

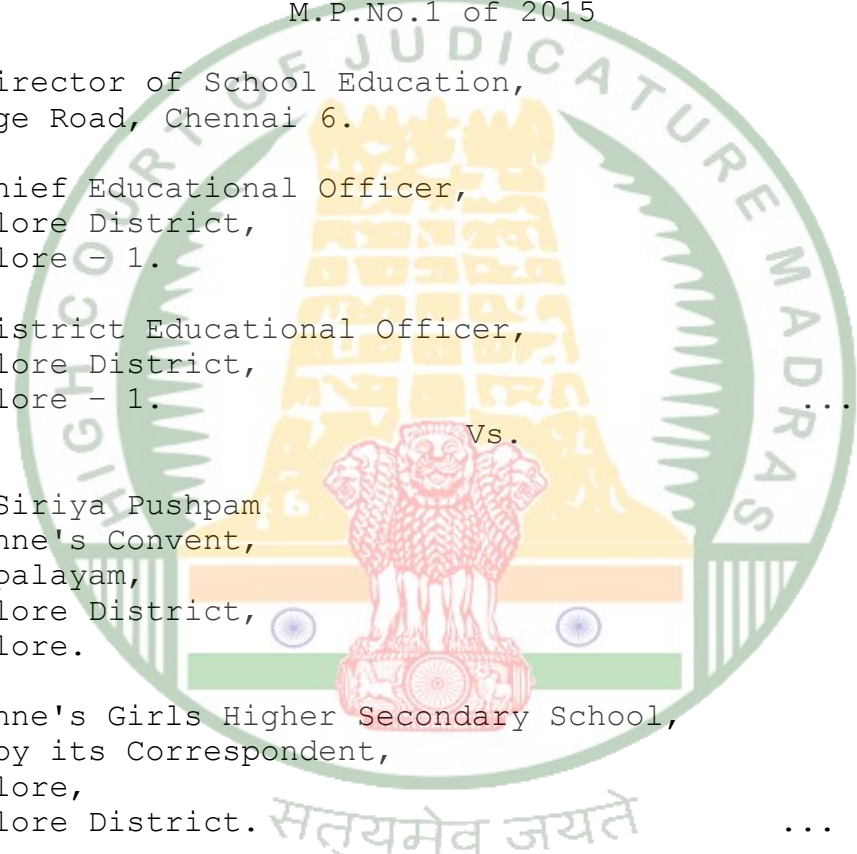
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-11-2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P.DEVADASS

W.A.No.1213 of 2015
and
M.P.No.1 of 2015

- 
1. The Director of School Education,
College Road, Chennai 6.
2. The Chief Educational Officer,
Cuddalore District,
Cuddalore - 1.
3. The District Educational Officer,
Cuddalore District,
Cuddalore - 1. Appellants
- Vs.
1. Sr.A.Siriya Pushpam
St. Anne's Convent,
Pudhupalayam,
Cuddalore District,
Cuddalore.
- 2 St. Anne's Girls Higher Secondary School,
Rep. by its Correspondent,
Cuddalore,
Cuddalore District. सत्यमेव जयते ... Respondents

This Writ Appeal is preferred under Clause 15 of Letters Patent against the order of this Court dated 01.09.2014 passed in W.P.No.17121 of 2013.

W.P.No.17121 of 2013 : Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus, to call for the records relating to the order of the 1st respondent in Na. Ka. No.125370/ T2/ E1/ 2009,

dated 17.4.2013 and the consequential proceedings of the 3rd respondent in Na.Ka. No.11376/A3/2009 dated 10.5.2013, to quash the same and consequentially direct the respondents to approve the appointment of the petitioner dated 21.1.2004 in the aided and approved post of Junior Assistant in the 4th respondent School St. Annes Girls Higher Secondary School, Cuddalore and the appointment made in the aided sanctioned and approved post of junior Assistant in the Beschi Higher Secondary School, Ulundurpet with all arrears of salary benefits and emoluments weightage of service rendered in aided and unaided school and count the same for the purpose of pension attached thereto.

For Appellants : Mr.K.Karthikeyan,
Government Advocate

For 1st Respondent : Mr.K.Sathish Kumar

JUDGMENT

(Judgment of the Court was delivered by Dr.P.DEVADASS, J.)

As only a narrow point is involved in this writ appeal, we shall dispose it of at the admission stage.

2. This writ appeal arises out of the orders passed by the Writ Court in W.P.No.17121 of 2013 on 1.9.2014. The official respondents 1 to 3 in the said writ petition are the appellants herein.

