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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal (MD) Nos.35 of 2014 & 374 of 2013

and

MP(MD)No.2 of 2013 in WA(MD)No.374/2013

WA(MD)No.35 of 2014

Secretary  
South Street Hindu Nadar  
Higher Secondary School,  
Muhavoor - 626 111,  
Virudhunagar District.

Vs.

..Appellant/4<sup>th</sup> Respondent

1.A.Ganesan

..Respondent/Writ Petitioner

2.State of Tamil Nadu  
its Secretary to Government,  
School Education Department,  
Secretariat,  
Chennai - 9.

3.Director of School Education,  
Chennai - 6.

4.District Educational Officer,  
Virudhunagar,  
Virudhunagar District.

..Respondents/Respondents

Prayer: Writ Appeal filed under clause 15 of Letters Patent against the order dated 17.07.2012 passed in WP(MD)No.1410 of 2007 by this Court.

|                 |                            |
|-----------------|----------------------------|
| For Appellant   | : Mr.K.Hema Karthikeyan    |
| For R - 1       | : Mr.V.Panneerselvam       |
| For RR - 2 to 4 | : Mr.V.R.Shanmuganathan    |
|                 | Special Government Pleader |

WA(MD)No.374 of 2013

1.State of Tamil Nadu  
Rep. by its Secretary to Government,  
School Education Department,  
Secretariat, Chennai - 9.

2.Director of School Education,  
Chennai - 6.

3.District Educational Officer,  
Virudhunagar,  
Virudhunagar District.

..Appellants/Respondents 1 to 3

<https://hcservices.ecourts.gov.in/hcservices/>

vs.



1.A.Ganesan

..Respondent/Writ Petitioner

2.Secretary

South Street Hindu Nadar  
Higher Secondary School,  
Muhavoor - 626 111,  
Virudhunagar District.

..Respondents/4<sup>th</sup> Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 17.07.2012 passed in WP(MD)No.1410 of 2007 by this Court.

Prayer in WP(MD). 1410/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorarified Mandamus, to calling for the records pertaining to the order passed by the 1st respondent in letter no.1146/D2/06-1 School Education Department, dated 25/05/2006 and the consequential order passed by the 2nd respondent in his proceedings Na.Ka.No.105962/D.1(4)/2003 dated 21/08/2006 and the order passed by the 3rd respondent in his proceedings O.Mu.No.10144/Aa/06 dated 13/09/2006 and Quash the same, and direct the respondents to approve the appointment of the petitioner as record clerk with all the consequential benefits from the date of appointment.

|                |                            |
|----------------|----------------------------|
| For Appellants | : Mr.V.R.Shanmuganathan    |
|                | Special Government Pleader |
| For R - 1      | : Mr.V.Panneerselvam       |

#### JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN,J.)

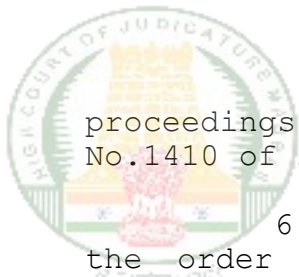
One Mr.A.Ganesan who is the first respondent in WA(MD)No.374 of 2013 and also the first respondent in WA(MD)No.35 of 2014 was appointed in a private aided school which is the second respondent in the first writ appeal and the appellant in the second writ appeal. The appointment was actually made on 10.02.1999, to the post of Record Clerk. It was as against a vacancy caused due to the promotion of the regular incumbent, to the post of Junior Assistant in 1997 itself.

2.Unfortunately the management of the private aided school did not either take prior permission for filling up the post or take approval of the appointment post facto. Therefore, the Government did not release the non teaching grant in respect of the post to which he was appointed.

3.In the meantime, a general order of ban was imposed on 29.11.2001 by the Government, for the filling up of all posts in the State. The said ban order remained in force for a period of little over four years until 07.02.2006.

4.During this period the management of the school committed another blunder by issuing a second appointment order dated 03.01.2003. This time the management sent a proposal on 07.01.2003 to the Government for approval.

5.The approval sought for by the management was rejected by the Services Officer by an order dated 13.09.2006 on the basis of the proceedings of the Director of School Education dated 21.08.2006 and the letter of the Government dated 25.05.2006. Therefore, all these three



proceedings were challenged by the employee in a writ petition in W.P(MD) No.1410 of 2007.

