

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.04.2015

Pronounced on : 15.04.2015

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Appeal No. 1374 of 2013
and
M.P.No.1 of 2013

1. The Additional Secretary to Government
School Education Department
Fort St.George
Chennai - 9.
2. The Director of School Education
D.P.I. Complex, College Road
Chennai -6
3. The District Educational Officer
Tenkasi Educational Department
Tenkasi
Tirunelveli District.Appellants/Respondents 1 to 3

vs.

1. Royagiri Thiru.C.P.Athithanar
Girls High School,
Rep. by its Secretary
61/29/J2, Kaliasman Koil Street,
Royagiri Post,
Sivagiri (Via)
Tirunelveli District.
2. M.IndranyRespondents/Petitioner & 4th
Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent,
against the order dated 13.12.2012 made in W.P.No. 23847 of 2012.

This Hon'ble Court may be pleased issue a writ of cetiorarified
mandamus Calling for the records of the first respondent in Letter No.
25313/D1/2008-3 dated 09.12.2011 and quash the same and direct the

respondents 1 to 3 to sanction one post of Physical Education Teacher to the Petitioner School with effect from 03.08.1994 and consequently approve the appointment of the fourth respondent to the said post from 03.08.1994 with salary and all other consequential service benefits and pass such further for other orders as this Hon'ble Court may deem fit.

For appellants : Mr.R.Ravichandran
Additional Government Pleader

For respondent-1 : Mrs.Dakshayani Reddy

For Respondent - 2 : Mr.K.H.Ravikumar

JUDGMENT

(T.MATHIVANAN, J.)

The order dated 13.12.2012 and made in the Writ Petition in W.P.No. 23847 of 2012 has been challenged in this memorandum of Writ Appeal.

2. The appellants 1 to 3 herein are the respondents 1 to 3 in the writ petition in W.P.No.23847 of 2012, whereas the first respondent herein is the writ petitioner and the second respondent is the fourth respondent in the writ petition.

3. For easy reference and for the sake of convenience, the first respondent herein may hereinafter be referred to as the petitioner and the appellants 1 to 3 be referred to as the respondents 1 to 3 and the second respondent be referred to as the fourth respondent as it is in the writ petition wherever the context so require.

4. The whole case hinges around the pivot of the Government Order in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997.

5. Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the writ petitioner has filed the Writ Petition in W.P.No.23847 of 2012 as against the appellants/respondents 1 to 3 seeking the relief of a Writ of Certiorarified Mandamus calling for the records of the first respondent in letter No.25313/D1/2008-3, dated 9.12.2011 and quash the same and direct the respondents 1 to 3 to sanction one post of

Physical Educational Teacher to the petitioner School with effect from 03.08.1994 and consequently approve the appointment of the fourth respondent to the said post from 3.8.1994 with salary and all other consequential service benefits.

6. The petitioner School, viz., Rayagiri Thiru. C.P.Aditanar Girls High School, is a government aided school and has been assessed to grant from 1.6.1994 with one post of Principal, two posts of B.T. Assistant, one post of Tamil Pandit, two posts of Secondary Grade Teacher and one post of Junior Assistant.

7. According to the petitioner, the students strength of the petitioner School from the year 1994-95 was about 300 in classes VI to X and therefore, there was a need for a physical education teacher. On this ground, the petitioner school had appointed the fourth respondent (Second respondent herein) as a physical education teacher with effect from 3.8.1994.

8. Despite periodic representations, the respondents never agreed to grant approval to the appointment of the fourth respondent as physical education teacher in the petitioner school. However, the third respondent, viz., District Educational Officer, Tenkasi, Tirunelveli District, had addressed a letter in Na.Ka.No.4522 /AA1/96 to the second respondent and thereby informed that the petitioner school was eligible to get the post of physical education teacher.

9. Since the second respondent had failed to consider the letter of the third respondent as afore stated, the petitioner school was constrained to file a writ petition in W.P.No.1605 of 2010 seeking a Writ of Mandamus directing the respondents to sanction one post of physical education teacher to the petitioner school and consequently approve the appointment of the fourth respondent in the said post with effect from 3.8.1994.

10. When the above said writ petition was disposed of by this Court on 17.3.2011, this Court seems to have made the following observation:-

"....this Court deems it fit to direct the petitioner to resubmit the representation to the first respondent within two weeks from the date of receipt of a copy of this order, whereupon the said

authority shall consider the case of the school on merits in the light of G.O.Ms.No.525 and, if it is found that the case of the petitioner attracts application of the Government order, he shall pass necessary orders within four weeks there from directing the second respondent to sanction the post as sought for by the school."

11. In pursuant to the direction of this Court, the writ petitioner had presented a representation on 19.5.2011. But his representation was rejected by the second respondent, vide his Letter No.25313/D1/2008-3, dated 9.12.2011, which is sought to be quashed in the writ petition.

12. The respondents have strenuously contested the said writ petition by filing their counter affidavit.

13. Eventually, on hearing both sides and on considering the submissions of both sides, the learned Single Judge of this Court has proceeded to dispose of the said writ petition on 13.12.2012 with the following direction:-

"The respondents 1 to 3 are directed to approve the appointment of the fourth respondent as physical education teacher from the academic year 1997-1998 and to grant pay and other benefits to the fourth respondent therefrom. The respondents 1 to 3 shall complete such exercise within a period of eight weeks from the date of receipt of a copy of this order."

14. This order has been challenged in this memorandum of Writ Appeal after invoking the provisions of Clause 15 of Letters Patent.

15. Heard Mr.R.Ravichandran, learned Additional Government Pleader appearing for the appellants and Mrs.Dakshayani Reddy, learned counsel appearing for the first respondent and Mr.K.H.Ravikumar, learned counsel appearing for the second respondent.