3. St. Anne's Girls Higher Secondary School, Cuddalore (4th respondent in W.P.) is a Minority Aided School. Three non-teaching post of Junior Assistants have been sanctioned to the said school. On administrative ground, one of the Junior Assistant, namely, Sister Alankaramary was transferred to some other school. Consequently, one post of Junior Assistant fell vacant. On 21.1.2004, Sister Siriya Pushpam, who was then working as a Junior Assistant in St.Philomenas Girls High School, a Self-Aided School in Cuddalore O.T. was appointed in the said vacant post.

4. The Management of St. Anne's Girls Higher Secondary School, Cuddalore, sought the approval of her appointment as Junior Assistant with effect from 21.1.2004 with arrears of salary and other monetary benefits from the District Educational Officer, Cuddalore (3rd respondent in W.P.). He wrote to the

Chief Educational Officer, Cuddalore (2nd respondent in W.P.), who refused to approve her appointment and release the monetary benefits since her appointment was made during the period of ban imposed by the Government to fill up the non-teaching posts vide G.O.Ms.No.212 (Personnel and Administrative Reforms (P) Department, dated 29.11.2001. Subsequently, the said ban was lifted by the Government through G.O.Ms.No.14 (Personnel and Administrative Reforms (P) Department, dated 7.2.2006. Even then, on 17.4.2013, referring to Government's Lr.No.11482/D2/2006-1 dated 26.5.2006, wherein it was stated that as an High Level Committee has to take a decision on the existing non-teaching vacancies in the Aided High Schools and Higher Secondary Schools, till such time there is no necessity to lift the ban imposed on the filling up of non-teaching posts, the Director of School Education, Chennai (1st respondent in W.P.) and the Chief Educational Officer, Cuddalore have refused to approve her appointment. On 10.5.2013, the Chief Educational Officer, Cudalore informed the school accordingly.

5. In the circumstances, Sister A.Siriya Pushpam filed W.P.No.25295 of 2009. In the meanwhile, on 3.2.2010, she was transferred as Junior Assistant to a sanctioned and aided post of Junior Assistant in Beschi Higher Secondary School in Ulundurpettai and request for approval of her said appointment was also sent to the Educational Authorities. But, there was no proper action.

6. On 25.7.2012, in W.P.No.25295 of 2009, the Writ Court directed the Director of School Education, Chennai to approve her appointment with effect from 21.1.2004 within a prescribed period. However, the Director of School Education, Chennai, referring to the Government ban, rejected her request. In the circumstances, she was constrained to file the present W.P.No.17121 of 2013 for issuance of a writ of Certiorarified Mandamus for approval of her appointment and release of salary and other monetary benefits. The Director of School Education stated that since she was appointed during the ban period, her appointment could not be approved. The Writ Court referring to the earlier decision of this Court in W.P.No.7627 of 2006, dated 1.4.2013 and also the decision of a Division Bench of this Court in W.A.(MD) No.456 of 2008, dated 4.8.2008, allowed her writ petition.

7. Aggrieved, the official respondents 1 to 3 have directed this writ appeal.

8. The learned Government Advocate appearing for the appellants contended that creation, sanction, approval and filling up of the posts are prerogative of the Executive. It is within the domain of the Government, it is also a policy decision of the Government, so, Government cannot be compelled to approve the filling up of the post by the School Management.

9. In this connection, the learned Government Advocate would cite the decisions of the Honóurable Supreme Court in UNION OF INDIA AND OTHERS ETC. VS. TEJRAM PARASHRAMJI BOMBHATE AND OTHERS ETC. (C.A.No.233 of 1991, dated 3.5.1991) and DIRECTOR OF EDUCATION VS. GAJEDHAR PRASAD VERMA (C.A.No.9517 of 1994, dated 21.11.1994).

10. We have anxiously considered the submissions of the learned Government Advocate, the impugned orders of the School Education Authorities, impugned order of the Writ Court and the decisions cited by the learned Government Advocate.

11. Admittedly, the post of Junior Assistant in the said Minority Higher Secondary School is a sanctioned and aided post. No sanction or creation of the post has been sought for by the school Management. When such a post fell vacant, the writ petitioner was appointed. Therefore, the decisions cited by the learned Government Advocate are not applicable to the facts of the present case.

