

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.40004 of 2016

&

W.M.P.No.34065 of 2016

Mr.Benny Christiansan

.. Petitioner

Vs.

1. The District Educational Officer,
Tiruvannamalai District.
Gandhi Nagar,
Tiruvannamalai-606 601.
2. The Arcot Lutheran Church,
(Registered under the Societies Registration Act),
Represented by its Secretary,
Church Board, No.9, A.L.C. Campus,
Cuddalore-607 001.
3. Danish Mission Higher Secondary School,
A Minority School under Arcot Lutheran Church,
(Registered under the Societies Registration Act),
Kattabomman Street,
Tiruvannamalai-606 601.
4. Rajamohandoss .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to forbear the respondents 2 and 3 from in any manner transferring the petitioner from the third respondent School to any other School run by the second respondent.

For Petitioner : Mr.T.S.Rajamohan

For Respondents :Mr.V.Anandhamoorthy, Addl.G.P. for R-1
Mr.Srinath Sridevan for RR-2 & 3

ORDER

The petitioner has filed the Writ Petition for issuance of a Writ of Mandamus to forbear the respondents 2 and 3 from in any manner transferring the petitioner from the third respondent

School to any other School run by the second respondent.

2. It is the case of the petitioner that he is presently working as Physical Director in the third respondent-School, which is run by the second respondent-Church. The third respondent-School is a minority School recognised by the Government. He is a graduate in Bachelor of Physical Education and also qualified in post-graduate degree in Master of Physical Education, besides Master of Philosophy. He joined the third respondent-School as Physical Education Teacher with effect from 10.01.2007 and promoted as Physical Director with effect from 16.07.2009. As far as the Rules governing the petitioner's services are concerned, the Standing Rules of the Arcot Lutheran Church, besides the Bye-laws and Constitution of Arcot Lutheran Church, are the guiding factors. It is further stated that so far as the recruitment of teaching/non-teaching staff to various Schools run by the second respondent-Church is concerned, the same is done by the Education Board in consultation with the Executive Committee. The Constitution and Powers of Education Board would demonstrate that the Secretary is always the Chairperson. The Education Board consisting of members nominated by Church Board, maintains seniority list of teachers serving in the educational institutions of the second respondent and also maintains a priority list of all qualified teacher applicants for future appointments and recommends to the Executive Committee with regard to the appointment and transfer of teachers and such application for appointment and transfer would be received by the Central Manager.

3. It is the further case of the petitioner that the fourth respondent was originally appointed as Physical Education Teacher in August 1996 at the Danish Matriculation High School, Parikkal, Villupuram District and thereafter, he was transferred to the third respondent-School. The fourth respondent obtained C.P.Ed., M.A., B.P.Ed. and M.P.Ed. and so far as the M.P.Ed. claimed by him is concerned, he had obtained the said Degree from Salem Vinayaka Mission, and the said Degree is not a recognised Degree. The first respondent has raised queries regarding the Degree obtained by the fourth respondent many times. On 15.03.2012, the second and third respondents made proposal with the first respondent for payment of incentive to the fourth respondent and on the ground that the Degree obtained by him is not recognised, the first respondent returned the proposal. The respondents 2 and 3 have forwarded the proposal on 09.09.2016 for incentive to be paid to the fourth respondent, but the said proposal was likely to be returned. The fourth respondent is due to retire on 30.06.2018. It is the grievance of the petitioner that, now, the respondents 2 and 3 are contemplating to promote the fourth respondent as Physical Director and post him in the third respondent-School. By doing so, the petitioner's service would get disturbed and he may be

transferred to some other District. Hence, the petitioner sent a representation, dated 26.09.2016 to the second respondent requesting him not to transfer the petitioner from the third respondent-School. As the said representation is still pending, the petitioner has filed this Writ Petition for the relief stated above.

4. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the petitioner shall not be transferred from the third respondent-School, as his wife is working as Elementary School Teacher at Tirukkivilur, besides his daughter is studying IIIrd Standard and his son is studying Ist Standard in the School at Tirukkivilur. Further, his mother is a widow suffering from various ailments and the petitioner has to take care of her. The petitioner came to know that he is likely to be transferred and that the fourth respondent is likely to be promoted as Physical Director and he may be posted in the third respondent-School, thereby the petitioner's service is likely to be disturbed. Learned counsel for the petitioner further submitted that the fourth respondent cannot at all be promoted as Physical Director as his M.P.Ed. Degree obtained from Vinayaka Mission is not recognised by any University.

5. Heard the learned Additional Government Pleader appearing for the first respondent.

6. Though the petitioner has sought for positive direction in this Writ Petition, this Court is not inclined to give the same. Liberty is given to the petitioner to send a representation before the respondents 1 to 3 within a period of two weeks from the date of receipt of a copy of this order, ventilating his grievance with regard to his transfer proposal, and on receipt of the same, the respondents 1 to 3 are directed to pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of such representation. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner and it is for the respondents to decide the same at the time of disposal of such representation.

7. With the above observations and directions, the Writ Petition is disposed of. No costs. W.M.P. is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

CS

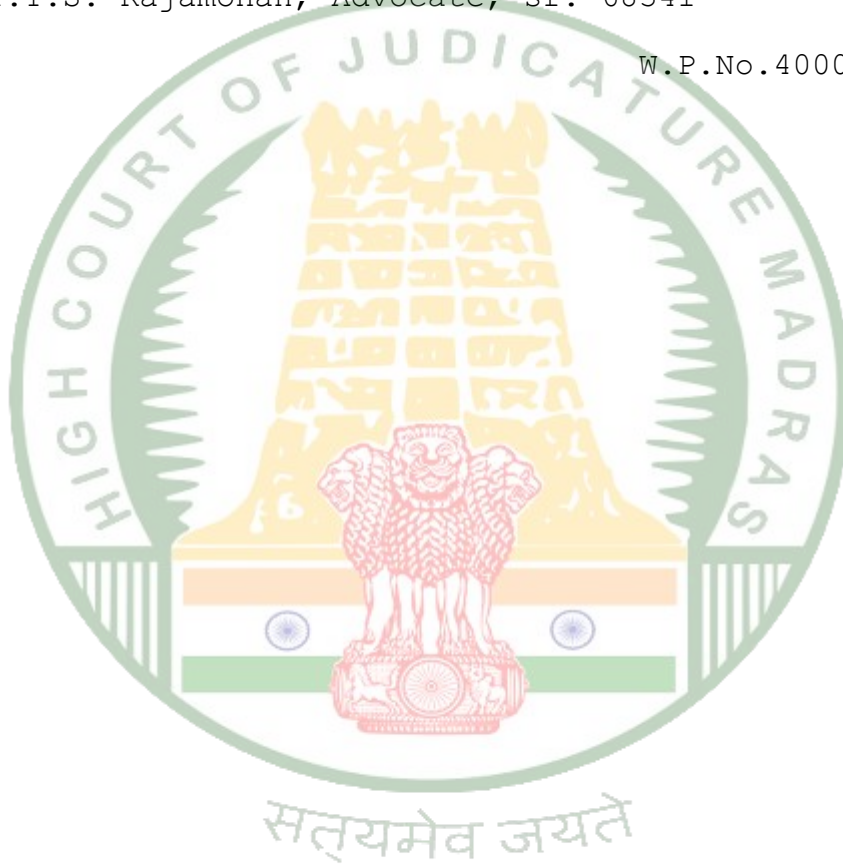
Copy to

The District Educational Officer,
Tiruvannamalai District.
Gandhi Nagar,
Tiruvannamalai-606 601.

1 cc to Mr.Srinath Sridevan, Advocate sr. 68761
1 cc to Mr.T.S. Rajamohan, Advocate, sr. 68341

W.P.No.40004 of 2016

PVS (CO)
kk 25/11



WEB COPY