



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18281 of 2020
and
W.M.P.(MD)No.15263 of 2020
and
W.P.(MD)No.1931 of 2021

W.P.(MD)No.18281 of 2020:-

Ajeena Fanny Swarna

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai - 600009.
- 2.The Director,
Office of 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.



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

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.John's College,
Rep. by the Secretary,
Tirunelveli - 627002.

8.St.John's College,
Rep. by the Principal,
Tirunelveli - 627002.

9.D.Milton David

... Respondents

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 proceedings of the 3rd respondent in Pa.Mu.No.3701/Aa1/2019-1 dated 13.12.2019 approving the appointment of 9th respondent respectively, as Junior Assistant in the 5th respondent College, quash the same and consequentially direct the respondents 5 and 7 to promote the petitioner as Junior Assistant retrospectively, determining the petitioner's commencement of service in the post of Junior Assistant based on the petitioner's seniority with all monetary and consequential service benefits.



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

For Petitioner : Mr.R.Anand

WEB COPY

For Respondents : Mr.N.Satheesh Kumar,
Addl. Government Pleader for R1 to R3.
Mr.P.P.Alwinbalan for R6 to R8.
Mr.S.Chellapandian for R9.
No appearance for R4 & R5.

W.P.(MD)No.1931 of 2021:-

Milton David

... Petitioner

Vs.

- 1.The Secretary to Government,
Department of Higher Education,
St.George Fort, Chennai.
- 2.The Director of College Education,
D.P.I. Compound, College Road,
Chennai.
- 3.The Joint Director of College Education,
Tirunelveli Region, Tirunelveli.
- 4.The Correspondent,
Sarah Tucker College,
Palayamkottai,
Tirunelveli District.
- 5.The Principal,
Sarah Tucker College,
Palayamkottai,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the

3/10



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

respondents to disburse petitioners monthly salary and all other monetary and service benefits with effect from 18/12/2017 based on the order passed by the 3rd Respondent vide 13/12/2019 within a stipulated period as fixed by this Court.

For Petitioner : Mr.S.Chellapandian

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

COMMON ORDER

Heard the learned counsel on either side.

2.The only issue that calls for consideration is whether the appointment of Milton David to the post of Junior Assistant in Sarah Tucker College, Palayamkottai on 14.12.2017 is valid and legal. The college comes under minority management. One Mrs.P.Rathinabai was holding the said post and it became vacant on account of her promotion. The appointment was approved on 06.11.2019 by the Joint Director of Collegiate Education, Tirunelveli. Ajeena Fanny Swarna filed W.P.(MD)No.18281 of 2020 challenging the said proceeding approving



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

the appointment. Ajeena Fanny Swarna also seeks retrospective promotion as Junior Assistant. Since on account of pendency of the writ petition, even though Milton David's appointment had been approved, he has not been paid salary till date. Therefore, Milton Davit filed W.P.(MD)No.1931 of 2021 for directing the authorities to disburse his salary and other monetary service benefits.

3.The primary argument of the learned counsel appearing for Ajeena Fanny Swarna is that appointment as well as the approval are clearly violative of Rule 11(4)(i) of Tamil Nadu Private Colleges (Regulation) Rules, 1976. The said rule is as follows:-

“(4) (i) Promotion shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal.”

The aforesaid rule refers only to filling of a vacancy by way of promotion. The case on hand pertains to filling up the vacancy in respect of non-teaching post. Since the expression 'promotion' is employed, it obviously means promoting an eligible candidate from a feeder grade. The learned Additional Government Pleader draws my attention to



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

G.O.(Ms)No.11, Education Department, dated 04.01.1989, which is as follows:-

Copy of: 1X1 65

GOVERNMENT OF TAMIL NADU
Abstract
Private Colleges- Non-teaching staff- appointment to the posts of Junior Assistants- orders- issued.

Education Department

G.O.No.11
Read the following:-
Dated 4.1.1989

1. G.O.Ms.No.936/Edn/dated 1.6.88
2. From the D.C.E.Lr.No.88539/X4/B7 dated 20.6.88 & 14.12.88

Order:

On the representations received from various levels, orders were issued in the Government Order read above that for appointment to the posts of Assistants in Private colleges, the Junior Assistants and Typists working in the same college shall be considered on seniority basis.