6.By an order passed on 17.07.2012, the learned Judge set aside the order of the authorities and issued a direction, the operative portion of which is as follows:

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*"Since, the school failed to make application seeking approval, the respondent-authorities are granted liberty to recover the salary paid by the Department to the petitioner from 10.02.1999 to 02.01.2003. However, it is made clear that the petitioner shall be treated as approved teacher from 10.02.1999 for all purposes and no recovery shall be made from the salary of the petitioner and the service shall be counted from 10.02.1999, since it is an admitted fact that he is serving the School from 10.02.1999 in the sanctioned post. The Writ petition is allowed and the impugned orders are quashed with a direction to the respondents to approve the appointment of the petitioner as Record Clerk from 10.02.1999. However, liberty is granted to the respondents to recover from the School the salary paid to the petitioner from 10.02.1999 to 02.01.2003."*

7.As against the said order, the Government have come up with the appeal in WA(MD)No.374 of 2013 contending that till the date of lifting of the ban order namely 07.02.2006, no liability can be fastened on the Government. As against that portion of the order of the learned Judge enabling the Government to recover the salary for the period from 10.02.1999 to 02.01.2003, the management has come up with WA(MD)No.35 of 2014.

8.Both appeals were clubbed together and we have heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the Government, Mr.V.Panneerselvam, learned counsel appearing for the employee and Mr.K.Hemakarthiskeyan, learned counsel appearing for the school.

9.Insofar as the writ appeal filed by the management is concerned, the issues arising therein are not complicated.

10.The management not only failed to forward a proposal with regard to the appointment dated 10.02.1999 but forwarded a proposal only in respect of the fresh appointment dated 03.01.2003. In the absence of a proposal from the management relating to the appointment made on 10.02.1999, the management cannot pass on the liability to the Government. Unless and until a proposal had been sent by the management in relation to the appointment made on 10.02.1999, the management cannot seek teaching or nonteaching grant in respect of such a post. Therefore, the learned Judge was right in allowing the Government to recover from the management, the salary paid from the grant for the employee pursuant to the interim orders passed by this Court in relation to the period from 10.02.1999 to 02.01.2003. Therefore, WA(MD)No.35 of 2014 filed by the management is dismissed.

11.Insofar as the writ appeal filed by the Government is concerned, their objection to the order of the learned Judge is two-fold. The first is that no prior permission was taken for filling up the post, but this objection does not hold good any more, in view of the fact

that for non teaching post, it is not necessary to take prior permission.

12.The second objection is with reference to the ban order that was in force from 29.11.2001 to 07.02.2006. But this objection cannot be sustained for the reason that today there is a finding of fact that the employee was actually appointed on 10.02.1999. It is only the question of liability of the Government to pay salary from 10.02.1999 that is in dispute and the very factum of appointment is not in dispute.

13.Therefore, the reliance placed by Mr.V.R.Shanmuganathan, learned Special Government Pleader on the decision of this Court in *State of Tamil Nadu v. A.Manivannan (Rev.Appln No.101 of 2013 dated 24.03.2014)* to which one of us (VRSJ) was a party, is not correct. That was a case where appointment was actually made during the very period of the ban order. In this case, there is no dispute that the appointment was made prior to the imposition of the ban order.

14.Therefore, we find no reason to interfere with the order of the learned Judge. Hence WA(MD)No.374 of 2013 is also dismissed. It is open to the Government to recover the salary already paid to the employee for the period from 10.02.1999 to 02.01.2003 from the future grant payable to the management of the school. The Government shall pass orders of approval within six weeks. No costs. Consequently, connected MP(MD) No.2 of 2013 is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar (C.S)  
Madurai Bench of Madras High Court,  
Madurai.

To

1.The Secretary to Government,  
State of Tamil Nadu,  
School Education Department,  
Secretariat, Chennai - 9.

2.The Director of School Education,  
Chennai - 6.

3.The District Educational Officer,  
Virudhunagar,  
Virudhunagar District.

+1cc to M/s.V.Paneer Selvam for Mr.C.S.Associates, in SR.No.67273

+1CC to The Special Government Pleader SR.No. 67353

Writ Appeal (MD) Nos.35 of 2014 & 374 of 2013  
24.11.2015

mj

PBK/NGM-SS/SAR-I 03/12/2015 ::4P-6C::