



W.P.(MD)No.13311 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 13311 of 2017

and

W.M.P(MD)Nos. 10381 to 10383 of 2017,

2782 of 2018 & 18087 of 2018

Charles Britto

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by the Secretary to Education Department,
Fort Saint George,
Chennai.
2. The Director of Collegiate Education,
Nungambakkam,
Chennai.
3. The Regional Joint Director,
Collegiate Education,
Tiruchirappalli.
4. The Nehru College Committee,
Puthanampatti,
Trichy District,
Represented by its Secretary.



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5. M. Muralidharan

6. R.Periyasamy

7. Asokan (Died)

8. T.Jeyasankari

... Respondents

[R-8 is impleaded as per Court order, dated 06.01.2023]

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 1st respondent in G.O.(3d) No.1 Higher Education (E2) Department, dated 06.02.2017 and quash the same as of no legal consequence and consequently forbear the respondents 1 to 3 from giving effect to the appointment of the respondents 5 to 7 from backdate from 6.11.1987 as though they have been appointed in the approved vacancy and in the Aided Section of the Computer Science Department of the 4th Respondent College.

For Petitioner : M/s.S.Wilson,
K.Gurunathan

For R-1 to R-3 : Mr.S.Kameswaran
Government Advocate

For R-4 : Mr.R.Vigneshwaran

For R-6 : Mr.S.Ramsundara Vijayraj, for
Ms/s.Veera Associates

For R-5 : Mr.A.Mohamed Hanieef

For R-8 : No appearance



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ORDER

This writ petition has been filed to quash the G.O.(3d) No.1 Higher Education (E2) Department, dated 06.02.2017 and seeking a consequential direction to forbear the respondents 1 to 3 from giving effect to the appointment of the respondents 5 to 7 from backdate from 6.11.1987 as though they have been appointed in the approved vacancy in the Aided Section of the Computer Science Department of the 4th Respondent College.

2. The brief facts are that the 4th respondent is a Registered Society and is having Educational Agency running a Private Aided College in the name and style of “Nehru Memorial College” at Puthanampatti. The petitioner was working as a Lecturer in the Computer Science Department of the said College from 31.01.1989 and were appointed as per law. The contention of the petitioner is that the respondents 5 to 7 claim as if their original date of appointment is on 06.12.1987, but the fact is that they were never appointed at all.

3. The petitioner further submits that a Panel was constituted by the then College Committee in liaison with the Bharathidasan University and the



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qualified professors and their representative of the educational agency. The petitioner underwent the selection process and was a successful candidate, thereafter appointed in the College on 31.01.1989. Along with the petitioner two more candidates namely Murugan and Mani were selected and appointed. The respondents 5 to 7 attended the same selection process, attended the interview, but they are unsuccessful candidates. But the respondents 5 to 7 are unnecessarily robed in by the then President of the Educational Agency, namely M.Ponnambalam and claimed as if the said respondents 5 to 7 have been employed by him. Under the insistence of the said M.Poonambalam the respondents 5 and 7 (even though the 6th respondent is not a party in the suit, for the sake of convenience this order refers respondents 5 to 7) have filed a suit in O.S.No.787 of 1989 on the file of Sub Court, Trichy which was transferred to the District Munsif Court, Thuraiyur and renumbered as O.S.No.195 of 2004, on account of the delimitation of the pecuniary jurisdiction. The respondents 5 to 7 filed the suit averring the present writ petitioner herein and the other two selected candidates Murugan and Mani as defendants. Also impleaded the said Ponnambalam, but their cause of action was sought to be espoused by Mr.M.Ponnambalan, the then President of Educational Agency, along with his



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wife. The petitioner and the two others were appointed by one M.Jeevamani, the brother of Mr.M.Ponnambalam, who was the then Secretary of the College Committee had constituted the interview panel. The said suit came to be struck off from the file of the District Munsif Court, Thuraiyur on the issue of jurisdiction. On appeal, the same was also dismissed and thereafter, a second appeal was also preferred in S.A.(MD)No.94 of 2009 and S.A.(MD)No.136 of 2009 and the same is pending at the time of filing this writ petition. Subsequently the same was dismissed as withdrawn with liberty to file fresh suit after disposal of the writ petition filed in W.P(MD)No.13311 of 2017 (that is the present writ petition).