2. The Government have also examined the proposals of the Director of Collegiate Education that appointments to the posts of Junior Assistants in the private colleges be made on seniority basis only even though the pay scales to certain posts in the feeder categories revised consequent on the implementation of the Tamil Nadu Fourth Pay Commission scales of pay. The above proposals has been accepted by the Government.

3. Accordingly the Government direct that irrespective of the scales of pay, the posts of Junior Assistantx in a private colleges shall be filled up from the persons working in the categories of Record Clerks, Library Attenders, Laboratory Assistants, Museum Keepers, Herbarium Keepers and Mechanics and posts in similar time scales of pay in the same categories be considered on seniority basis as per rule 11(4)(i) of Tamil Na du Private Colleges (Regulations) Rules 1976 as amended.

(By order of the Governor)

H.B.N.Shetty
Special Commissioner and Secretary to Government.

To
The Director of Collegiate Education, Madras
The Examiner of Local Fund Audit Madras-2
The Accountant General Madras-18
The Accountant General Madras-35
Copy to The Regional Deputy Director of Collegiate Education through the Director of Collegiate Education Madras-6
Education(B) & L 3 Department
/true copy/



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

4.Ajeena Fanny Swarna is working only as Office Assistant. The pay scale of the post of Office Assistant is not on par with the post of Record Clerk / Library Attenders / Laboratory Assistant. Therefore, the post of Office Assistant cannot be considered as feeder grade for the post of Junior Assistant. In this view of the matter, I reject the contention of the learned counsel appearing for Ajeena Fanny Swarna and not on another ground.

5.In fact, W.P.(MD)No.18281 of 2020 will have to suffer dismissal for yet another reason. What is under challenge is only an order approving the appointment of Thiru.Milton David. Ajeena Fanny Swarna was very much an insider. She knew that Milton David had been appointed as Junior Assistant on 14.12.2017 itself. I do not know as to why Ajeena Fanny Swarna waited till the appointment was approved by the department. In any event, in the writ petition, the appointment order should have been put to challenge. She failed to do so. My attention is drawn to the order dated 14.12.2012 made in W.P.(MD)No.14128 of 2003 (V.Panchavarnam vs. K.Balasubramanian and two others). Paragraph No.31 of the said order is as follows:-



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

WEB COPY

31. Another vital aspect of the matter is that the petitioner had challenged only the order of the third respondent granting approval of the appointment of the first respondent as Headmaster. Admittedly, the said basic order of appointment has not been challenged so far. The order impugned in this writ petition is only granting approval on such appointment and therefore, it is only a consequential order. Therefore, without challenging the basic order, namely, the order of appointment, the present writ petition filed against the consequential order, namely, the approval of such appointment, is not maintainable. At this juncture, it is relevant to quote the decision of the Hon'ble Supreme Court reported in 2010(1) SCC 756 in the case of *Edukanti Kistamma vs. Venkatareddy*.

"22. It is a settled legal proposition that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined (*Vide P.Chitharanja Menon v. A.Balakrishnan [(1977)3 SCC 255 : 1977 SCC (L & S) 378 : AIR 1977 SC 1720]; H.V.Pardasani v. Union of India [(1985)2 SCC 468:*



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

1985 SCC (L & S)482 : AIR 1985 SC 781]; and Govt. of Maharashtra vs. Deokar's Distillery [(2003) 5 SCC 669 : AIR 2003 SC 1216]"

Thus, W.P.(MD)No.18281 of 2020 suffers dismissal on this ground also.

6.At this stage, the learned counsel would also urge that the appointment was not made by the competent authority. I need not go into this contention for the simple reason that the petitioner lacks *locus standi*. The rights of Ajeena Fanny Swarna to seek promotion to the next higher post of Record Clerk is left open. She can very well file an independent writ petition on the said cause of action.

7.W.P.(MD)No.18281 of 2020 stands dismissed and as a consequence W.P.(MD)No.1931 of 2021 stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

18.04.2023

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

9/10



WEB COPY



W.P.(MD)No.18281 of 2020 and W.P.(MD)No.1931 of 2021

G.R.SWAMINATHAN, J.

ias

To:

- 1.The Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai - 600009.
- 2.The Director,
Office of 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.

**W.P.(MD)No.18281 of 2020
and
W.P.(MD)No.1931 of 2021**

**18.04.2023
(2/3)**