

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:02.02.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.Nos.487 to 492 of 2014
and
M.P.Nos.1, 1, 1, 1, 1 & 1 of 2014

- 1.The Secretary,
Government of Tamil Nadu,
Education Department,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
(Secondary Education),
College Road, Chennai - 600 006.
- 3.The District Educational Officer,
District Educational Office,
Cuddalore New Town,
Cuddalore District.Appellants/in all WAS/Respondents

V.

St. Annes Girls Higher Secondary School
Pudupalayam, Cuddalore.1 of
The Congregation of the
Immaculate Heart of Mary Pondicherry
Rep. By its Coordinator for Education,
Rev. Sr.Deva Aseer Mary
Immaculate Generalate
St. Therese Street, Pondicherry - 605 001.

...Respondent/ in all WAS/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order of this Court dated 17.09.2012 made in
W.P.Nos.28769 to 28774 of 2011 respectively.

Writ petitions presented under Article 226 of Constitution of
India praying to issue a writ of certiorarified mandamus

W.P.No.28769 of 2011: Calling for all records relating to the order of the third respondent made in O.Mu.10694/A5/06 dated 24.10.2007 relying upon G.O.Ms.No.115 Personal & Administration Department dated 30.07.2007 and the proceedings of the second respondent made in Na.Ka.No. 61748/G1(E3)/07 dated 30.07.2007 and quash the above orders in terms with G.O.Ms.No.14 Personal and Administrative Reforms (P) Department dated 07.02.2006 as interpreted by this Honourable Court in W.A.(M.D.)No.308 of 2008 and W.A.(M.D.)No.456 of 2008 dated 04.08.2008 and G.O.Ms.No.203 Education dated 23.10.2010 by directing the respondents particularly the third respondent to entertain and approve the appointments made by the petitioner in the sanctioned and approved post of watch Man from the date of appointment (ie) daed 23.4.2004 with all emoluments and salary in the St. Anne's Higher Secondary School Pudupalayam, Cuddalore 1 is concerned.

W.P.No.28770 of 2011:-Calling for all records relating to the order of the third respondent made in O.Mu.No. 1051/A3/2007 dated 14.02.2007 and to quash the same in terms with G.O.Ms.No.14 Personal and Administrative Reforms (P) Department dated 07.02.2006 as interpreted by this Honourable Court in W.A.(M.D.)No.308 of 2008 and W.A.(M.D.)No.456 of 2008 dated 04.08.2008 by directing the respondents particularly the third respondent to entertain and approve the appointments made by the petitioner in the sanctioned and approved post of Junior Assistant from the date of appointment (i.e.) dated 02.01.2004 with all emoluments and salary in the St.Annes Higher Secondary School Pudupalayam Cuddalore-1 is concerned.

W.P.No.28771 of 2011:- Calling for all records relating to the order of the third respondent made in Na.Ka.No. 12587/A5/2007 dated 25.10.2007 relying upon G.O.Ms.No.115 Personal & Administration Department dated 30.07.2007 and the proceedings of the second respondent made in Na.Ka.No. 61748/G1(E3)/07 dated 30.07.2007 and quash the above orders in terms with G.O.Ms.No.14 Personal and Administrative Reforms (P) Department dated 07.02.2006 as interpreted by this Honourable Court in W.A.(M.D.)No.308 of 2008 and W.A.(M.D.)No.456 of 2008 dated 04.08.2008 and G.O.Ms.No.203 Education dated 23.10.2010 by directing the respondents particularly the third respondent to entertain and approve the appointments made by the petitioner in the sanctioned and approved post of Waterman form the date fo appointment (i.e) dated 23.4.2004 with all emoluments and salary in the St. Anne's Higher Secondary School, Pudupalayam, Cuddalore -1 is concerned.

W.P.No.28772 of 2011 Calling for all records relating to the order of the third respondent made in Na.Ka.No. 10697/A3/06 dated 25.08.2008 and the proceedings of the second respondent made in Na.Ka.No. 61748/G1(E3)/07 dated 30.07.2007 and to quash the same in terms with G.O.Ms.No.14 Personal and Administrative Reforms (P) Department dated 07.02.2006 as interpreted by this Honourable Court

in W.A.(M.D.)No.308 of 2008 and W.A.(M.D.)No.456 of 2008 dated 04.08.2008 by directing the respondents particularly the third respondent to entertain and approve the appointments made by the petitioner in the sanctioned and approved post of Office Assistant from the date of appointment (i.e.) dated 23.04.2004 with all emoluments and salary in the St. Anner's Higher Secondary School, Pudupalayam, Cuddalore-1 is concerned.