4. The further contention of the petitioner is that writ petitions in W.P.(MD)No.7504 to 7508 of 2001 were filed by the petitioner and the other two persons namely Murugan and Mani for regularize the appointment with all financial benefits and the said writ petitions were allowed. Aggrieved over the same, the respondents 5 & 6 and the college had filed writ appeals in W.A(MD) No.1768 to 1770 of 2003 and the college filed writ appeal in W.A(MD)No.2919/2003, W.A(MD)No.3385/2003, W.A(MD)No.3421/2003, W.A(MD)No.3134/



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2003 and W.A(MD)No. 3422/2003 the same was dismissed on 11.03.2008. When the selection for the writ petitioner and two others were made, there was only three approved vacancies. The sanctioned post was granted by the Government only three in number. Hence the management was not having any power to consider the case of the respondent Muralidharan and others.

5. There was litigation between one Jeevamani and the said Ponnambalam. At the cost of repetition, the said Jeevamani and Ponnambalam are brothers. There were several other litigations pending between the brothers, where the Higher Education Department was under pressure to resolve the dispute among the brothers. Hence in order to resolve the dispute among the parties, the Government has passed the impugned G.O, granting approval to the appointment of respondents 5 to 7, that too, their services were regularized from the year 1987.

6. The contention of the petitioner is that the Government has no jurisdiction to approve the appointment by backdating the appointment date. More so, when the suit was dismissed against the respondents 5 to 7. There is a



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specific plea before the Hon'ble Division Bench of this Court to grant approval from the date of original appointment and the same was declined and the writ appeal was dismissed. Moreover, if the approval is granted from the original date, the petitioner's seniority would be affected. Since the approval is affecting the petitioner and other two persons, exactly for this reason the writ petitioners are before this Court.

7. The 4th respondent, management has filed counter supporting the impugned the G.O. The primary issue that was raised is maintainability and *locus standi* of the writ petition. The management has termed the writ petition as a 'Public Interest Litigation'. Moreover, the petitioner is not aggrieved by the said GO, since the GO grants relief to the respondents 5 to 7. The said Jeevamani, as Secretary to the College had submitted through a communication dated 28.07.1987 along with the proforma in Form-I indicating the workload wherein, it has been categorically stated that the college needs “five posts” (U.G. Professor 1 and Assistant Professors 4). After going through the proposal, the official authorities have sanctioned for three posts only. However, the college was in need of three more posts. Subsequently, in the year 1994-1995 strength was



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increased further, hence, the college is in a needy of extra posts. After the proposal was submitted by the College, the College has appointed the respondents 5 to 7. Therefore, the respondents are entitled to grant salary under the grant-in-aid. Moreover, the appointment to the respondents is not temporary in nature. Therefore, after sanctioning of the posts, the respondents 5 to 7 would be entitled to the salary. The management have also stated, that the course was granted grant-in-aid from 1984-1985 and 1985-1986. The order was received during the academic year 1986-1987 on 13.01.1987, but the fixation of staff was not obtained in the year 1986-1987 and hence the management contended that there is additional requirement. For 1st year B.Sc. Computer Science the admitted students is 34, for the 2nd year is 33 and for 3rd year 31. The 4th respondent further stated the one Jeevamani was mischief of the entire issue. When the suit was filed before the Subordinate Court, Tiruchirappalli, there was an order of interim injunction restraining the college committee to appoint anybody and inspite of the same, the petitioner and other two persons were appointed. The said appointment was made violating the interim order granted by the Sub Court. Subsequently, the suit was dismissed based on jurisdiction. However, based on interim order, the 4th respondent is claiming the appointment of the petitioner is violating the interim



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order and the petitioner has no right to claim approval and the consequential salary. The 4th respondent further stated in the counter that the College committee has not passed any resolution to appoint the petitioner and other two other persons. However, the appointment of the respondents 5 to 7 was approved by the College Committee, but the same was not forwarded to the official respondents. Therefore, the date of appointment fixed as 1987 is appropriate and it needs no interference. Hence the claim of the petitioner ought to be rejected.

