



W.P.(MD)No.7881 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
29.03.2023	15.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.7881 of 2018

and

W.M.P.(MD)Nos. 7473 of 2018, 22294 of 2022,
2282 & 2283 of 2023 of 2016

R.Gnanadhas

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented 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,
Tirunelveli Region,
Gandhi Nagar,
Tirunelveli 627 008.



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4. Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District, 629 165,
Represented by its Correspondent – Secretary.

5. R.Rajasingh

.... Respondents

[R5 is impleaded vide Court order, dated 16.12.2022]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorarified Mandamus***, calling for the records of the 4th respondent, pertaining to its order in proceedings in Ref.No. CCM/ 2017-810 dated 16.08.2017 on its file, the subsequent order of the 2nd respondent in his order in Na.Ka.No.48916/F2/2016, dated 25.07.2018 on his file, the subsequent order of the 2nd respondent in Na.Ka.No.4980/F2/2018, dated 25.08.2022 on his file, and the subsequent order of the 3rd respondent in Pa.Mu.No.7066/Aa4/2020, dated 29.11.2022 on his file, quash the same, except with regard to the rejection of approval of the petitioner's appointment as Gardener in the 4th respondent college, contained in the 2nd respondent's above said order in Na.Ka.No. 48916/F2/2016, dated 25.07.2018, directing the respondents 2 and 3 to approve the petitioner's appointment as Office Assistant in the 4th respondent college with effect from 06.04.1998 by order in Ref.No.CCM/1998:179A dated 06.04.1998 and directing the respondents 1 to 4 to give the petitioner all benefits thereof including payment of all monetary benefits within a time to be fixed by this Court.

[Prayer amended as per Order of this Court dated 15.11.2023]



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For Petitioner : Mr.K.N.Thambi

For Respondents : Mr.V.Om.Prakash,
Government Advocate, for R-1 to R-3

Mr.K.Ragatheesh Kumar, for
M/s.Isaac Chambers, for R-4
Mr.B.Brijesh Kishore, for R-5

ORDER

This writ petition is filed for *Writ of Certiorarified Mandamus* to quash the impugned order, dated 16.08.2017 and the subsequent order of the 3rd respondent, dated 29.11.2022 and to direct the 4th respondent to forward the 3rd respondent all the materials called for by the 3rd respondent vide, letter dated 07.02.2017 addressed to the 4th respondent including the proposal for approval of the petitioner's appointment as Office Assistant in the 4th respondent College with effect from 06.04.1998 along with the College notes on the same. Initially the writ petition was filed to quash the impugned order dated 16.08.2017, pending writ petition the respondent had passed an order dated 29.11.2022 and hence an amendment petition was filed to quash the impugned order 29.11.2022 and the same was allowed by this court.



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2. The brief facts as stated in the affidavit is that on 02.01.1997 the 4th respondent College, an Aided Minority institution, appointed the petitioner as Management Staff and thereafter, the College issued an Order, dated 06.04.1998, appointing the petitioner as Office Assistant in the retirement vacancy of I.Sylas, w.e.f., 06.04.1998 in time scale of pay and the petitioner joined on 06.04.1998 as Office Assistant. The contention of the petitioner is that since the petitioner was appointed in the sanctioned post, hence he is entitled for approval of appointment. The 4th respondent College has submitted a proposal, vide letter, dated 17.04.1998. But the appointment was not approved by the 2nd and 3rd respondents until now. Since the respondents have not granted approval, the petitioner sought permission from the 4th respondent College to file a petition before this Court on 12.01.2015 and the same was granted on the same day.

3. Thereafter, the petitioner has submitted a representation, dated 07.06.2016 seeking approval and consequently disburse grant-in-aid for salary. Since the same was not considered, the petitioner has filed W.P.(MD)No.35310 of 2016 for Writ of Mandamus to approve the petitioner's appointment, in the light of approval granted to the similarly placed non-teaching staffs namely, M.Stephen



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and M.Chithiraraj, vide, proceedings, dated 13.01.2015 with all monetary benefits based on the orders of High Court and Supreme Court passed in W.P.(MD)No. 23712 of 2002, dated 26.09.2008, W.A.(MD)No.99 of 2009, dated 24.04.2009 and S.L.P.No.27331 of 2013 dated 04.10.2013 with monetary benefits, seniority in service and other attendant benefits with effect from 06.04.1998 based on the petitioner's representation dated 07.06.2016. This Court, vide order, dated 05.10.2016 directed the petitioner to submit the copy of the representation, dated 07.06.2016 along with the order and the respondents were directed to consider and pass orders.

