

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.36712 of 2016

and W.M.P.No.31556 of 2016

J.John Sundarson

.. Petitioner

Vs

- 1 The State 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
Vellore Vellore District
 - 4 The District Educational
Officer Thirupattur Vellore District
 - 5 The Correspondent
Concordia Higher Secondary School Ambur-632
802
- ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus to call for the entire records connected with the impugned proceeding of the fourth respondent passed vide Aa.Thi.Mu.No. 4894/A2/2015 dated Nil 12.2015 signed on 19.12.2015 and quash the same and directing respondents to approve the appointment of the petitioner as Lab Assistant in the fifth respondent school w.e.f. 3.10.2013 with all consequential benefits in the light of the order passed in W.A.No.74 of 2016 dated 11.3.2016.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.V.Anandhamoorthy,
Addl. Govt. Pleader (Edn.)

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition, challenging the impugned proceedings of the fourth respondent vide Aa.Thi.Mu.No.4894/A2/2015 dated Nil .12.2015 signed on 19.12.2015 and consequently, to direct the respondents to approve his appointment as Lab Assistant in the fifth respondent school w.e.f. 3.10.2013 with all consequential benefits in the light of the order passed in W.A.No.74 of 2016 dated 11.3.2016.

3. It is the case of the petitioner that the fifth respondent is a religious minority Higher Secondary School, which is governed by the Tamil Nadu Recognised Private Schools Regulations Act 1973. The petitioner joined in the fifth respondent School on 1.9.2011 in the vacancy caused due to the retirement of one Selvakumar, Lab Assistant on 30.8.2011. Thereafter, the fifth respondent school had submitted a proposal dated 3.10.2013 to the fourth respondent for approval of the petitioner's appointment w.e.f. 3.10.2013. However, by proceeding dated 19.12.2015, the fourth respondent returned the proposal on the ground that without the prior permission of the department, the post of Lab Assistant was filled up by the fifth respondent. As per Rule 15(4) of the Tamilnadu Recognised Private Schools (Regulations) Act, 1973, no prior permission is required to fill up the non-teaching post in the minority school as has been held by this Court in a catena of decisions. As per G.O.Ms.No.115, School Education (D2) Department, dated 30.5.2007, in the Government Aided Schools, all the vacancies of non-teaching staff can be filled up and 50% of the Watchman vacancies can be filled up. Subsequently, the Government issued G.O.Ms.No.203 dated 23.7.2010 granting permission to fill up the non-teaching post. The petitioner was appointed in a vacancy that arose after issuance of G.O.Ms.No.203 School Education (D1) Department, dated 23.7.2010, and therefore, there is no impediment in approving the petitioner's appointment as Lab Assistant with effect from 3.10.2013. On the contrary, the fourth respondent rejected the approval of the appointment of the petitioner as Lab Assistant by the impugned proceedings, which will not stand scrutiny of the Government Orders stated above. Therefore, the impugned proceedings are liable to be quashed and the petitioner is entitled for the consequential relief.

4. I have heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who has taken notice on behalf of the respondents.

5. The impugned order came to be passed on the ground that prior permission was not obtained in the matter of appointing the petitioner as Lab Assistant. 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 been already sanctioned, came into consideration in the case of State of Tamil Nadu rep. by its Secretary to Government, Department of School Education, Secretariat Chennai and 2 othes vs. SBM High School, rep. by its Correspondent, Trichy Road, Namakkal District [W.A.No.908 of 2013) dated 25.04.2013, wherein a Division Bench of this Court has held as follows:-

"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 a Division Bench made in W.A.Nos.1159 and 1160 of 2006 dated 12.1.2010 etc., (Madras Christian College Higher Secondary School vs. N.Ganapathi and others). The appellants are not disputing the fact about the minority character of the respondent school. ..."

6. It is not in dispute that the fifth respondent is a minority institution and the petitioner was appointed in a regular vacancy that arose due to the retirement of one Selvakumar, Lab Assistant.

7. In the light of the above said legal position and in view of G.O.Ms.No.203, School Education (D1) Department, dated 23.7.2010, the impugned proceedings are set aside and the writ petition is allowed. The fourth respondent is directed to approve the appointment of the petitioner as Lab Assistant in the services of the fifth respondent School with effect from

3.10.2013 with conferment of all benefits and pass necessary orders within a period of one month from the date of receipt of a copy of this order and also pay the arrears of salary within a period of one month thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

sbi

To

1 The 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
Vellore Vellore District

4 The District Educational
Officer Thirupattur Vellore District

1 cc to Mr.S.N. Ravichandran, Advocate, Sr. 65755

1 cc to Government Pleader, Sr. 66101

W.P.No. 36712 of 2016

GJ (CO)
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