



W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.4300 of 2016
and
W.M.P(MD)Nos.3828 to 3830 of 2016
and
Cont.P(MD)No.1696 of 2015

W.P(MD)No.4300 of 2016:

J.S.Sargo

... Petitioner

Vs.

- 1.The Director of Collegiate Education,
College Road,
Chennai-600 006.
- 2.The Deputy Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli – 627 007.
- 3.The Registrar,
Manonmaniam Sundarnar University,
Abhishekapatti,
Tirunelveli.
- 4.The Correspondent Secretary,
Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District.



W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

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5.The Principal,
Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District.

6.The Sub-Committee,
Represented by its Covener,
Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District.

7.C.Nagendran

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proposed order for absorption into aided stream in Annexure-IV, in the 4th respondent Nesamony Memorial Christian College, Marthandam, Kanyakumari District from the non-teaching staff (Management) dated 20.02.2016 issued by the 6th respondent committee and quash the same in respect of the proposed absorption of the 7th respondent in the post of Library Assistant in the Nesamony Memorial Christian College, Marthandam, Kanyakumari District and consequently directing the respondents to appoint the petitioner as Library Assistant in the 4th respondent college as directed by this Court in W.P.(MD)No.8837 of 2014 dated 09.07.2014.

For Petitioner : Mr.D.Kirubakaran



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W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

For R1 & R2 : Mr.D.Sadiq Raja
Additional Government Pleader

For R3 : Mr.M.Mohammed Rafi
for M/s.Ajmal Associates

For R4 – R7 : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

Cont.P(MD)No.1696 of 2015:

J.S.Sargo

... Petitioner

Vs.

1.Dr.Rt.Rev.Deva Kadacham,
The Correspondent/Secretary,
Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District.

2.Dr.Thambi Thangakumar,
The Principal,
Nesamony Memorial Christian College,
Marthandam,
Kanyakumari District.

... Respondents

Prayer : Contempt Petition filed under Section 11 of Contempt of Court Act, to punish the respondents for the deliberate and wilful disobedience of the order passed by this Court in W.P(MD)No.8837 of 2014, dated 09.07.2014.

For Petitioner : Mr.D.Kirubakaran



W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

For Respondents : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

COMMON ORDER

This writ petition has been filed to quash the impugned proposed order for absorption into aided stream in annexure - IV of the 4th respondent college, dated 20.02.2016 and consequentially quash the proposal for absorbing the 7th respondent in the post of Library Assistant with a direction to appoint the petitioner as Library Assistant in the 4th respondent college in the light of order, dated 09.07.2014 passed in W.P.(MD)No.8837 of 2014.

2. The petitioner's father, namely Justine Devaraj was working as Library Assistant at 4th respondent college and died on 30.09.2013. The petitioner submitted an application on 17.04.2014 to consider the petitioner's case under compassionate appointment due to serious financial crises. Since the same was not considered, the petitioner had filed W.P.(MD)No.8837 of 2014 to consider his representation and this Court vide order, dated 09.07.2014 passed an order as under:



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“4. The learned counsel for the fourth respondent on instructions submitted that the post of Library Assistant has already been filed up by the Management. The learned counsel further submitted that the Management is prepared to appoint him in the self-finance section.

5. There are no documents before this Court indicating the number of vacancies in the fifth respondent institution. The Management has now agreed to appoint the petitioner as Assistant in the self-finance section. In case there are vacancies in the fifth respondent college, necessarily, the petitioner should be considered, taking into account the employment of his father as Library Assistant till his death.

6. The fourth respondent is directed to consider and dispose of the representation dated 17.04.2014 on merits and as per law. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.”

3. Thereafter, the 4th respondent had appointed the petitioner as Security in self-finance section vide proceedings dated 14.09.2015 and the petitioner joined the said post. But the petitioner is aggrieved, since the 4th respondent as per the undertaking given before the Court, has not appointed the petitioner as Assistant in self-finance section. Moreover, in the exiting vacancy of Library Assistant, the petitioner was not appointed. Hence, the petitioner has preferred Cont.P.(MD) No.1696 of 2015 and the same is pending.

4. In the meanwhile the 6th respondent committee was constituted by the



W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

Administrative Committee of CSI Kanyakumari Diocese to prepare the list of eligible candidates from the management staffs for promotion in the vacant post under aided stream in respect of the colleges under the control of CSI Kanyakumari Diocese. The 6th respondent committee had submitted the impugned absorption order dated 20.02.2016, in Annexure IV, wherein the 7th respondent name was proposed for appointment for the post of Library Assistant. The said impugned order is illegal and against the order passed in the W.P.(MD)No.8837 of 2014. Hence, the petitioner is before this Court challenging the impugned order.