4. Based on the order, the 3rd respondent directed the Secretary to send the proposal in full form as per Rules, within two days vide letter, dated 07.02.2017. The 4th respondent has issued an order, dated 16.08.2017 stating that the petitioner was observed in the aided stream and regularized as Gardener in the promotion vacancy of Sundaram with retrospective effect from 27.08.2003 on time scale of pay. Aggrieved over the same, the present writ petition is filed to quash the impugned order, dated 16.08.2017 with a consequential relief to grant approval to the post of Office Assistant and monetary benefits and service benefits



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with effect from 06.04.1998. Pending writ petition the respondents had granted approval vide order dated 29.11.2022 to the 5th respondent retrospectively from 01.06.1995 along with monetary benefits from the date of appointment. Aggrieved over the same the present writ petition is filed.

5. The 4th respondent had filed counter stating that the school is a Minority Aided institution under the Corporate Management, there are several institutions managed by the Diocese. As a matter of policy wherever vacancy in the teaching and non-teaching posts arises in the Aided sections, the Diocesan Employment Bureau would consider the qualified senior candidates serving in the self-financed sections for filling up of the said vacancy. Out of 54 sanctioned non-teaching staffs, under the aided system several non-teaching posts became vacant in recent years. Due to administrative exigency, the College filled up the said post and sought approval from the official respondents. Some of the posts were approved, in some cases their appointment to the subsequent post were approved, however the service rendered by them in the earlier post remained unapproved.



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6. In the meanwhile, the government issued G.O.Ms.No.212 Personnel and Administrative Reforms-P dated 29.11.2001 banned any appointment. Thereafter the ban was lifted through G.O.Ms.No.14 Personnel and Administrative Reforms-P dated 07.02.2006, but the said ban is applicable to the government department alone. The College being minority institution prior permission is not necessary and hence the college had appointed certain persons. In the meantime, the 1st respondent in complete violation of the provisions of the Tamil Nadu Recognized Private Colleges (Regulation) Act, has issued G.O.Ms.No.219 Higher Education (D1) Department, dated 24.10.2013, directing the Government Aided Colleges to fill up the posts like, Sweeper, Scavenger, Cleaner, Gardener and Marker through outsourcing and on contract basis and the G.O. attempts to take away the posts sanctioned to the college long back for no reason.

7. The same was challenged before this Court in W.P.(MD)No.22534 of 2015 and in the aforesaid writ petition, M.P(MD)No.2 of 2015 was filed seeking interim direction to fill up the post. This Court, vide order, dated 06.12.2015 directed the respondents to grant permission to fill up the post. Since



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there were several posts, the management initiated the process of regularizing the appointments and promotions of non-teachings staff in the aided stream based on their seniority and the Sub-Committee was formed. The Sub-Committee submitted a report on 20.02.2016, but there were certain discrepancies, hence again the Sub-committee submitted a report on 16.07.2016. Since several litigations arose, again another sub-committee was directed to submit report and a third report dated 12.08.2017 was filed. Based on the report, the College has regularized the appointments based on the seniority list maintained by the Diocesan.

8. The contention of the 4th respondent is that the petitioner was initially appointed as Management Staff w.e.f., 02.01.1997, thereafter, one P. Sundaram who was working as Gardener was promoted as Lab Assistant on 27.08.2003, the petitioner was allotted duties of Gardener with effect from 27.08.2003, thereafter, on 01.06.2009 one Herbarium Keeper post fell vacant due to retirement of C.David Rajan, on 31.05.2009 and the College directed the petitioner to function as Herbarium Keeper. However, for the above posts, the Director has not granted permission to fill up the above said post. Accordingly,



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the College has issued order of appointment as Herbarium Keeper with effect from 24.02.2012 and the petitioner was allowed to sign in the attendance register with effect from the said date. Therefore, the petitioner is entitled to approve from the above said date but the petitioner again seeking approval from 1997 onwards. Moreover, the said post was allotted to one Rajasingh, who is senior most person and he is senior than the petitioner in the seniority list maintained by the College. Therefore, the said Rajasingh was granted the said post of I.Sylas, who retired from the post of Office Assistant as early as on 06.04.1998. Hence, the claim of the petitioner cannot be entertained and the 4th respondent prayed to dismiss the writ petition.

