

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM

THE HON'BLE Mr. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE Mr. JUSTICE M.VENUGOPAL

W.A.No.74 of 2016
and
C.M.P.No.895 of 2016

- 1.The State of Tamil Nadu
rep. by its Secretary to Government,
Education Department,
Chennai - 9.
- 2.The Director of School Education,
DPI Buildings, College Road,
Chennai - 6.
- 3.The Chief Educational Officer,
Vellore.
- 4.The District Educational Officer,
Tirupattur, Vellore District. .. Appellants

Vs.

- 1.S.Kumar
- 2.The Headmaster and Correspondent,
Concordia Higher Secondary School,
Ambur - 632 802,
Vellore District. .. Respondents

Appeal filed under Clause 15 of the Letter of Patents Act
against the order dated 21.11.2014 in W.P.No.23713 of 2014.

Petition filed under Article 226 of the Constitution of India to
issue a Writ of Mandamus directing the 4th respondent to approve
the appointment of the petitioner, as Office Assistant
W.E.F.01.10.2008 with all consequential benefits, in the 5th
respondent school on the basis of the proposal of the school
dated 01.10.2008.

For Appellants .. Mr.K.Karthigeyan,
Govt. Advocate

For Respondents .. Mr.S.N.Ravichandran

JUDGMENT

(delivered by SATISH K.AGNIHOTRI, J.)

With the consent of the learned counsel appearing for the parties, the writ appeal is taken up for final disposal.

2.The instant intra-court appeal arises from the order dated 21 November, 2014 made in W.P.No.23713 of 2014.

3.The writ petitioner / first respondent herein preferred the writ petition, seeking a direction to the fourth appellant to approve the appointment of the writ petitioner/first respondent as Office Assistant with effect from 01 October 2008 with all consequential benefits in the second respondent school on the basis of the proposal of the school dated 01 October 2008.

4.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 District¹ (dated 25 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.Sanjeewa 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

1 W.A.No.908 of 2013

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."

5.In the case on hand, the post of Office Assistant was duly sanctioned by the State Government, which was occupied by one Mr.V.Wilson Jayakumar. 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 01 October 2008. 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.

6.The appellants were given sufficient time right from 29 January 2016 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.

7.There is no cavil in the case on hand that the post of the Office Assistant was already sanctioned, which fell vacant on account of superannuation of one Mr.V.Wilson Jayakumar. 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 to that of the one taken by the learned Single Judge as the appellants have failed to produce any material necessitating contrary stand.

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

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

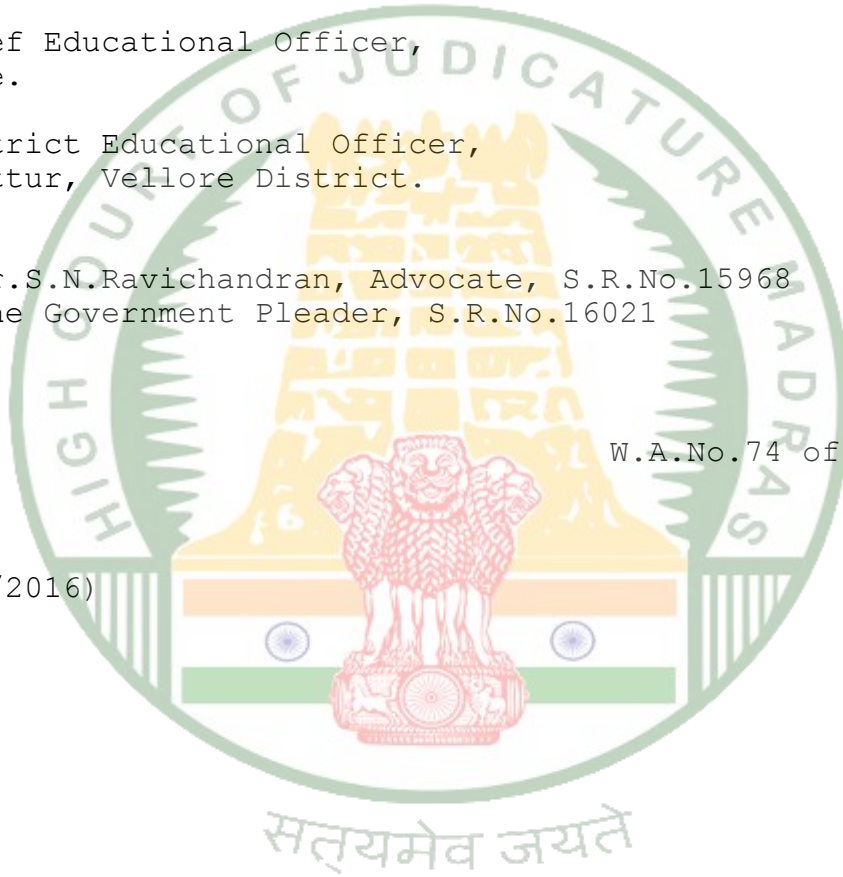
To

- 1.The Secretary to Government,
Government of TamilNadu,
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+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.15968
+1cc to the Government Pleader, S.R.No.16021

W.A.No.74 of 2016

lrs (CO)
srg (23/03/2016)



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