12. Admittedly, on 21.1.2004, when writ petitioner was appointed, G.O.Ms.No.212, (Personnel and Administrative Reforms (P) Department, dated 29.11.2001, imposing ban on filling up of non-teaching posts in Aided school was in force. It is also not in dispute that by G.O.Ms.No.14 (Personnel and Administrative Reforms (P) Department, dated 7.2.2006), the said ban was lifted by the Government. The said G.O. (supra), dated 7.2.2006, has been issued in the name of Governor of Tamilnadu in exercise of his constitutional power under Article 162, Constitution of India. However, the letter of the Government dated 26.5.2006 stating that still the ban will continue has been issued by the School Education Department Secretary contrary to the G.O. (supra), dated 7.2.2006 which was issued in the name of the Governor. Thus, the said letter, which is an administrative instruction, cannot prevail over the said G.O., dated 7.2.2006. {See Dwarka Nath Tewari vs. State of Bihar (AIR 1959 SC 249), Punit Rai vs. Dinesh Chaudhary (2003 (8) SCC 204) and S.D.Rajkumar vs. Govt. of Tamilnadu and 3 others (W.P.(MD)

No.484 of 2007, dated 30.10.2007. Therefore, in the wake of G.O. supra, dated 7.2.2006, the School Authorities cannot take umbrage under the said letter of the School Education Secretary and refuse to approve the appointment of the writ petitioner.

13. Now, the ban imposed by the Government in filling the non-teaching posts in Aided schools have been lifted. The petitioner has been appointed already in a sanctioned, aided and approved post. In such circumstances, the stand of the School Education Authorities to refuse approval of the appointment of the writ petitioner is not valid.

14. In this connection, it is relevant to note the following observations of a Division Bench of this Court made in S.D.Rajkumar vs. Govt. of Tamilnadu and three others (W.A.(MD) No.456 of 2008 dated 4.8.2008):-

''4 It has been brought to our notice that in similar circumstances, the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date of his initial appointment. Therefore, the orders of the learned single Judge needs to be modified to this extent. Accordingly, the Writ appeal is allowed modifying the order of the learned single Judge, dated 30.10.2007 made in W.P.(MD) No.484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment. No order as to costs.''

15. In the light of the above, this writ appeal fails and it is hereby dismissed. The impugned order of the Writ Court is upheld. However, no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vaan/Svn

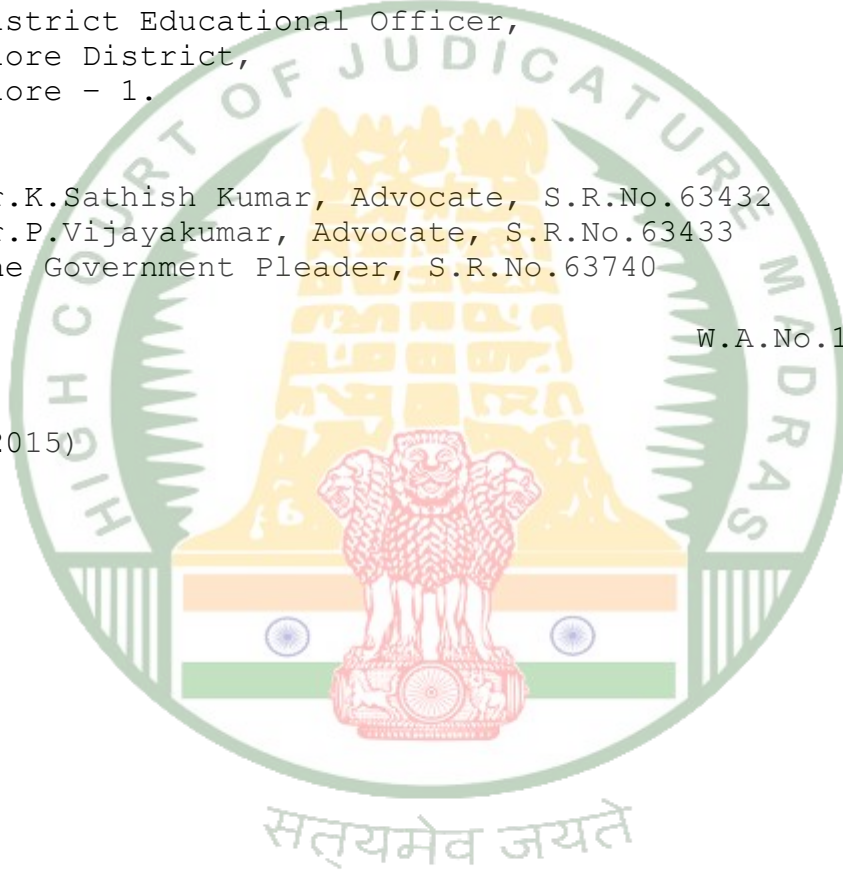
To

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College Road, Chennai 6.
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Cuddalore - 1.
3. The District Educational Officer,
Cuddalore District,
Cuddalore - 1.

+1cc to Mr.K.Sathish Kumar, Advocate, S.R.No.63432
+1cc to Mr.P.Vijayakumar, Advocate, S.R.No.63433
+1cc to the Government Pleader, S.R.No.63740

W.A.No.1213 of 2015

TEJ(CO)
CA(10/12/2015)



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