9. The official respondents 1 to 3 have filed counter stating that there were rival claims for the same post by the said Rajasingh as well as the petitioner. The said Rajasingh had filed writ petition claiming the post of Office Assistant in W.P.(MD)No.3952 of 2018 which became vacant due to retirement of I.Sylas who retired on 31.05.1995. And the writ petitioner is also claiming the same post and had filed the present writ petition. Pending this litigation, based on the orders passed by this Court, the respondents have granted approval to the said



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Rajasingh, vide proceedings, dated 25.08.2022 and consequential order dated 29.11.2022 was also issued granting approval along with monetary benefits to the said Rajasingh from 01.06.1995 to 23.02.2012 and already the said Rajasingh's appointment was approved from 20.04.2012. Therefore, the earlier period was also ratified along with the monetary benefits to the said Rajasingh. Therefore, the official respondents prayed that the petitioner's case cannot be entertained, because already based on the order of this Court in W.P.(MD)No.3452 of 2018, dated 09.11.2021 Rajasingh was already granted the said I.Sylas vacant post with monetary benefits. Hence, the official respondents prayed to dismiss the writ petition.

10. Heard Mr.K.N.Thambi, the Learned counsel appearing for the petitioner, Mr.V.Om.Prakash, the Learned Government Advocate appearing for the respondents 1 to 3, Mr.K.Ragatheesh Kumar, for M/s.Isaac Chambers, the Learned counsel appearing for the 4th respondent, Mr.B.Brijesh Kishore, the Learned counsel appearing for the 5th respondent and perused the material documents available on record.



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11. The Learned counsel appearing for the petitioner relied on the appointment order issued to the petitioner. In the initial appointment order, dated 02.01.1997 the petitioner was appointed as management staff to operate Xerox machine in the vacant post of one K.Sutha, since the incumbent K.Sutha was appointed in the regular aided vacancy and the proposal of appointment K.Sutha's was pending for approval before the authorities concerned, until her approval is granted the petitioner was allowed to continue in the said post without any salary. The said appointment order has referred to Minutes of the Governing Board, dated 12.12.1996 in reference No. CCM/97:138 and the said appointment is extracted here under:

"No.CCM/97:138

Dated 01.01.1997

APPOINTMENT ORDER

Sub: Appointment of staff under Management -

*Ref: **Minutes of the Governing Board dated 12.12.1996***

Mr.R.Gnanadhas S/o.Mr.Ramaswamy, Nedia Vilai, Swamiyarmadam, Kattathurai Post, Kanyakumari Dist is appointed as a Management staff to operate the xerox machine in the Nesamony Memorial Christian College, Mortandam with effect from 02.01.1997 and you will not be paid any salary until the date when your predecessor's Miss.K.Sutha's appointment in



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regular aided post is approved by the authorities concerned and till then your service in the College will be purely voluntary and you will have to abide by all the rules and regulations of the College. If you are amicable to the conditions you can join duty from 02.01.1997”.

12. Thereafter again the petitioner was granted another appointment order on 06.04.1998, based on the approval through Circulation Minutes of Governing Board dated 04.04.1998 and the said appointment order is extracted hereunder:

“Ref.No.CCM/1998:179A

Dated 06.04.1998

**PROCEEDINGS OF THE CORRESPONDENT-SECRETARY,
NESAMONY MEMORIAL CHRISTIAN COLLEGE, MARTHANDAM**

Mr.R.Gnanadhas (Management staff) was appointed as office Assistant in the retirement vacancy of Mr.I.Sylas with effect from 06.04.1998 in the scale of pay of Rs.750-12-870-15-945 with usual allowances permissible under the rules of the Government of Tamil Nadu and according to the terms and conditions stipulated by the College and approval of the Joint Director of Collegiate Education.