16. The Government Order in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997 has been issued with reference to the Revision of norms for assessment of grant for Teaching posts.

17. Clause 5 (III) C of the above said order reads as under:-

"When the strength in classes VI to X in High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of 3."

18. According to the petitioner, the students strength of their school was more than 350 and since the petitioner school has satisfied the requirements of the Government Order in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997, as afore stated, the petitioner school is deserved and eligible to get one post of Physical Education Teacher sanctioned.

19. On coming to paragraph No.4 of the counter affidavit filed by the respondents 1 to 3, they have stated that at the time of the appointment of the fourth respondent, the petitioner school was having the strength of 176 students only and it has reached the scale of strength of students only in the year 1997-98 as specified in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997.

20. Though they have admitted that during the year 1997-1998, the petitioner school had reached the scale of strength of students as per the Government Order in G.O.Ms.No.525, they have rejected the request of the petitioner school on the ground that since there was no Physical Education Teacher extend post in the petitioner school sanctioned by the Government and that the appointment of the fourth respondent Mrs.Indrany as Physical Education Teacher in the petitioner school would be a bad precedent for similarly placed schools and it will open the floodgate of litigations.

21. We have perused the entire records.

22. The third respondent in her letter in R.C.No.4522/B1/96, dated 30.4.1999 addressed to the second respondent, viz., the Director of School Education, has stated that as on 31.8.1998 as per the Government Order in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997, the petitioner school is eligible to get the following posts sanctioned.

Sl.No.	Category	Eligible	Sanction post	Addl. Posts Needed
1	B.T.	2	2	-
2	Sec.Gr.	4	2	1
3	Tamil Pandit	2	1	1
4	Physical Edn.Tr.	1	-	1

23. From serial No.4 as specified in the above tabular column, the third respondent has clearly stated that as on 31.8.1998 the petitioner school is eligible to get the post of Physical Education Teacher sanctioned in view of the Government Order in G.O.Ms.No.525, dated 29.12.1997. However, the first respondent without considering the topographical sketch depicted by the third respondent in her letter as afore stated, has proceeded to reject the request of the petitioner.

24. It is pertinent to note here that as directed by this Court in its order, dated 17.3.2011 and made in W.P.No.1605 of 2010, the petitioner school had made a specific representation on 19.5.2011. When the present writ petition in W.P.No.23847 of 2012 came up for hearing before the learned Single Judge of this Court, the fourth respondent (second respondent herein) had filed an affidavit saying that she would be satisfied if the respondents 1 to 3 approve her appointment as Physical Education Teacher at least from the academic year 1997-1998.

25. It may be more significant to note here that the learned counsel appearing for the petitioner before the learned Single Judge of this Court had also submitted that the petitioner also would be satisfied if the respondents 1 to 3 approve the appointment of the fourth respondent as Physical Education Teacher from the academic year 1997-1998 as the strength of the students had

reached the mark of 250 as provided in the Government Order in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997.

26. Considering this aspect, the learned Single Judge of this Court, has proceeded to dispose of the above said writ petition on 13.12.2012 with the direction as detailed in the foregoing paragraphs.

27. The learned Additional Govt. Pleader has adverted to that the appointment of the fourth respondent as Physical Education Teacher could not be approved as the institution had not maintained the minimum students strength to become eligible for one post of Physical Education Teacher.

28. He has also maintained that the management of the petitioner school had not appointed the fourth respondent in a sanctioned post and that the fixation of staff strength was done based on the strength of the students as per the G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997.

29. In order to fortify his argument, he has made reference to the decision of the Division Bench of the Apex Court, in Kolawana Gram Vikas Kendra vs. State of Gujarat and others ((2010) 1 SCC 133). In this case, it has been held that prior approval of the State Government or competent authority is required, as per the government circular with a view to verify whether there was a vacancy as per the work load and whether the candidate possessed the minimum prescribed qualification.

30. On the other hand, Mrs. Dakshayani Reddy, learned counsel appearing for the first respondent has argued after making reference to the letter addressed by the third respondent to the second respondent in R.C.No.4522/B1/96, dated 30.4.1999, that as on 31.8.1998, the students strength of the petitioner's school had crossed the scale of 250 as provided under G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997 and since the school is in immediate need of one post of Physical Education Teacher, the respondents are bound to sanction the same and also to approve the appointment of the fourth respondent Mrs. Indrany as the request of the management of the petitioner school was in conformity with the Government Order in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997.

31. We have considered the aforesaid submissions made on

behalf of both sides. We have also gone through the impugned order of the learned Single Judge of this Court with great care and caution.

32. Having regard to the related facts and circumstances of the case, we are of the considered view that the impugned order of the learned Single Judge of this Court, dated 13.12.2012 does not suffer from any infirmity or illegality, instead, it deserves to be upheld.

33. In view of the above facts, the Writ Appeal is dismissed and the impugned order, dated 13.12.2012 made in W.P.No.23847 of 2012, is confirmed. The respondents (appellants 1 to 3) shall comply with the direction of the learned Single Judge of this Court within a period of eight weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Connected M.P. is also dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Additional Secretary to Government,
School Education Dept., Fort St.George, Chennai.

2.The Director of School Education,
DPI Complex, College Road, Chennai.

3. The District Educational Officer
Tenkasi Educational Department
Tenkasi
Tirunelveli District.

+1 cc to Government Pleader, SR.20569

+1 cc to Mr.K.H.Ravikumar, Advocate, SR.20395

+1 cc to Mrs.Dakshayani Reddy, Advocate, SR.20523.

Lrs (co)
krd 12/6

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