by the retirement of Dr.Nalina Jeyaseelan. Absorbing the individual to regular



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service retrospectively (02.01.2012) after a period of 5 years (28.03.2017) is not acceptable in any law.

iii)It is contrary to see that in the bio-data, the date of appointment was mentioned as 02.01.2012 and date of appointment in the regular vacancy on 10.01.2013.

iv)It is mentioned in para-II Form 7 (a), the period of appointment is mentioned as 02.01.2012 to 23.06.2014, this is not possible and not acceptable on the date of agreement i.e., 02.01.2012. (Her appointment with effect from 24.06.2014 was approved only in 2014 and mentioning this approval date on 02.01.2012 is not at all possible).

v)Further, no governing body resolution has been passed for the appointment of M/s. Gilda Rani with effect from 02.01.2012.”

Therefore, this Court is of the considered opinion that when the college had not submitted proposal in full then the claim of the petitioner cannot be considered.

7. It is seen that there were vacancies in Tamil Nadu in various Colleges and in order to fill the said vacancies, the Government issued G.O.Ms.No.79, Higher Education (E2) Department, dated 28.05.2012, wherein it has been categorically stated that the vacancies arose from 01.06.2008 to 31.05.2011 is



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3120. After considering the said vacancies, the Government had granted permission to fill up the said vacancies and the list of colleges was annexed along with the said G.O. For the post of Assistant Professor (History), totally the vacancies were 218. Consequent to the said G.O., the Director has granted permission to the 5th respondent, vide proceedings, dated 24.06.2014 and the 5th respondent College was granted 2 posts of Assistant Professor (History). For other subjects also, the 5th respondent College was granted permission to fill the vacancy (totally 18 posts). The 3rd respondent Joint Director by considering the above facts has granted approval from 24.06.2014, since the State Government granted permission to all aided Colleges functioning in Tamil Nadu to fill up 3120 vacant posts through G.O.Ms.No.79, dated 28.05.2012 and the 2nd respondent Director has permitted the 5th respondent College to fill up 18 posts out of 2 posts for History, vide proceedings, dated 24.06.2014. When the sanction was granted on 24.06.2014, then the 5th respondent college would be entitled grant-in-aid from 24.06.2014 only. Therefore, this Court is of the considered



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opinion that the respondents had sanctioned only from 24.06.2014, then the deceased employee is entitled to approval and benefits only from 24.06.2014.

8. When the sanctioned was granted only from 24.06.2014, then the 5th respondent is entitled to appoint from that date onwards. If the 5th respondent has appointed prior to the said date of 24.06.2014, then the deceased employee ought to be considered as an appointee in the self-finance post (management employee) and not in an aided post. If it is a self-finance stream, then the petitioner is not entitled to salary under grant-in-aid.

9. The College has appointed the deceased employee when there was not permission for the College to appoint. The permission was granted from the date of issuance of the G.O., to various Colleges to fill up the posts. In the said G.O., the Director was authorized to grant permission to the Colleges to grant permission. Consequent to the power, the Director has exercised the said power



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and issued a consequential order, dated 24.06.2014, to the 5th respondent College. Therefore, the approval was granted from 24.06.2014. The College cannot appoint any person without such permission from the Government or the official authorities concerning the said Department. Therefore, the petitioner cannot seek any benefits from 24.06.2014.

10. The College has unilaterally appointed the deceased employee in the said vacancy. Even though the said post become vacant, the said post was earlier sanctioned to the College, there were 3120 vacancies in the entire State of Tamil Nadu. When the Government has taken a specific policy decision to fill up the vacancy of 3120 posts, the deceased employee cannot claim special status to grant approval for the prior period and consequently, to grant grant-in-aid to the deceased employee. The deceased employee was appointed in the year 2012. The College has no authority to appoint anybody, when the Government has not granted any permission to appoint anybody in the said post.



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11. The contention of the petitioner is that the 1st petitioner's wife died and he has incurred huge amount for the treatment of the deceased employee. Therefore, this Court is of the considered opinion that the College is liable to pay the salary to the deceased employee for the period from 2012 onwards.

12. The learned Counsel for the petitioners submitted that in similar circumstances, this Court has directed the Government to disburse the grant in aid from the date of original appointment. If such concession is granted to the employee in the present case, then the said 3120 employees would come forward with the same relief. Hence, the said relief cannot be granted to the petitioner.

13. Admittedly, the College has issued the appointment order on 22.12.2011 and the deceased employee has joined the duty on 02.01.2012. But the respondents have not granted permission to appoint in the said sanctioned post. The 5th respondent has issued the appointment order again in the year 2015.



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The College cannot issue appointment orders when there was no permission to appoint anyone in the said post. Therefore, the official respondents cannot be directed to grant benefits and cannot be burdened. It is the mistake of the college, to appoint the employee without any permission from the government. Hence, the 5th respondent College is directed to pay the entire salary from the period from 02.01.2012 and 23.06.2014.

14. With the above said direction, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

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To

- 1.The Secretary,
State of Tamil Nadu,
Department of Higher Education,
Fort St.George, Chennai-600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai-600 006.
- 3.The Joint Director of Collegiate Education,
Tirunelveli Region, Tirunelveli-627 002.



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S.SRIMATHY, J

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