13. In the circulation minute dated 04.04.1998 it has been stated that the petitioner is granted I.Sylas place and the members have signed it. Hence the



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contention of the Learned Counsel appearing for the petitioner is that the petitioner was appointed in I.Sylas place as early as 06.04.1998. But this fact was refuted by the Learned Senior Counsel appearing for the 4th respondent College stating that in the petitioner's appointment order 06.04.1998, there is no reference for the Minutes of the Board Meeting at all. Moreover, in the reference the number stated as 179A, because of the alphabet “A” along with the number 179, the letter “A” is an interpolated. Moreover, no records are available for the alleged circulation minute, which fact is recorded in the Sub-Committee report. Therefore, the College submitted that the alleged appointment order is fake and bogus and the petitioner was never ever appointed in the said I.Sylas place as Office Assistant, hence, the petitioner cannot be considered.

14. The 4th respondent further submitted that the petitioner was not granted any permission to initiate litigation to grant approval and the letter relied on also is fake. After hearing the rival submissions this Court is of the considered opinion that the petitioner had produced a letter dated 04.04.1998 wherein it is stated as “Circulation Minute” and the names of the management committee members were mentioned and they have signed it. But the genuinity is doubtful



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since it is typed in a paper and there is no endorsement and there is no seal. As rightly pointed out by the 4th respondent, in the appointment order, reference number is stated as 179A, which means the letter “A” is interpolated. When the 4th respondent claims no records are available for the alleged circulation minute, thereby a clout is place over it, then the said alleged circulation minute cannot be considered as true.

15. As far as the appointment of Rajasingh the 5th respondent herein, is concerned the contention of the 4th respondent is that the said Rajasingh was appointed on 09.03.1994 and his appointment order, refers to the minutes of meeting, dated 21.08.1993 and the same is extracted here under:

“APPOINTMENT ORDER”

Sub: Appointment of staff under Management-

*Ref: **Minutes of the Governing Board dated 21.08.1993***

Mr.R.Rajasingh, Neeralikarai Veedu, Malaicode, Edaikode is appointed as a Management staff in the Nesamony Memorial Christian College, Martandam with effect from 09.03.1994 and you will not be paid any salary until the date when your predecessor's Mrs.R.Christy appointment in regular aided post is approved by the



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authorities concerned and till then your service in the College will be purely voluntary and your will have to abide by all the rules and regulations of the College. If you are amicable to the conditions you can join duty from 09.03.1994.

After perusing the Rajasingh's appointment order dated 09.03.1994 and the petitioner's appointment order dated 01.01.1997, it is seen that there is approval of Governing Board in both the appointment orders. But the petitioner's subsequent appointment order dated 06.04.1998 there is no such reference of Governing Board's minutes of meeting but only circulation minute as stated supra. It is pertinent to state herein that the Rajasingh was appointed in the year 1994 and the petitioner was appointed in the year 1997 and hence the petitioner is junior to the said Rajasingh. It is also pertinent to state that both the Rajasingh and the petitioner were appointed as management staff i.e. as self-finance staff. And also they were appointed in the vacancy of management staff and not in regular aided vacancy. Infact the earlier incumbent K.Sutha and R.Christy were also under the category of management staff only. Infact the appointment order dated 09.03.1994 of the Rajasingh and the appointment order dated 01.01.1997 of the petitioner specifically states that they were appointed in the vacancy of management staff and the incumbent management staff were granted regular



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aided vacancy. As rightly pointed out by the Learned Senior Counsel appearing for the 4th respondent, when the senior Rajasingh was available, then the petitioner being junior would not have been appointed in the regular aided vacancy of I.Sylas. Therefore, this Court is of the considered opinion that the second appointment order dated 06.04.1998 is not believable and the same cannot be relied on.

16. If the appointment of the petitioner and the said Rajasingh cannot be considered from 1994 and 1997, then the question arises from which date they can be considered as appointed in the aided post. It is seen from records until the ban order of G.O.Ms.No.212 Personnel and Administrative Reforms-P dated 29.11.2001, the 4th respondent had not appointed the petitioner and the said Rajasingh in any regular aided post. Therefore from 1994 and 1997 until the ban order dated 19.11.2001 the petitioner and the said Rajasingh was not appointed in regular aided vacancy. Once there is “ban order” for fresh recruitment and thereafter the ban was lifted through G.O.Ms.No.14 Personnel and Administrative Reforms-P dated 07.02.2006, hence until 07.02.2006 the petitioner and the said Rajasingh could not have been appointed. An attempt was made by the 4th



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respondent to convince this Court that the ban order in G.O.Ms.No.212 is not applicable to the Aided schools, but the said argument cannot be accepted. The ban of recruitment was issued since the government was under financial constraints. Moreover, after banning the fresh recruitment the government had fixed the cut-off date for old pension as 31.03.2003 and the new contributory pension scheme is applicable for the persons recruited from 01.04.2003, which is a policy decision.

