



W.P(MD)No.22794 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.06.2023

Pronounced On : 03.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22794 of 2022

and

W.M.P.(MD)No.16940 of 2022

Y.Saharine

... Petitioner

Vs

- 1.The Director of Collegiate Education,
D.P.I Campus,
College Road, Chennai.
- 2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli District.
- 3.The Principal,
St.Jude's College,
Thoothur, Kanyakumari District.
- 4.Fr.Lucians Thommas,
Secretary,
St.Jude's College,
Thoothur, Kanyakumari District.
- 5.The Hon'ble Administrator,
St.Jude's College,
Thootur, Kanyakumari District.

6.G.Merlin

... Respondents



W.P(MD)No.22794 of 2022

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 of the fourth respondent impugned appointment order in Proceedings No.SJC/2811/S/2018, dated 04.07.2018 and the consequential approval granted by the office of the second respondent in Proceedings in Ni.Mu.No. 02259/E3/2019, dated 12.03.2019 issued in favour of the sixth respondent and to quash the same as illegal and consequently, direct the respondents 3 & 4 to send the proposal for approval of the petitioner's appointment as Lab Assistant from 18.05.2010 in the existing vacancy in the St.Jude's College, Thuthoor and further direct the respondents 1 & 2 to approve the same on receipt of the proposal with all monetary benefits within the time frame that may be stipulated by this Court.

For Petitioner : Mr.C.Emalias

For Respondents : Mr.N.Satheeshkumar

Additional Government Pleader for R1 & R2

: no appearance for R3 & R4

: Mr.V.Pannerselvam for R5

: Mr.A.R.Kannappan for R6

ORDER

The case of the petitioner is as follows:-

The petitioner was appointed as Lab Assistant in St.Jude's College, Thoothukudi, Kanyakumari District on 18.05.2010.



W.P(MD)No.22794 of 2022

He was appointed in the vacancy caused by the retirement of one Tmt.John Reginal. It is a sanctioned post. The secretary of the college submitted proposal to the Joint Director of the Collegiate Education, Tirunelveli for approval. Further steps were not taken on account of the internal dispute in the college management. The petitioner in these circumstances represented to the department. The petitioner's request was however negatived. Challenging the rejection of the approval, the petitioner filed W.P. (MD)No.17380 of 2017. The writ petition was disposed of on 22.12.2017. The college management instead of resubmitting the proposal chose to appoint one G.Merlin as Lab Assistant on 04.07.2018. It was also approved on 12.03.2019. The department declined to approve the petitioner's appointment. That led to filing of W.P.(MD)No.1168 of 2019. The said writ petition was disposed of by granting liberty to the petitioner to question the proceedings whereby Merlin was appointed. Availing the said liberty, the present writ petition came to be filed.

2. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and



W.P(MD)No.22794 of 2022

called upon this court to quash the impugned order and grant relief as prayed for.

WEB COPY

3. The official respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The contesting private respondents / selected candidates had also filed counter affidavit. A retired Judge of this Court has been appointed as administrator. The stand of the respondents is that the petitioner had worked only in self finance stream and therefore, the question of approving his appointment does not arise. The respondents pressed for dismissal of the writ petition.

4. I carefully considered the rival contentions and went through the materials on record. Even though regular vacancy arose in the post of Lab Assistant as early as on 30.09.2009, it is little difficult to believe that it was filled up on regular basis only after a gap of 9 years. The petitioner's appointment order dated 17.05.2010 enclosed in the typed set of papers also states that the petitioner was appointed as Lab Assistant in the place of Tmt.K.John Reginal who retired from service on 30.09.2009. It is beyond dispute that the petitioner had been working in the St.Jude's College since 18.05.2010. Unfortunately for the petitioner, even the extracts of the hand book



W.P(MD)No.22794 of 2022

enclosed by him show that he was working only in the self finance stream.

A retired District Judge is presently serving as administrative officer and the statement filed by him before this Court also does not advance the case of the writ petitioner.

5. I did feel strongly persuaded by the submission of the learned counsel appearing for the petitioner. It appears that the petitioner is a victim of the internal dispute among the members of the college management. But the materials on record are not sufficient for this Court to sustain the claim of the petitioner. Admittedly, St.Jude's College is a minority institution. The management had submitted proposal to the Joint Director of Collegiate Education for approving the appointment of G.Merlin. Neither the management nor the Hon'ble Administrator supported the petitioner's case. The petitioner is also not in a position to marshal any independent evidence to show that he was appointed on regular basis. Paragraph Nos.4 & 7 of the counter affidavit filed by the department read as follows:-

“4. At the outset, the above writ petition is liable to be dismissed in limini as it proceeds on the ground that the 6th respondent was appointed in the post which was already occupied by the petitioner which is unsustainable for the following reasons. It is to be noted that the proposal seeking appointment approval in aided colleges should be supported by the appointment order by an approved secretary, College



WEB COPY



W.P(MD)No.22794 of 2022

Committee/ Governing board resolution for the appointment, Joining Report, Certificate of physical fitness, Certificates of educational qualification, agreement between the management and the employee in Form VII C. No such complete proposal have been received yet.

7. However, I humbly submit that no such proposal was received from the secretary of the college in respect of the petitioner. Further, the principal vide his letter dated 04.06.2020 has categorically stated that there is no college committee / Governing board resolution for the appointment of the petitioner.”

6. It is not possible for this Court to grant any relief in this writ petition.

The Writ Petition stands ***dismissed***. However, considering the special facts and circumstances of this case, the college management may consider appointing the petitioner on regular basis in any of the sanctioned post by taking into account his educational qualification and experience. Since the petitioner has served the institution for more than 13 years, I am certain that this sentiment expressed by this Court will be honoured. No costs. Consequently, connected miscellaneous petition is closed.

03.10.2023

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



WEB COPY



W.P(MD)No.22794 of 2022

To

- 1.The Director of Collegiate Education,
D.P.I Campus,
College Road, Chennai.
- 2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli District.



WEB COPY



W.P(MD)No.22794 of 2022

G.R.SWAMINATHAN, J.

rmi

W.P(MD)No.22794 of 2022

03.10.2023