W.P.No.28773 of 2011:- Calling for all records relating to the order of the third respondent made in ATM 12805/A5/2006 dated 09.10.2006 and O.Mu.No. 121696/A5/06 dated X.01.2008 Na.Ka.No. 3908/A5/07 dated 11.01.2008 and to quash the same in terms with G.O.Ms.No.14 Personal and Administrative Reforms (P) Department dated 07.02.2006 as interpreted by this Honourable Court in W.A. (M.D.)No.308 of 2008 and W.A.(M.D.)No.456 of 2008 dated 04.08.2008 by directing the respondents particularly the third respondent to entertain and approve the appointments made by the petitioner in the sanctioned and approved post of Office Assistant from the date of appointment (i.e.) dated 2.1.2004 with all emoluments and salary in the St. Anner's Higher Secondary School., Pudupalayam, Cuddalore 1 is concerned.

W.P.28774 of 2011:- Calling for all records relating to the order of 3rd respondent made in O.Mu.10695/A5/06 dated 25.10.2007 relying upon G.O.Ms.No.115 Personal & Administration Department dated 30.07.2007 and the proceedings of the 2nd respondent made in Na.Ka.No. 61748/G1(E3)/07 dated 30.07.2007 and quash the above orders in terms with G.O.Ms.No.14 Personal and Administrative Reforms (P) Department dated 07.02.2006 as interpreted by this Honourable Court in W.A.(M.D.)No.308 of 2008 and W.A.(M.D.)No.456 of 2008 dated 04.08.2008 and G.O.Ms.No.203 Education dated 23.10.2010 by directing the respondents particularly the third respondent to entertain and approve the appointments made by the petitioner in the sanctioned and approved post of Scavenger from the date of appointment (i.e) dated 23.4.2004 with all emoluments and salary in the St. Anne's Higher Secondary School, Pudupalayam, Cuddalore -1 is concerned.

For Appellants : Mr.K.Karthikeyan
(in all the writ appeals) Government Advocate

For Respondent : Mr.Joseph Thatheus Jerome
(in all the writ appeals)

COMMON JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellants have filed the present Writ Appeals as against the order dated 17.09.2012 in W.P.Nos.28769 to 28774 of 2011 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the orders in W.P.Nos.28769 to 28774 of 2011, on 17.09.2012, had set aside the orders of the 3rd Respondent (3rd Appellant herein) returning the papers filed by the Petitioner's School (Respondent herein) for approval of the appointment of persons viz., 1.Edward as Watchman, 2.Rev.Sr.R.Nirmala as Junior Assistant, 3.M.Mark as Waterman, 4.A.Rajasekaran as Office Assistant, 5.P.Gandhimathi as Office Assistant, 6.Gowri as Scavenger and the impugned orders of the 2nd Respondent/2nd Appellant dated 30.05.2007 and consequently, allowed the Writ Petitions. Further, the Learned Single Judge had directed the Respondent/Petitioner School to forthwith send a proposal once again to the 3rd Respondent/3rd Appellant and that the 3rd Respondent/3rd Appellant, without rejecting the same, was to approve the appointment of the aforesaid persons, on and from the date of their appointments viz., 08.02.2006, 02.01.2004, 01.06.2006, 23.04.2004, 13.08.2007 and 08.02.2006 respectively. Moreover, the Respondent/Petitioner School was directed to send a proposal within one week from the date of receipt of a copy of the order and on doing so, the 3rd Respondent/ 3rd Appellant was directed to approve the appointment of the said persons within a period of four weeks thereafter.

3.Assailing the correctness, validity and legality of the impugned orders of the Learned Single Judge dated 17.09.2012 in W.P.Nos.28769 to 28774 of 2011 (filed by the Respondent/Petitioner School), the Learned Government Advocate urges before this Court that the Learned Single Judge should have properly appreciated the tenor and spirit of G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007.

4.Advancing his arguments, the Learned Government Advocate submits that the Learned Single Judge had not borne in mind that in terms of the ingredients of G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007, the respective aided schools should bear the expenditure for the posts of Office Assistant, Watchman, Scavenger, Sweeper etc. and that the appointment for the said posts are to be made by outsourcing. However, in the present cases, the Respondent/Petitioner School had made the appointments in question against the stipulated conditions specified in the Government Order.

5.The Learned Government Advocate brings it to the notice of this Court that the Learned Single Judge should have taken into account of a vital fact that in G.O.Ms.No.189, School Education Department, dated 27.07.2009, the Government had permitted to fill up only one Junior Assistant post and one Office Assistant in the schools where such vacancy existed and further, the Government had decided not to permit to fill up other such vacancies. As such, the Respondent/Petitioner School is not required to fill up the posts of Watchman, Office Assistant, Junior Assistant, Scavenger and Sweeper.

