

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No. 9856 of 2003

Palayyan

.. Petitioner

Versus

1.The Secretary to Government
Educational Department,
Fort St.George, Chennai 600 009.

2.The Director of School,
Education, College Road,
Nungambakkam, Chennai - 6.

3.The District Educational
Officer, Thuckalay

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the third respondents respecting Na.Ka.No.867-A2/03 dated 05.02.2003 and quash the same and direct the respondents to accord sanction for the two posts namely M.Jeya Singh Prekumar as B.T.Assistant and T.Saraswathy as Tamil Pandit and grant them salary with effect from 01.06.2000 onwards.

For Petitioner : Ms. J. Anadavalli

For Respondents : Mr.A. Kumar
Special Government Pleader

ORDER

This writ petition has been filed challenging the order dated 05.02.2013 of the third respondent in and by which the third respondent refused to accord sanction for the appointment of two teaching staff namely Mr. M.Jeya Singh Prekumar, B.T. Assistant and Ms. T.Saraswathy, Tamil Pandit who were appointed in the petitioner school.

2. The petitioner is the Correspondent of St. Peter's R.C. High School, Chekkal, Thiruparappu Post, Kanyakumari District. According to the petitioner, as per the order passed by the Government in G.O.Ms.No.460 dated 8.5.1992 and as per the prevailing student strength, the school is eligible to have 8 teaching and 1 non-teaching staff. However, the third respondent, without taking into account the prevailing student

strength, has passed an order dated 22.11.2000 fixing the staff strength of the school. By virtue of the fixation of such staff strength, two of the teachers in the petitioner school could not be approved of their appointment. Therefore, the petitioner has filed W.P. No. 47069 of 2002 before this Court for a Writ of Mandamus and the same was disposed of by this Court on 03.01.2003 directing the respondents therein to consider the petitioner's representation and pass appropriate orders within a period of eight weeks. Pursuant to such direction, the third respondent passed the impugned order on 05.02.2003 by erroneously taking into account the staff strength of the school and refused to accord approval for the appointment of two teachers viz., Mr. M.Jeya Singh Premkumar, B.T.Assistant and one Ms. T.Saraswathy, Tamil Pandit. In view of the refusal to accord approval of their appointment, the said two teachers were working continuously without salary. In the impugned order dated 05.02.2003, it was erroneously stated that the aforesaid two teachers have been appointed in a non-sanctioned post which is contrary to the prevailing student strength of the school. Hence the petitioner has come forward with this writ petition challenging the order dated 05.02.2003 of the third respondent.

3. The learned counsel for the petitioner submitted that the school is eligible for three B.T.Assistant Posts and two Tamil Pandit Posts but sanction was accorded for only 2 posts of B.T.Assistant and one post of Tamil Pandit and refused to accord approval for the two appointments made by the school which is contrary to the student strength of the school.

4. The learned Special Government Pleader appearing for the respondents would contend that petitioner ought to have challenged the original order dated 22.11.2000 of the third respondent wherein the third respondent has indicated the eligibility of the petitioner school to appoint teaching and non-teaching staff. Even according to the petitioner, by virtue of the said order dated 22.11.2000, the appointment of the teaching staff employed in their school namely Tr. N.Jaya Singh Premkumar, B.T.Assistant and Ms. T.Saraswathy, Tamil Pandit could not be approved. While so, the petitioner ought to have challenged the order dated 22.11.2000 instead of filing WP No. 47069 of 2002 only for a Writ of Mandamus. When the aforesaid two persons were appointed by the management of the school in a non-sanctioned post, the official respondents cannot be expected to pay them salary. The learned Special Government Pleader also placed reliance on the counter affidavit filed by the third respondent to that effect and prayed for dismissal of the writ petition.

5. I heard the learned counsel for both sides and perused the materials placed on record. The grievance of the petitioner is that the third respondent has erroneously refused to accord approval for appointment of the two teaching staff in the school and such refusal is contrary to the prevailing student strength in the school. As rightly pointed out by the learned Special Government Pleader for the respondents, by the

order dated 27.11.2000, the third respondent has fixed the eligibility of the petitioner school to appoint teaching and non-teaching staff. However, the petitioner has not challenged the said order dated 22.11.2000, but filed WP No. 42009 of 2002 only for a Writ of Mandamus directing the official respondents to sanction the two posts in which Tr. M. Jeya Singh Prem Kumar and Ms. T. Saraswathy were appointed as B.T. Assistant and Tamil Pandit respectively. When the petitioner did not challenge the order dated 22.11.2000, the present order passed by the third respondent, on the basis of the direction issued by this Court on 03.01.2003 in WP No. 47069 of 2002 cannot be interfered with by this Court. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

kkd/rsh

To

- 1.The Secretary to Government
Educational Department,
Fort St.George, Chennai 600 009.
- 2.The Director of School,
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Nungambakkam, Chennai - 6.
- 3.The District Educational
Officer, Thuckalay

1 cc to M/s.G. Sumitra, Advocate, Sr. 51011

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PSK (CO)
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