17. During this ban period, the government had also taken a policy decision that as far as non-teaching staff is concerned like Sweeper, Scavenger, Cleaner, Gardener, Marker etc., shall be outsourced or engaged on part time basis. Hence such a policy decision cannot be stated as not applicable to the aided schools. Therefore, this Court is of the considered opinion that the petitioner and the said Rajasingh could not have been appointed until 07.02.2006.

18. Thereafter the petitioner and the said Rajasingh was continuing as Management staff and they were carrying on all works without any specific post. Subsequently, the said Rajasingh was granted the appointment order only on



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24.02.2012 as Junior Assistant in the retirement vacancy of N.Mathias and the petitioner was appointed on the same day i.e. on 24.02.2012 as Herbarium Keeper (merged as Lab Assistant as per G.O.Ms.No.728 dated 29.08.1994) in the retirement vacancy of Mr.C.David Rajan. The said appointment order of the said Rajasingh and the petitioner are extracted hereunder:

“Ref Mp/CC,/2012:240

Dated 24.02.2012

***PROCEEDINGS OF THE CORRESPONDENT –
SECRETARY NESAMONY MEMORIAL CHRISTIAN COLLEGE,
MARTHANDAM***

Sub: Appointment order as Junior Assistant – Regarding

Ref: Minutes of the Governing Board dated 23.02.2012

Mr.R.Rajasingh, Neerazhikarai Veedu, Malaicode, Edaikode Post, Kanyakumari District is appointed as Junior Assistant in the retirement vacancy of Mr.N.Mathias with effect from 24.02.2012 in the scale of pay Rs.5200-20200-2400(G.P) with usual allowances permissible under the rules of the Government of Tamil Nadu, rules and regulations of the College and subject to the approval of the Joint Director of Collegiate Education, Tirunelveli. He will on probation for a period of two years.

If he agrees to the above conditions, he may join duty in the forenoon of 24.2.2012”.



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The petitioner's appointment order:

"Ref Mp/CC,/2012:241

Dated 24.02.2012

***PROCEEDINGS OF THE CORRESPONDENT –
SECRETARY NESAMONY MEMORIAL CHRISTIAN COLLEGE,
MARTHANDAM***

Sub: Appointment order as Herbarium Keeper – Regarding

Ref: Minutes of the Governing Board dated 23.02.2012

Mr.R.Gnanadhas, Nedia Vilai, Swamiyarmadam, Kattathurai Post, Kanyakumari District is appointed as Herbarium Keeper (merged as Lab Assistant as per G.O.Ms.No.728 dated 29.08.1994) in the retirement vacancy of Mr.C.David Rajan with effect from 24.02.2012 in the scale of pay Rs.5200-20200-2400(G.P) with usual allowances permissible under the rules of the Government of Tamil Nadu, rules and regulations of the College and subject to the approval of the Joint Director of Collegiate Education, Tirunelveli. He will on probation for a period of two years.

If he agrees to the above conditions, he may join duty in the forenoon of 24.2.2012".

Since the said Rajasingh was granted appointed from 24.02.2012 onwards in the place of N.Mathias, in a regular Aided government sanctioned post, then the said



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Rajasingh is eligible to get the Aided post salary from 24.02.2012 onwards. Likewise, the petitioner was granted appointed from 24.02.2012 onwards in the place of C.David Rajan, in a regular Aided government sanctioned post, then the petitioner is eligible to get the Aided post salary from 24.02.2012 onwards. It is pertinent to note that from the date of lifting of ban in G.O.Ms.No.14 dated 07.02.2006, the 4th respondent had not appointed the petitioner and the said Rajasingh in any Aided government post, in such circumstances both are not eligible for the grant-in-aid salary until 24.02.2012. In other words, the petitioner and the said Rajasingh are not eligible for grant-in-aid salary from the date of ban 07.02.2006 to 23.02.2012 as stated supra. From the above discussion the petitioner is not entitled for grant-in-aid salary from 06.04.1998 to 23.02.2012 and the said Rajasingh is not entitled for grant-in-aid salary from 09.03.1993 to 23.02.2012. Therefore, the orders dated 25.08.2022 and 29.11.2022 is absolutely illegal.

