

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1508 of 2015
and
M.P.No.1 of 2015

- 1.The State of Tamil Nadu,
rep by its Secretary to Government,
Education Department,
Chennai-9.
- 2.The Director of School Education,
D.P.I. Buildings, College Road,
Chennai-6.
- 3.The Chief Educational Officer,
Cuddalore.
- 4.The District Educational Officer,
Viruthachalam. .. Appellants / Respondents 1 to 4

Vs.

- 1.R.Devadoss ...1st Respondent/ Petitioner
- 2.The Correspondent,
Danish Mission Higher Secondary School,
Pudhukuppam,
Virudhachalam. ..2nd Respondent/ 5th Respondent

This writ appeal is preferred under Clause 15 of the Letters Patent against the order dated 21.11.2014 made in W.P.No.9065 of 2014.

W.P.No.9065 of 2014:- Petition under Article 226 of the constitution of India to issue a writ of certiorarified mandamus calling for the entire records connected with the impugned proceedings of the 4th respondent passed vide A.Thi.Mu.No.4051/A3/13 dated 23.8.2013 and quash the same and directing respondents to approve the appointment of the petitioner as Junior Assistant in the 5th respondent school wef 16.7.2013 with all consequential benefits in the light of the order passed in W.A.908/2013 dt.25.04.2013.

For Appellants : Mr.K.Karthigeyan, GA (Edn.)

For Respondents : Mr.S.N.Ravichandran for R-1

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 21st November, 2014 made in W.P.No.9065 of 2014.

2 The writ petitioner / first respondent herein preferred the writ petition, questioning the validity of the proceedings dated 23rd August, 2013 of the fourth appellant herein and further seeking direction to approve the appointment of the first respondent herein as Junior Assistant in the second respondent school herein with effect from 16th July, 2013.

3 The learned Single Judge found that the facts involved herein are identical to that of a case in State of Tamil Nadu, rep by its Secretary to Government, Department of School Education, Secretariat, Chennai and 2 others Vs. SBM High School, represented by its Correspondent, Trichy Road, Namakkal District [W.A.No.908 of 2013], dated 25th April, 2013. The question involved herein as to whether the minority aided institution is required to take prior approval of the appointment of an individual, particularly in a case where the post has already been sanctioned, came into consideration in the aforesaid writ petition, wherein a Division Bench of this Court held as under :

"4.Rule 15(4) of the Tamil Nadu Private Schools Regulation Act 1973 (hereinafter referred to as "the Act") states that the School Committee shall get permission from the competent authority to fill up vacant posts. Section 15 of the said Act contemplates the constitution of School committee in private schools. The said section is not applicable to minority schools. The said fact is reiterated in the decision in T.Sanjeeva Rao Vs. The Director of School Education and another reported in 2012 WLR 463 which was rendered following the Judgment of Division Bench made in W.A.Nos.1159 and 1160 of 2006 dated 12.01.2010 etc., (Madras Christian College Higher Secondary School v. N.Ganapathi and others). The appellants are not disputing the fact about the minority character of the respondent school. Minority status was granted by the Government in G.O.MsNo.1089, Education Department dated 06.11.1992. The respondent appointed the Junior Assistant in a sanctioned post and the post is still available in the school and the appointment was also approved by

order dated 02.03.2011 which was subsequently cancelled on 29.02.2012."

4 In the case on hand, the post of Junior Assistant was duly sanctioned by the State Government, which was occupied by one Mr.D.John Dhayanith Santhakumar. On his attaining the age of superannuation, the said sanctioned post fell vacant, which was filled up by the first respondent herein with effect from 16th July, 2013. In such view of the matter, relying on the above judgment of the Division Bench, the learned Single Judge passed the order, which is sought to be impugned herein. It is stated that against the said order passed in W.A.No.908 of 2013, a Special Leave Petition, being SLP (CC)No.4030 of 2014 was preferred, which was summarily dismissed by the Supreme Court.

5 The appellants were given sufficient time right from 18th November, 2015 on several dates to produce any Government Order, executive instruction or statutory provision, which contemplates prior approval of appointment of an individual against the sanctioned post in an aided minority school. There is no dispute regarding the character of the second respondent school, which is an aided minority school.

6 There is no cavil in the case on hand that the post of the Junior Assistant was already sanctioned, which fell vacant on account of superannuation of one Mr.D.John Dhayanith Santhakumar. Again, for the said post, the second respondent, being aided minority school, had appointed the first respondent. In such scenario, we do not find any reason to take contrary stand as that of the one taken by the learned Single Judge as the appellants have failed to produce any material necessitating contrary stand.

7 In view of the foregoings, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Education Department,
Chennai-9.
- 2.The Director of School Education,
D.P.I. Buildings, College Road,
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1 cc to Mr.S.N. Ravichandran, Advocate, Sr. 10747

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