



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2016

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THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A(MD) No.997 of 2015
and M.P.(MD) No.1 of 2015

1.The State of Tamil Nadu,
rep.By its Secretary,
Department of School Education,
Fort St.George,
Chennai-09.

2.The Director of School Education,
College Road,
chennai-06.

3.The chief Educational Officer,
Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

...Appellants/ Respondents 1 to 4

-Vs-

1.K.Suresh
Lab Assistant,
Higher Secondary School,
Arumana,
Kanyakumari District -151.

... 1st Respondent/petitioner

2.The Manager,
Higher Secondary School,
Arumana,
Kanyakumari District -151.

... 2nd Respondent/5th Respondent

PRAYER : The Writ Appeals are file under Clause 15 of the Letters Patent against the order dated 04.02.2013 made in W.P.(MD) No.13349 of 2011.



For Respondents : Mr.M.Saravanan for
Mr.N.C.Ashok Kumar for R-1
No appearance for R-2

J U D G M E N T

(Judgment of this Court was delivered by M.SATHYANARAYANAN,J.)

By consent, this Writ Appeal is taken up for final disposal.

2. The first respondent herein was working as a Lab Assistant in the services of the fifth respondent school, which is a linguistic minority institution. In the said school, one sanctioned post of Lab Assistant had fallen vacant on 30.11.2010 on account of the retirement of previous incumbent one K.P.Sundhamoni and in that post, the fifth respondent school had appointed the first respondent as Lab Assistant on 06.12.2010 and he joined duty in the said post on the same day.

3. Thereafter, the fifth respondent school had submitted a proposal to the fourth appellant herein seeking approval of the first respondent's appointment as Lab Assistant and also for the purpose of grant-in-aid salary and necessary documents have also been submitted along with the proposal. However, the fourth respondent had returned the proposal vide proposal dated 03.03.2011, directing the fifth respondent/Management to submit the proposal after obtaining orders in terms of G.O.Ms.No.115, dated 30.05.2007.

4. In the stand of the fifth respondent school, it is stated that since it is a minority institution and the post of Lab Assistant is a sanctioned post, the school submitted a representation dated 30.08.2011 to the second respondent praying for issuance of No Objection Certificate and it was also followed by two reminders dated 19.09.2011 and 12.10.2011. The Second respondent, after some time, issued the impugned proceedings, dated 04.10.2011 stating that the request for approval would be considered after getting necessary orders from the State Government to fill up the non-teaching post. Challenging the legality of the same, the first respondent herein filed a writ appeal and it was entertained and notices were ordered.

5. The fourth respondent in the writ petition/4th appellant herein, had filed a counter by taking a stand that in terms of the above cited Government Order, non-teaching posts cannot be filled up without prior permission of the Government and as such, the stand taken is tenable and prays for dismissal of the writ petition.

<https://hcservices.ecourts.gov.in/hcservices/>

6. The learned Single Judge, after taking note of the rival



submissions, observed that it is a well-settled position of law that in respect of the non-teaching posts in a minority institution, prior approval is not necessary. Therefore, citing the said reason, allowed the writ petition vide the impugned order dated 04.02.2013. Challenging the legality of the same, the official respondents 1 to 4 in the writ petition have filed this writ appeal.

7. Mr.A.K.Baskara Pandian, learned Special Government Pleader, appearing for the appellants has drawn the attention of the Court to the typed set of papers and submitted that admittedly, the fifth respondent, though a minority institution and receiving aid from the Government, as per G.O.Ms.No.115, dated 30.05.2007, it is a mandate to get prior approval and therefore, the stand of the fourth respondent/fourth appellant is perfectly in order and therefore, prays for interference.

8. Per contra, the learned counsel appearing for the first respondent/writ petitioner has drawn the attention of the court to the typed set of documents, dated 23.09.2016, stating that the issue is no longer *resintegra* for the reason that in the judgment dated 25.08.2013, passed in writ appeal No.908 of 2013, it is stated that prior approval is not necessary for the minority institutions and it was put to challenge before the Honourable Supreme Court of India by way Special leave Petition and the said SLP was also dismissed and that apart, when the scope of Rule 15 (4) of the Tamil Nadu Private Schools Regulation Act, 1973 came up for consideration in **2012 WLR 463 (T.Sanjeeva Rao Vs. The Director of School Education and another)**, a Division Bench has followed the earlier decision dated 12.01.2010, made in W.A.Nos.1159 and 1160 of 2016 and held that in respect of sanctioned post in a minority institution, prior approval is not necessary. Insofar as the reliance made by the learned counsel for the appellants on G.O.Ms.No.115, dated 30.05.2007 is concerned, he submitted that the said Government Order has been set aside by this Court in **W.P. (MD).Nos.11481 of 2008 and batch, (Deva Asir Vs. The Correspondent, St. Josephs Higher Secondary School, Mulagumoodu, Kanyakumari District)**, dated 15.03.2016. Against, the said common order passed in all the writ petitions, no appeal has been filed and as such, the said G.O.Ms.No.115, dated 30.05.2007, has no application on the case of hand and prays for dismissal of the writ appeal.

9.This Court has paid it's best attention to the rival submissions and also perused the documents filed in the form of typed set of papers carefully.

10.As rightly pointed out by the learned counsel appearing for the first respondent, this court, in the judgments dated 21.11.2014, 22.02.2016 and 11.03.2016 made in W.P.No.23173 of



2014, W.A.No.1508 of 2015 and W.A.No.74 of 2016 had held that for filling up a sanctioned post in a minority institution, prior approval is not necessary. That apart, the above stated common order, dated 15.03.2016 would also indicate that G.O.Ms.No.115, School Education Department, dated 30.05.2007, has been quashed. In the considered opinion of this Court, even otherwise G.O.Ms.No.115, dated 30.05.2007 has any application as it deals with the post of Junior Assistant, Office Assistant, Watchman, Sanitary worker cum Sweeper. However, in the case of hand, it is for the post of Lab Assistant. In the considered opinion of this Court, the learned Single Judge, on proper appreciation of facts and correct application of legal principles, has rightly reached the conclusion to allow the writ petition. There is no infirmity or error apparent on the face of the record. Hence, this Court is not interfering with the same.

11. In the result, the Writ Appeal is dismissed, confirming the order dated 04.02.2013, made in W.P.(MD).No.13349 of 2011. The appellants shall comply with the order dated 04.02.2013, passed in W.P.(MD).No.13349 of 2011 within a period of eight weeks from the date of receipt of a copy of this order. The appellants shall communicate the decision taken, to the first as well the fifth respondent. No costs. Consequently, connected Miscellaneous Petition stands dismissed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

vs

To

1. The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St. George,
Chennai-09.

2. The Director of School Education,
College Road,
Chennai-06.

3. The chief Educational Officer,
Nagercoil,

<https://hcsa.judges.org.in/hcsa/judges> District.



4.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

JAM/30.11.16/CK/5p-5c

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