8. The 3rd respondent, Joint Directorate of Collegiate Education has filed counter stating the litigation between the parties were going on for more than 25 years and in order to resolve the issue appropriate agreement was also executed. Subsequently, based on the order in W.A.(MD)No.1769 of 2003 batch, an amicable solution was reached and therefore, the impugned G.O. came to be passed. The College needs further posts as well. Therefore, considering the work load, the impugned G.O. was passed granting an approval with anti-date. Therefore, the act of the Government is based on rules and also in accordance with law. Therefore, the respondents prayed that the impugned Government order may be sustained.



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9. Heard M/s.S.Wilson, K.Gurunathan the Learned Counsel appearing for the petitioner, Mr.S.Kameswaran, the Learned Government Advocate appearing for the respondents 1 to 3, Mr.R.Vigneshwaran, the Learned Counsel appearing for the 4th respondent, Mr.A.Mohamed Hanieef, the Learned Counsel appearing for the 5th respondent, Mr.S.Ramsundara Vijayraj, for Ms/s.Veera Associates the Learned Counsel appearing for the 6th respondent and perused the material documents available on record.

10. The college has started the Computer Science course in the year 1983-1984. The course was granted approval from the academic year 1984-1985 and 1985-1986, but the order was issued during the academic year 1986-1987 vide the order dated 13.01.1987. Immediately the college submitted a representation dated 28.07.1987 showing the work load and requested to sanction five posts. The official respondents have considered the students strength and the work load and sanctioned three posts through proceedings, dated 14.03.1988. In the order it has been stated that as per the work load for the year 1985-1986, three posts were sanctioned in the year 1987-1988.



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11. Based on the sanctioning of three posts, the said Jeevamani, the then Secretary of the said College directed the College Committee to liaison with the Bharathidasan University to constitute the Selection Panel consisting of qualified professors and the representative of the educational agency. The Selection Panel has selected the candidates Charless Britto, the writ petitioner herein, Murugan and Mani. The respondents 5 to 7 also participated in the selection process, but they are unsuccessful candidates.

12. On the other side there was a dispute between the brothers Jeevamani and Poonambalam to capture the management of the college. The counter filed by the 4th respondent speaks the case of the Ponnambalam and not the case of the Jeevamani. The said Jeevamani is not a party in this writ petition. The claim of the 4th respondent management is that there was interim injunction in the suit which has restrained the said Jeevamani to appoint the writ petitioner Charles Britto, Murugan and Mani and since they were appointment during the injunction period the appointment is illegal. It is seen from the records that there was interim injunction, but subsequently the suit was stuck off on the issue of jurisdiction. Therefore, this Court is of the considered opinion that the interim



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injunction was issued without jurisdiction and the same is non est in law. Hence the appointment is legally valid.

13. On the other hand even the 4th respondent is not stating that the Muralidaran and two others were selected by the selection committee, the fact that the respondents 5 to 7 are unsuccessful candidates was not denied by the respondents. The 4th respondent only states that the respondents 5 to 7 were appointed prior to the writ petitioner and their appointment date is, M.Muralidharan on 06.11.1987, Periyasamy on 26.07.1988 and M.Asokan on 08.08.1988. On perusal of the documents, it is seen that the said Muralidharan was directed to participate in the selection process and the interview date is 24.10.1987. It is also seen that the said Muralidharan was appointed on 04.11.1987 on consolidated pay and this has been produced by the 4th respondent. This fact would make the issue clear that the then Secretary of the College has appointed Muralidharan and two others is consolidated pay. And they were appointed without any sanctioning of post. Since the college was sanctioned three posts by the department only on 14.03.1988. Therefore, from these facts it is evident that the said appointment of Muralidharan and others is illegal. Moreover,