5. The respondent had filed counter and additional typed set. The contention of the 4th respondent is that the petitioner's father was working as Library Assistant in the 4th respondent college. After his demise, the petitioner submitted an application to consider his candidature under compassionate appointment. Since the same was not considered, the petitioner filed writ petition. Based on the orders of this Court, the petitioner was granted appointment in self-finance section as Watchman. Since the petitioner raised some objection due to his qualification, the petitioner was placed in Office with



W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

effect from 05.01.2016 to do works allotted to him as self-finance staff. However, he was paid salary that is applicable under self-finance section. The 4th respondent follows a procedure to bring people who are working under self-finance section to aided stream and a seniority list is being followed. The petitioner has challenged the said seniority list, dated 20.02.2016. Since there were some discrepancy and anomaly in the said list, the impugned order in the writ petition was revoked. The anomaly is under Serial No.4, one Jeba Isan was appointed in the retirement vacancy of Mr.I.Sylas. That entry is incorrect, since the Jeba Isan was appointed in the place of death vacancy of the petitioner's father. Moreover, in Serial No.17, one Nagendran was appointed in the death vacancy of petitioner's father, which is incorrect. Likewise, some other discrepancies were pointed out. Hence, the 4th respondent revoked this order and submitted the proceedings before the Sub Committee. The Sub Committee again issued a list on 16.07.2016. Since in the said list also some discrepancies were pointed out, finally the Administrative Committee passed an order, dated 12.08.2017. Now, in the list that is being followed by the 4th respondent, the petitioner is placed under Serial No.53. In the said list, until Serial No.30, they were absorbed in the aided section from the self-finance. The other persons are



W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

still waiting in the seniority list. The petitioner is seeking to march over the other persons, who are waiting in the seniority list. Therefore, the petitioner cannot demand any compassionate appointment under aided stream and march over the other persons, who are waiting in the seniority list. Therefore, the respondents claim to reject the writ petition. As far as the contempt petition is concerned, the order is only to consider. The said claim of the petitioner was considered and he was placed under self-finance section. As and when the vacancy arises as stated in the scheme stated supra, the petitioner's claim will be considered. Therefore, the learned counsel appearing for the respondents submitted the claim of the petitioner cannot be considered at this point of time.

6. Heard Mr. D.Kirubakaran, learned counsel for the petitioner. Mr.D.Sadiq Raja, learned Additional Government Pleader for respondents 1 and 2, Mr.M.Mohammed Rafi, learned counsel for 3rd respondent and Mr.K.Ragatheesh Kumar, learned counsel for respondents 4 to 7.

7. This Court is of the considered opinion that the 4th respondent college



W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

is a minority aided institution. Appointment of any post under the minority institutions cannot be interfered with and it is within the domain of the institution, unless it is shown that the appointment is made where unqualified persons are appointed. Hence, the scope to interfere is very limited.

8. Secondly, the petitioner is seeking compassionate appointment based on his educational qualification. The scheme of compassionate appointment is not available to aided schools and hence, on this angle also, the petitioner is not entitled to maintain this writ petition. Even in the scheme of compassionate appointment followed by the Government, the persons who are claiming compassionate appointment will be appointed only in the last grade service and cannot be appointed in the posts which would be recruited by Teachers Recruitment Board or Tamil Nadu Public Service Commission. Therefore, the claim of the petitioner to appoint him based on his educational qualification cannot be considered.



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9. Since the 4th respondent college is following a scheme to absorb persons' service in self-finance stream to aided and the petitioner is in Serial No.53 in the seniority list, the petitioner necessarily ought to wait until his seniority arises. The claim of the petitioner that he is financially in a distress possession, cannot be accepted, since the petitioner is working in the self-financing section and he is receiving salary. The financial distress has also been addressed by the 4th respondent.

10. On any angle, the petitioner's claim cannot be considered. The petitioner necessarily has to wait for absorption in the aided section. With this observation, this writ petition is dismissed. The 4th respondent college shall not deviate from the seniority list, which is shown before this Court. Based on the seniority list, the petitioner may be appointed in the aided stream as and when his vacancy arises in the impugned seniority list.

11. As far as the contempt petition is concerned, since the petitioner is appointed in the self-finance stream, there is no contempt as alleged. Hence, the Contempt petition is liable to be closed and the same is closed.



W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

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12. W.P(MD)No.4300 of 2016 is dismissed and Cont. P. (MD) No. 1696 of 2015 is closed. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.01.2023

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

1.The Director of Collegiate Education,
College Road,
Chennai-600 006.

2.The Deputy Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli – 627 007.



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W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

S.SRIMATHY, J.

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W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015



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W.P(MD)No.4300 of 2016 & Cont.P(MD)No.1696 of 2015

30.01.2023