



W.P.No.6420 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.6420 of 2023 and
W.M.P.No.6448 of 2023

Mrs.M.Jancy Merlin

...Petitioner

-Vs-

1.The Secretary to Government of Tamilnadu,
Higher Education Department,
Secretariat, Chennai-600 009.

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

3. The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli-627 007.

4. Scott Christian College,
Nagarcoil-629 003,
Kanyakumari District,
Represented by its Correspondent/Secretary

...Respondents



W.P.No.6420 of 2023

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent passed in Pa.Mu.No.5964/A4/2022 dated 04.11.2022, quash the same and direct the 1st and 2nd respondents to pay the arrears of salary payable to the petitioner's service as Physical Training Instructor with effect from 05.12.2007 based on the order of approval passed by the 3rd respondent in Na.Ka.No.7463/E2/2020 dated 20.09.2021 and pass such further or other orders.

For petitioner : Mr.S.V.Karthikeyan

For respondents 1 to 3 : Mrs.S.Anitha
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 04.11.2022 thereby directed the 4th respondent's college to submit proposal to create the post of Physical Training Instructor in order to get government order to pay the arrears of salary.

2. The petitioner is qualified with Master of Physical Education



W.P.No.6420 of 2023

Course, she was appointed in the 4th respondent college as Physical Training Instructor on 05.12.2007 in the sanctioned vacancy. Her post is a sanctioned post and eligible for grant-in-aid from Government. After her appointment the 4th respondent had sent proposal for the approval of her appointment. After long delay, the petitioner's appointment was duly approved as Physical Training Instructor in the vacancy caused due to promotion of Dr.P.Arthur Daniel with effect from 05.12.2007 by the respondent. However, the petitioner was not paid salary till date. Therefore, the petitioner submitted representation to 3rd respondent the same was rejected on the ground that as per G.O.Ms.No.135 dated 12.06.2009, 82 posts were abolished. Therefore, in order to create such post, the 3rd respondent directed the 4th respondent to sent proposal.

3. The learned counsel for the petitioner has relied upon the judgement of this Court in W.P.No.15066 of 2013 dated 12.02.2014 whereas this Court held as follows :



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"8. The petitioner was promoted and appointed as Junior Mechanic by the third respondent College taking into consideration of his qualification to the said post. When such appointment was sought to be approved, the same was rejected by the impugned order by stating that approval cannot be granted in view of G.O.(D).No.135, Higher Education (T) Department, dated 12.06.2009, whereby the Government has taken a decision not to fill up the said post. In the impugned order, except stating the above said reason, no other reason is stated, more particularly with regard to the qualification of the petitioner. No doubt, in the counter affidavit, the respondents 1 and 2 have raised an objection with regard to the qualification of the petitioner by contending that he has completed Diploma in Electronics and Communication Engineering as part-time study only. No doubt, the petitioner in the original affidavit filed in support of the writ petition has stated that he has studied Diploma in Electronics and Communication Engineering as part-time study. Learned counsel for the petitioner submitted that such statement is factually not correct and it is a mistake. On the other hand, the fact remain that the petitioner studied Diploma Course only on full time basis and passed the same in the year 1998. My attention is drawn to the mark sheet issued by the Department of Technical Education, Government of Tamilnadu to the petitioner,



W.P.No.6420 of 2023

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wherein it is stated that the course is full time course. Therefore, the objection of the respondents 1 and 2 with regard to the qualification of the petitioner cannot be sustained."

4. It is clear that the Government Order in G.O.Ms.No.135 dated 12.06.2009 cannot be applicable to the appointment of the petitioner made on 05.12.2007. The said Government Order is applicable and came into effect with retrospective effect. Therefore, even before the said Government Order, the petitioner was appointed on 05.12.2007 and his appointment was duly approved by an order dated 20.09.2021. Therefore, there is no question of creating post of Physical Education Training Instructor in the 4th respondent college. In fact, she was appointed in the sanctioned vacancy caused due to the promotion of incumbent with effect from 05.12.2007.

5. In view of the above, the impugned order passed by the 3rd respondent dated 04.11.2022 is liable to be quashed. Accordingly, the impugned order passed by the 3rd respondent dated 04.11.2022 is quashed. Further, the respondents 1 to 3 are directed to disburse the arrears of salary of the petitioner as Physical Training Instructor with effect from original



W.P.No.6420 of 2023

appointment i.e., 05.12.2007 within a period of four weeks from the date of receipt of copy of this orders.

6. With the above direction, this writ petition is allowed.

Consequently, connected miscellaneous petition is closed. No costs.

25.03.2024

Index : Yes/No
Speaking/Non Speaking Order
Neutral Citation : Yes/No
gvn

To

6/8



W.P.No.6420 of 2023

WEB COPY

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W.P.No.6420 of 2023

W.P.No.6420 of 2023

25.03.2024