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the said Muralidharan and two others were not selected by the selection committee. For this reason also the said appointment is illegal. After the facts stated supra, this Court is of the stern opinion that any appointment ought to be made only after obtaining prior permission from the department. There are some judgments where it has been held prior permission from the Department is not necessary. But this Court is of the considered opinion that if prior permission is obtained the issue raised in this writ petition would not arise. Almost in all management disputes the core issue would be the power to appoint teaching and non-teaching staffs. Hence for this reason only this Court in categorical terms is holding that the educational institution both School and College, whether minority or non-minority shall obtain prior permission to appoint in the vacancy.

14. As far as the issue of salary is concerned the writ petitioner Charles Britto and four others had already filed W.P.No.7504/2001(S. Murugan), W.P.No.7505/2001(K.Mani), W.P.No.7506/2001(M.P.Shanthi), W.P.No.7507/2001 (S. Charles Britto) and W.P.No.7508 of 2001(R.Manimegalai) praying for salary, increment and other benefits and the same was allowed vide order dated 06.02.2003. Aggrieved over the College filed writ appeals in W.A(MD)No.2919/



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2003 W.A(MD)No.3385/2003, W.A(MD)No.3421/2003, W.A(MD)No. 3134/2003, W.A(MD)No. 3422/2003 and the same was dismissed on 11.03.2008. The relevant portion of the order is extracted hereunder:

.....

“4. It is submitted that the petitioners’ appointment in Nehru Memorial College had been approved by the concerned authority. Once their appointments are approved, they are entitled for the salary and other benefits. Therefore, we are unable to appreciate the contention raised by the Learned Senior Counsel for the College that their appointments are invalid. We see no reason to interfere with the order of the Learned Single Judge. Accordingly, the writ appeals fail and the same are dismissed. Since the order has been passed on 06.02.2003, the college authorities are granted four weeks time to comply with the order to the Learned Single Judge namely submission of proposal claiming salary of the petitioners including the increments and other benefits. on receipt of the said proposal the government is directed to consider and pass order within a period of twelve weeks.

5. During the course of argument, the Learned Senior Counsel for the College submitted that as early as 09.12.2007 the College has submitted a proposal to the Joint Director of Collegiate Education along with the working sheet containing details of the workload and requested for sanction additional posts and it is pending consideration and therefore a direction may be given to consider and dispose of the said proposal. Therefore, we direct the government to consider the said proposal also



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and pass appropriate orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, no costs.”

When the College has prayed to direct the authorities to consider their representation dated 09.12.2007 considering the work load to grant additional post, the Hon’ble Division Bench has directed the authorities to consider and pass orders. Nowhere the Hon’ble Division Bench has held “in order to put an end to the litigations the parties are allowed to enter into an agreement”. But the present impugned order has stated that the Court have directed to amicably settle the issue, hence this order is passed. Even the counter filed by the Department states that in order to end the disputes amicably the impugned order is passed. Curiously the department, the college and the ACTA representing the said Muralidharan and two others have entered into agreement on 19.11.2007, stating that the Courts have directed to amicably settle the issue. It is seen this agreement is entered into on 19.11.1997, but the Division Bench judgment is on 11.03.2008. The Division has not directed the parties to amicably settle the issue. It is not known how the Joint Director has signed the agreement, under what authority of law he has entered into an agreement. Therefore, this Court is of the considered opinion that



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the said settlement is not valid in law. If such agreements are allowed then any authority can enter into any agreement with anybody and the same would bind the government, which would be a dangerous proposition. This Court is of the considered opinion that such agreement is illegal and it is not binding the government.

15. After independence the Government intended to impart education to the citizens. Since creating infrastructure in a short span was not viable, the government called private persons to start educational institutions. The concept is that the private individuals would bear the burden of creating infrastructures and the government would bear the burden of paying salaries to the teaching and non-teaching staffs. This cannot be taken advantage of by the private individuals, that too to the disadvantage of the government and throw the unnecessary burden on the government. In the agreement one such clause is throwing burden on the government, which states that the said **“Charles Britto, Murugan and Mani should be permanently migrated to other colleges”**. It is not known how such an agreement can be entered into. The College would do all mischiefs, but in order to protect the individuals the department should migrate the individuals to



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other colleges. The College has totally mismanaged the college. It is not only mismanagement, it is atrocity.