19. The 4th respondent has submitted that the government had issued G.O.Ms.No.219 Higher Education (D1) Department dated 24.10.2013 directing the government aided colleges to fill up posts like Sweeper, Scavenger, Cleaner,



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Gardener, Marker through outsourcing and on contract basis and the said G.O.Ms.No.219 is extracted hereunder:

"ABSTRACT

Collegiate Education - Aided Colleges - Filing up of vacancies in the post of Office Assistant Marker and "D" Category posts - Permission accorded - Orders issued.

Higher Education (D1) Department

G.O.(Ms) No.219

Dated: 24.10.2013

Thiruvalluvar - Aandu 2044 Vijaya Varudam, Aippasi 7

Read:

- 1. G.O.(Ms)No.49, Personnel and Administrative Reforms Department, dated 14.5.2002.*
- 2. From the Director of Collegiate Education Letter No.17509/G3/2008, dated 9.9.2008, 28.9.2010, 07.12.2010 and 9.2.2011.*
- 3. Government letter No.22011/D1/2008-14, dated 20.7.2011.*
- 4. From the Director of Collegiate Education Letter Na.ka.No.17509/G3/2008, dated 24.1.2013.*

ORDER:

In the letters second read above, the Director of Collegiate Education had requested orders of the Government to permit her to fill up the vacancies of 1282 non-teaching posts viz, Office Assistant - (573), Marker - (64), Sweeper - (259), Watchmen - (182), Gardener - (121) and Cleaner - (83) as on 22.8.2008 in Government Aided Arts and Science Colleges and Colleges of Education.

2. In the letter third read above and Government had requested the Director of Collegiate Education to furnish the details of number of non-



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teaching staff to be filled up based on the students strength, number of sanctioned posts, number of posts filled up and number of vacancies in the sanctioned post.

3. In the letter fourth read above the Director of Collegiate Education has furnished the details of vacancies in the posts of Office Assistant, Marker, Sweeper, Cleaner, Watchman, Waterman and Gardener in Government Aided Arts and Science Colleges and Colleges of Education during the period 1.6.2008 to 31.5.2011 as follows:-

S. No.	Posts	Total
1	Office Assistant	486
2	Gardener	127
3	Waterman	126
4	Sweeper	373
5	Cleaner	97
6	Watchman	200
7	Marker	83
Total		1492

She has requested orders of the Government to permit her to fill up the above posts in Government Aided Arts and Science Colleges and Colleges of Education.

4. In the Government Order first read above orders were issued that work of all group 'D' categories like Sweeper, Scavenger, Cleaner and Gardener in the Government Department shall be progressively outsourced and entrusted on contract basis.

5. The Government have examined the proposal of the Director of Collegiate Education, in para 3 above in the light of the Government Order first read above and have decided to accord permission to the



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Director of Collegiate Education to fill up the vacancies in the post of Office Assistant, Marker, Sweeper, Cleaner, Watchman, Waterman and Gardener in Government Aided Arts and Science Colleges and Colleges of Education. Accordingly, the Government accord permission to the Director of Collegiate Education to fill up the following posts that have fallen vacant during the period from 1.6.2008 to 31.5.2011:-

(i) 243 vacancies in the posts of Office Assistant

(ii) 83 vacancies in the posts of Marker by 24 meeting the salary cost from the Sports Funds of Aided Colleges and

iii) 923 vacancies in the post of Sweeper, Cleaner, Watchman, Waterman and Gardener through outsourcing and on contract basis, by meeting the expenditure from college fund of Government Aided Arts and Science Colleges and Colleges of Education based on the orders issued in G.O. (Ms)No.49, Personnel and Administrative Reforms department, dated 14.5.2002.

6. This order issues with the concurrence of Finance department, vide its U.O.No.59166/Edn-I/13, dated 22.10.2013 and U.O.No.61053/CMPC/13, dated 24.10.2013.