6.The other stand taken on behalf of the Appellant is that a High Level Committee was formed by the Government, through letter dated 15.11.2011, to frame regulations regarding appointment of Non- Teaching Staff in Aided Schools and necessary particulars were called for from the District Authorities. Therefore, it is the plea of the Appellants that until a decision is taken, the appointment of Non-Teaching Staff members in 'Aided Schools' cannot be made even though the ban is lifted.

7.At this stage, this Court very pertinently points out that the Learned Single Judge in the impugned orders in W.P.Nos.28769 to 28774 of 2011 dated 17.09.2012 had referred to the orders passed by the Madurai Bench of this Court in W.P.(MD).No.484 of 2007 dated 30.10.2007 wherein had extracted the paragraph 4 of the order which runs as under:

" 4.The second ground raised is that the appointment of non-teaching posts in private aided schools are governed under the Tamil Nadu Recognized Private Schools (Regulation) Act and Rules, wherein there is no prohibition to fill up permanent the vacancies. The management i.e., the fourth respondent, having exercised his power to fill up the post in accordance with the said Act and Rules, the respondents have no jurisdiction to deny approval from the date of appointment of the petitioner, who was appointed in a sanctioned post".

8.It is to be noted that as against the order dated 30.10.2007 in W.P.(MD).No.484 of 2007, a Writ Appeal in W.A.(MD).No.308 of 2008 was filed by the Appellants therein, wherein the order of the Learned Single Judge was affirmed by this Court.

9.Added further, the Learned Single Judge, at paragraph 9 of the impugned orders in W.P.Nos.28769 to 28774 of 2011, had also observed the following:

"9. Further more, several schools and the individual persons who have been appointed and who have been refused approval, have approached this Court and this Court directed the educational authorities to approve the appointment made by the school. One such writ petition that was considered and allowed by this Court is W.P.No.14645 of 2008, dated 9.12.2010."

and consequently, came to the conclusion that the orders of the 3rd Appellant/3rd Respondent in returning the papers filed by the Respondent/Petitioner School for approval of the persons, viz., 1.Edward as Watchman, 2.Rev.Sr.R.Nirmala as Junior Assistant, 3.M.Mark as Waterman, 4.A.Rajasekaran as Office Assistant,

5.P.Gandhimathi as Office Assistant, 6.Gowri as Scavenger, was totally erroneous and also opined that the reliance placed by the 3rd Appellant/3rd Respondent on G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007 was a misconception and resultantly, allowed the Writ Petitions.

10.That apart, in the Judgment dated 24.11.2015 in W.A.No.1213 of 2015 [where one of us S.K.A., J. is a party] wherein, at paragraph 14, had referred to the observations of a Division Bench of this Court made in W.A.(MD).No.456 of 2008 dated 04.08.2008, whereby and whereunder, it is held as under:

"4.It has been brought to our notice that in similar circumstances, the Government has issued orders in respect of similar employee 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."

11.Be that as it may, on a careful consideration of the contentions advanced on behalf of the Appellants and also this Court, on going through the impugned orders dated 17.09.2012 of the Learned Single Judge in W.P.Nos.28769 to 28774 of 2011, comes to an inescapable conclusion that the Learned Single Judge had rightly allowed the Writ Petitions by setting aside the impugned order passed by the 2nd Respondent dated 30.05.2007 and issued directions to the Respondent /Petitioner School to forthwith send a proposal once again to the 3rd Appellant/3rd Respondent and further that, the 3rd Appellant/3rd Respondent, without rejecting the same, was directed to approve the appointments of the persons viz., 1.Edward as Watchman, 2.Rev.Sr.R.Nirmala as Junior Assistant, 3.M.Mark as Waterman, 4.A.Rajasekaran as Office Assistant, 5.P.Gandhimathi as Office Assistant, 6.Gowri as Scavenger, from the date of their appointments etc. and the same are not liable to be interfered with by this Court sitting in Appellate Jurisdiction. Viewed in that perspective, the Writ Appeals fail.

12.In the result, the Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Sgl

To

- 1.The Secretary,
Government of Tamil Nadu,
Education Department,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
(Secondary Education),
College Road, Chennai - 600 006.
- 3.The District Educational Officer,
District Educational Office,
Cuddalore New Town,
Cuddalore District.

6 ccs to M/s. Joseph Thatheus Jermoe, Advocate, Sr. 6634 to 6638

1 cc to Government Pleader, Sr. 7333

W.A.Nos.487 to 492 of 2014

KSJ (CO)
kk 12/2