

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.03.2016

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE T.MATHIVANAN

W.A.No.232 of 2016
and
C.M.P.No.3662 of 2016

- 1.The Secretary to Government,
Education Department,
State of Tamil Nadu,
Secretariat, St. Fort George,
Chennai - 9.
- 2.The Director of School Education,
College Road, Chennai -6.
- 3.The District Educational Officer,
Erode. ...Appellants/Respondents
- V.
- 1.Vijay Amirtharaj ... 1st Respondent/Petitioner
- 2.The Correspondent,
C.S.I. Boys Hr. Sec. School,
Erode - 1. ... 2nd Respondent/4th Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order of this Court dated 09.09.2014 made in
W.P.No.24366 of 2014.

WP.No.24366 of 2014:Writ Petition filed Under Article 226 of the
Constitution of India praying for the issuance of Writ of
Certiorarified Mandamus to call for the records relating to the
order passed by the 3rd respondent in his proceedings in
O.Mu.No.9150/A3/2012 dated 9.3.2013 and quash the same and
consequently direct the respondents to approve the petitioner
appointment as Record Clerk in 4th respondent school from the
date of his appointment and to pay all the service and monetary
benefits within stipulated time.

For Appellants : Mr.K.Karthikeyan
Government Advocate

JUDGMENT

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

The Appellants have preferred the present intra-Court Writ Appeal as against the order dated 09.09.2014 in W.P.No.24366 of 2014 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order in W.P.No.24366 of 2014 on 09.09.2014 (filed by the 1st Respondent/ Petitioner), at paragraph 5, had observed the following:

"5.It is seen from the orders passed by this Court in W.P.(MD).No.484 of 2007, dated 30.10.2007, and W.P.(MD).Nos.6542 to 6544 and 6546 of 2014 that, when a post is a sanctioned post and any person has been appointed to that sanctioned post consequent to the retirement of a person holding that post, there is no need to get approval and the Authorities are bound to approve the same.

In the case on hand also, the Record Clerk post is sanctioned post, as seen from the proceedings of the third respondent. Therefore, following the orders passed in the above referred Writ Petitions, the order impugned herein is set aside, this Writ Petition is allowed, and the respondents 1 to 3 are directed to approve the appointment of the petitioner from the date of his initial appointment within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P. is closed."

3.Challenging the order dated 09.09.2014 in W.P.No.24366 of 2014 passed by the Learned Single Judge in allowing the Writ Petition filed by the 1st Respondent, the Learned Government Advocate for the Appellants contends that the impugned order of the Learned Single Judge dated 09.09.2014 is against law, contrary to the facts of the case.

4.The Learned Government Advocate for the Appellants urges before this Court that the Learned Single Judge had not considered the fact that in terms of G.O.Ms.No.115, School Education, dated 30.05.2007, all the vacant non-teaching posts of sweeper, watchman and sweeper - cum - scavenger in the aided school shall be filled up by the Management only by outsourcing subject to the condition that the expenditure shall be borne by the concerned School.

5. According to the Appellants, the Learned Single Judge had not considered the fact that the filling up of the non-teaching posts in aided School is not automatic on the lifting with effect from 07.02.2006 of the ban imposed for any recruitment other than essential services as ordered in G.O.Ms.No.212, P & AR, dated 29.11.2001.

6. Advancing his arguments, it is the plea of the Appellants that the Learned Single Judge had not taken into account of an important fact that in the absence of any challenge to G.O.Ms.No.115, School Education, dated 30.05.2007 which is still in force, the post of Record Clerk in the Respondent School ought not to have been filled up.

7. The Learned Government Advocate for the Appellants projects an argument that the policy decision of the Government could not be subjected to 'Judicial Review' unless the same was found to be an arbitrary one.

8. Lastly, it is the contention of the Learned Government Advocate for the Appellants that the High Level Committee (constituted under the Chairmanship of the Secretary to Government School Education Department) had taken a decision not to lift the ban to fill up the non-teaching posts in aided High/Higher Secondary Schools in the State and till a contra decision is taken by the Government in the matter, the post of Record Clerk to the 2nd Respondent School could not be filled up and this primordial fact was not appreciated by the Learned Single Judge at the time of passing the impugned order in the Writ Petition in a proper and real perspective.