(By order of the Governor)

*Apurva Varma
Principal Secretary to Government"*

In the said G.O. the government had granted permission to fill up the non-teaching posts and until then there was no permission to fill up any vacant post of



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non-teaching staffs. Even in School Education Department there was no permission to fill up any vacant post of non-teaching staffs since there was a policy decision to fill up the post like Sweeper, Scavenger, Cleaner, Gardener, Marker through outsourcing. It is pertinent to state that the government had banned the fresh recruitment of non-teaching staffs even after lifting of general ban through G.O.Ms.No.14. Since it is policy decision, the 4th respondent cannot claim that as a right of minority institution. When the government is taking the burden of paying the monetary benefits, then the government has every right to restrict the sanctioned post and appointment to the said post. The initial sanctioned post cannot be cited and claim perpetual right over the said sanctioned post. The government has every right to modify the sanctioned post based on requirement and necessity. The minority institution has right to choose the candidate but has no right to claim (rather demand) the sanctioned post perpetually as a right. The post may vary based on the policy decision of the government. From the above discussion it would be evident that the 4th respondent college was granted permission to fill up the vacancy of non-teaching staff through the said G.O.Ms.No.219 dated 24.10.2013 and such appointment shall be with effect from 24.10.2013, the date of issuance of the G.O. Therefore



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the 4th respondent gets right to fill up the vacancy through the said G.O.Ms.No. 219 dated 24.10.2013. Infact after this permission only the respondents ought to have appointed the petitioner and the said Rajasingh from 24.10.2013 onwards and not prior to the said date.

20. The 5th respondent claimed that the said G.O. is issued to fill up the post which had fallen vacant from 01.06.2008 to 31.05.2011, but the I.Sylas post was became vacant from 06.04.1998, hence the 4th respondent is entitled to fill the said post. But the 4th respondent is following seniority list and had not filled up any posts which had fallen vacant from 06.04.1998. The 4th respondent further submitted there were several vacancies in the post of non-teaching staffs and the same was not filled up. Thereafter sub-committee was constituted to consider to fill up the vacancies for which seven management staffs namely S.Jayadhas, R.Rajasingh, M.Selvadhas, C.Paul Raj, K.Sutha, R.Gnanadhas, T.Godwin were considered. There are three reports from the sub-committee i.e. 20.02.2016, 16.07.2016 and 12.08.2017. Based on the report and based on the seniority among the management staffs, the said persons were appointed in the regular aided vacancy. It is an admitted fact that it is only after the Sub-



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Committee's report which was issued on 20.02.2016, 16.07.2016 and 12.08.2017, the college had appointed persons in the non-teaching posts. In such circumstances the fact remains the petitioner, the Rajasingh and any persons stated in the seniority list were not appointed in any post until 21.02.2012. But the 4th respondent was granted permission to appoint and fill up the vacancy only from the date of the G.O.Ms.No.219 dated 24.10.2013. Hence the 4th respondent is entitled to appoint and fill up the vacancy of non-teaching staffs only from 24.10.2013 and the candidates are eligible for government aided salary, service benefits from 24.10.2013 only.

21. It is seen from the records, based on the direction of the High Court in W.P.(MD)No.3452 of 2018, the Director of Collegiate Education vide proceedings dated 25.08.2022 had considered the case of the said Rajasingh and had granted approval from 01.06.1995 to 23.02.2012 along with monetary benefits. The Learned Single Judge of this Court in W.P.(MD)No.3452 of 2018 has only directed to consider and pass orders and there is no specific order to grant approval from 01.06.1995 onwards and the relevant portion of the order is



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extracted hereunder:

“4. Since there are disputed questions of fact that arises in this writ petition and also for the reason that the petitioner's representation dated 29.01.2018 is admittedly pending before the official respondents i.e., R1 to R3, it would in my view, suffice that R3 be directed to dispose representation, dated 29.01.2018, after hearing the petitioner, R4 and R5, by issuing notices to the respective parties sufficiently in advance. Let an order be passed by R3 thereafter in accordance with law and taking note of the contentions advanced by all parties.

