



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 30.06.2023

Pronounced on : 03.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**WP(MD)No.18258 of 2020
and
WMP(MD)No.15248 of 2020**

S. Malliga

... Petitioner

vs.

- 1.The Principal Secretary to Government,
Higher Educational Department,
Fort St. George, Chennai – 600009.
- 2.The Director, O/o. the Director of Collegiate Education,
College Road, Chennai – 600006.
- 3.The Regional Joint Director of Collegiate Education,
O/o. the Joint Director of Collegiate
Education, Tirunelveli – 627008.
- 4.The Chairman/ Moderator Commissary,
Tirunelveli Diocesan Trust Association
(TDTA) Colleges, Bishop Stowe,
No.17, North Ground Road, Palayamkottai,
Tirunelveli – 627002.



5.Sarah Tucker College (Autonomous),
Rep.by the Secretary,
Perumalpuram, Tirunelveli – 627007.

6.Sarah Tucker College (Autonomous),
Rep. by the Principal, Perumalpuram,
Tirunelveli – 627007.

7.St.Johns College,
Rep.By the Secretary, Tirunelveli – 627002.

8.St.Johns College,
Rep. by the Principal, Tirunelveli – 627002.

9.L.Darmis Lydia Janet

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus by calling for the records pertaining to the order of appointment dated 18.12.2017 issued by the 5th respondent in favor of the 9th respondent in the post of Junior Assistant in Sarah Tucker College, Tirunelveli, as well as the consequential order of approval made by the 3rd respondent in Pa.Mu.No.3701/Aa3/2019 dated 13.12.2019 and quash the same and consequentially direct the respondents 5 and 7 to promote the petitioner as Junior Assistant with retrospective effect by determining the petitioner commencement of service in the post of Junior Assistant based on the petitioner seniority with all monetary and consequential service benefits.

(Prayer amended vide court order dated 22.06.2023).



WEB COPY

For petitioner : Mr.R.Anand

For Respondents : Mr.N.Satheesh Kumar,
Addl Government Pleader for R1 to R3

No appearance for R4 & R5

Mr.P.P.Alwin Balan for R6 to R8

Mr.Isaac Mohanlal, Senior Counsellor
for M/s.Isaac Chambers for R9

ORDER

The petitioner was appointed as Lab Assistant in Sarah Tucker College, Tirunelveli on 26.02.2002. It was a sanctioned post. Her appointment was duly approved. The petitioner was promoted as Record Clerk on 24.10.2016. The promotion was also duly approved. The next promotional avenue for the petitioner was to the post of Junior Assistant. When vacancy arose, the college management appointed the ninth respondent. This was also duly approved by the third respondent vide proceedings dated 13.12.2019. Challenging the appointment as well as the approval, the present writ petition came to be filed.

2.The learned counsel for the petitioner contended that there has been a clear breach of the mandate set out in Rule 11(4)(i) of the Tamil Nadu Private Colleges (Regulations) Rules, 1976. It reads as follows :



WEB COPY

“11. Conditions of service, etc., of teachers and other persons in college. - (1)...

(2)...

(3)...

(4)(i) Promotions in respect of teaching staff shall be made on ground 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.”

It is too obvious that overlooking the claims of the petitioner, the management had appointed the ninth respondent. At this stage, the learned Senior Counsel appearing for the ninth respondent would point out that even though the rule was upheld by the Hon'ble First Bench in the decision reported in **2002 (3) CTC 65 (M.Reethammal v. State of Tamil Nadu)**, there has been a subsequent march of law which this Court may take note of. He relied on the eleven Judges Bench of the Hon'ble Supreme Court in the decision reported in **(2002) 8 SCC 481 (T.M.A Pai Foundation vs. State of Karnataka)** for the proposition that the right of minority management to appoint a candidate of their choice cannot be fettered.





e) Since the appointment of the ninth respondent as Junior Assistant had already been approved by the third respondent, the ninth respondent's salary will be released without raising any further query.

f) The college management is directed to send proposals appointing the petitioner as Junior Assistant and the ninth respondent as RC. The proposals will contain the details in the manner mentioned above. The third respondent shall grant approval for the proposals to be submitted by the management within a period of three weeks from the date of submission of proposals.

g) The petitioner and the ninth respondent will be entitled to receive salary and other benefits in their respective posts to be granted as mentioned above with effect from 09.10.2023.”

4.This writ petition is allowed. No costs. Connected miscellaneous petition is closed.

03.10.2023

Index : Yes / No
Internet : Yes/ No
skm

Issue order copy on 05.10.2023



To

WEB COPY

1. The Principal Secretary to Government,
Higher Educational Department,
Fort St. George, Chennai – 600009.
2. The Director, O/o. the Director of Collegiate Education,
College Road, Chennai – 600006.
3. The Regional Joint Director of Collegiate Education,
O/o. the Joint Director of Collegiate
Education, Tirunelveli – 627008.



WEB COPY



G.R.SWAMINATHAN, J.

skm

**WP(MD)No.18258 of 2020
and
WMP(MD)No.15248 of 2020**

03.10.2023