16. As held supra, the appointment of Muralidaran and others cannot be sustained in law since they were appointed in the year 1987 when there was no sanctioned post (three posts were sanctioned on 14.03.1988), they were appointed without following the selection process, when they participate in the selection process they were unsuccessful candidates, they were not selected by the selection committee, hence the college has not submitted any proposal of approval and the Department has not approved their appointment. On the other hand, the Charles Britto and others had participated in the selection process, they were selected by the committee, they were appointed in the sanctioned post, the department had approved their appointment. Moreover, based on the orders of the writ petitions and writ appeal they are getting salary. It is pertinent to mention here that the college has to follow the qualification prescribed by UGC and the recruitment rules, reservation and other selection process should be followed as per the sanctioned order. If there is any violation the Department would not approve the appointment of the Charles Britto and two others. In the present case



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when the department has approved their appointment. On the other hand the 4th respondent has accepted that the said Jeevamani has not submitted the selection of Muralidharan and two other for approval, which means they were not appointed and approved at any point of time.

17. Since the college appointed the said Muralidharan and others without any sanctioned post, the said Muralidharan and others ought to be treated under the category of management employee and pay salary under self-finance category. Infact the learned counsel appearing for the 4th respondent submitted that the salary is paid to the respondents 5 to 7 by the Management from their own source. Let the management continue to pay salary on their own funds. The said Muralidharan and others are entitled to salary from the management from the date of appointment. Since this Court is of the considered opinion that the said Muralidharan and others are management employee, the question of seniority of the said Muralidharan and others Vs the Charles Britto and others would not arise. For these reasons the impugned order is liable to be quashed and the same is quashed.



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18. At this juncture the Learned Counsel appearing for the College submitted that college is entitled to sanctioning of post with grant-in-aid from 2007 onwards. And also submitted the data of work load and the students' strength of the college. It is seen from the data that the college is in need of six professors. The College is at liberty to submit the said proposal to the Department and the appropriate authority shall considered the same and pass orders. It is made clear that this court is not expressing any opinion on this proposal seeking sanction of additional post from 2007 onwards. It is also made clear that the college is entitle to be considered for the future only and not retrospectively.

19. This is a classic case of mismanagement but claiming financial assistance by arm twisting the Government without any basis and with high handedness. The college has totally misconstrued the issue and is claiming huge amount as grant-in-aid for salary by crook or hook. The college is doing business under the guise of running educational institution. However, the learned counsel appearing for the 4th respondent has projected, as if the college committee was misguided or mismanaged by one Jeevamani. But the said Jeevamani and Ponnambalam are brothers and it is the fight between brothers. It is pertinent to



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state that the counter affidavit filed by the 4th respondent management is the son of the said Ponnambalam. The educational institutions are creating management disputes and in all such disputes the core issue would be who is empowered to appoint the teaching and non-teaching staffs and this present case is one such classic case. Because of this reason this Court is inclined to impose cost on the management, so that this would restrain the educational institutions from such management disputes. Hence the 4th respondent management is imposed with a cost of Rs.10,000/- payable to ***“Aiswaryam Trust, Indian Bank, Tirunagar Branch, Madurai, Account No.6639017788, IFSC IDIB000T032”***.

20. With this direction, the Writ Petition is allowed and the cost of Rs.10,000/- is imposed on the 4th respondent. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
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To:

- 1.The Secretary to Education Department,
State of Tamil Nadu,
Fort Saint George,
Chennai.
2. The Director of Collegiate Education,
Nungambakkam,
Chennai.
3. The Regional Joint Director,
Collegiate Education,
Tiruchirappalli.



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S.SRIMATHY, J

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**Order made in
W.P.(MD)No.13311 of 2017**

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