9. At this stage, this Court very relevantly points out that the 1st Respondent/Petitioner before the Writ Court had taken a stand that he was appointed as Record Clerk on 31.10.2012 in the 2nd Respondent School, Erode in a sanctioned post in the vacancy caused due to the retirement of previous Record Clerk and immediately after his appointment order was transmitted to the 3rd Appellant/3rd Respondent by the 2nd Respondent School. In fact, the 2nd Respondent School send a proposal to the 3rd Appellant/3rd Respondent for approval of the 1st Respondent/Petitioner's appointment. However, the 3rd Appellant/ 3rd Respondent passed an order rejecting the request of approval of 1st Respondent/Petitioner's appointment through proceedings in O.Mu. No.9150/A3/2012 dated 09.03.2013. The grievance of the 1st Respondent/Petitioner is that since the 2nd Respondent School had failed to take any legal steps, he was perforced to file the present Writ Petition.

10. That apart, the core stand of the 1st Respondent/Petitioner before the Writ Court was that the post of Record Clerk is a sanctioned post and there is no necessity to obtain any prior approval.

11. On a careful consideration of the contentions advanced on behalf of the Appellants and also this Court, on going through the impugned order dated 09.09.2014 passed by the Learned Single Judge in the Writ Petition, is of the considered view that the Learned Single Judge, while allowing the Writ Petition by setting aside the impugned order passed by the 3rd Appellant/3rd Respondent dated 09.03.2013, had taken note of the orders passed by this Court in W.P.(MD).No.484 of 2007, dated 30.10.2007, to the effect that 'when a post is a sanctioned one and any person was appointed to that sanctioned post consequent to the retirement of a person holding that post, there is no need to get approval and the Authorities are bound to approve the same' and issued consequent directions to the Appellants 1 to 3 to approve the appointment of the 1st Respondent/Petitioner from the date of his initial appointment within a period of 12 weeks from the date of receipt of a copy of the order, are not liable to be interfered with by this Court, since they are legally valid. Consequently, the Writ Appeal fails.

12. In the result, the Writ Appeal is dismissed. The 3rd Appellant/ 3rd Respondent is hereby directed to approve the appointment of the 1st Respondent/Petitioner from the date of his initial appointment within a period of four weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

Sgl
To

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

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

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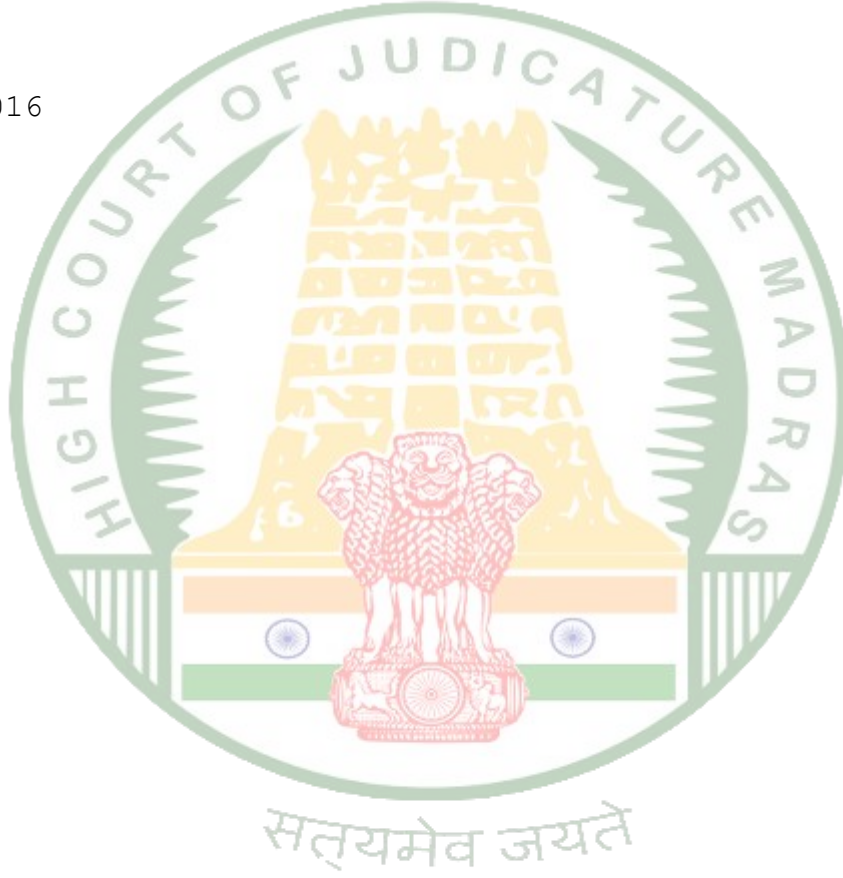
3.The District Educational Officer,
Erode.

4.The Correspondent,
C.S.I. Boys Hr. Sec. School,
Erode - 1.

+1 cc to Government Pleader sr.19267

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