5. The exercise as above shall be completed within a period of twelve weeks from date of uploading of the copy of this order upon the official website of this Court. This writ petition is disposed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

22. After the Sub-Committee's report, based on the seniority list, the 4th respondent had appointed the said Rajasingh and as well as the petitioner in the available vacant aided post. Finally, the said Rajasingh was appointed on 24.02.2012 in post of Junior Assistant and the petitioner was appointed as Herbarium Keeper on 24.02.2012 i.e. on the same day. It is seen from the records that both the petitioner and the said Rajasingh **were never ever worked as Office**



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Assistant from 1995 onwards, when the post fell vacant due to the retirement of I.Sylas in the year 1995. And the government has not granted any permission to fill the post. When the petitioner as well as the said Rajasingh have never worked in the post of Office Assistant, they cannot claim any approval to the said post of Office Assistant from the year 1995 onwards. Therefore, the impugned order dated 29.11.2022 is absolutely illegal as far as granting approval of appointment to the said Rajasingh from 01.06.1995 onwards. Without any appointment to the said post from 1995 onwards and without any work being carried out in the said post, these orders were passed for approving the appointment in the said post with back wages is absolutely loss of the Government. Therefore, this Court is setting aside these two orders to the effect that it is granting approval from 01.06.1995 to 24.02.2012.

23. This Court categorically directing no one was appointed from the year 1995-2012 in the post of I.Sylas and also other non-teaching posts which were vacant and nobody is entitled to any backwages for approval for the post said from 1995 to 2012 and the orders passed to that effect are quashed. Hence, this Court is not inclined to entertain the plea of the petitioner and grant approval



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from 06.04.1998 onwards in the post of I.Sylas. Having said so, even the said Rajasingh is not entitled for the said post from 01.06.1995 onwards. Both the petitioner and the said Rajasingh, as well as any other persons who were considered to appoint in the vacancies are entitled to appointment and government aided salary from 24.10.2013 only (the date of G.O.Ms.No.219).

24. Infact when the said Rajasingh was appointed as management staff from 1995 onwards, it is unknown how the official respondents had granted approval from 1995 onwards. Likewise, when the petitioner was appointed as management staff from 1997 onwards, it is absolutely illegal to claim approval from 1997 onwards or 1998 onwards. Even if some posts are vacant, there cannot be automatic appointment and approval. The recruitment should be conducted through selection committee. In the present case the 4th respondent has not stated that they conducted on selection process. The 4th respondent has stated that they had appointment based on seniority only. As per the 4th respondent there were several vacancies and based on three reports of the sub-committee and based on seniority the said vacant posts were filled up. Infact the sub-committee reports were issued on 20.02.2016, 16.07.2016 and 12.08.2017, then it is unknown how



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the appointment was issued from the year 1995 or 2012. Therefore, the order passed by the official respondents granting approval from 01.06.1995 to Rajasingh through the order in Na.Ka.4980/F2/2018 dated 25.08.2022 and the consequential order in Pa.Mu.No.7066/Aa4/2020, dated 29.11.2022 granting approval from 01.06.1995 to 23.02.2012 to the said Rajasingh is absolutely illegal and the same is quashed. The petitioner is not entitled to any approval of appointment from 06.04.1998 as the same is not genuine. The petitioner, the said Rajasingh and any other persons stated in the sub-committee report are not entitled to appointment prior to 24.10.2013 (the date of issuance of G.O.Ms.No. 219) and consequently not entitled to any approval and monetary, service benefits applicable to government aided post prior to 24.10.2013.

25. Therefore, the impugned order passed by the official respondents granting approval from 01.06.1995 to Rajasingh through the order in Na.Ka. 4980/F2/2018 dated 25.08.2022 and the consequential order in Pa.Mu.No. 7066/Aa4/2020, dated 29.11.2022 granting approval from 01.06.1995 to 23.02.2012 to the said Rajasingh is quashed. The impugned order dated 16.08.2017 is quashed. The petitioner, the said Rajasingh and any other persons



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stated in the seniority list is entitled to appointment, approval in the government aided post only from 24.10.2013.

26. With these observations, this Writ Petition is partly allowed with above directions as stated supra. No Costs. Consequently ***W.M.P(MD)No.2282 of 2023*** is allowed and ***W.M.P(MD)Nos.7473 of 2018, 22294 of 2022 and 2283 of 2023*** are closed.

Index : Yes / No
Internet : Yes
ksa

15.11.2023

To

1. The Secretary,
State of Tamil Nadu,
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,
Tirunelveli Region,
Gandhi Nagar,
Tirunelveli 627 008.



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.7881 of 2018**

15.11.2023