



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.10507 and 10508 of 2015
and
M.P(MD)Nos.1, 1 and 2 of 2015

W.P(MD)No.10507 of 2015:

F.Bella Fernando

.. Petitioner

vs.

- 1.The State of Tamilnadu,
Rep. By its Secretary,
Department of School Education,
For St. George, Chennai - 600 009.
 - 2.The Director of School Education,
College Road, Chennai - 600 006.
 - 3.The Chief Educational Officer,
Tuticorin, Tuticorin District.
 - 4.The District Educational Officer,
Tuticorin, Tuticorin District.
 - 5.The Correspondent,
St. Joseph's Higher Secondary School,
Manapad - 628 209,
Tuticorin District.
- .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the fourth respondent District Educational Officer vide Na.Ka.No.190/A4/2015, dated 19.01.2015, quash the same and further direct the fourth respondent District Educational Officer to approve the appointment of the petitioner Pre Vocational Instructor (Sewing) and disburse the salary and other attendant benefits w.e.f., 01.12.2014.



For Petitioner
For R-1 to R-4

For R-5

:Mr.A.Ajith Geethan
:Mr.R.Anandharaj,
Government Advocate
: No Appearance

W.P(MD)No.10508 of 2015:

J.Anna Malar

... Petitioner

vs.

- 1.The State of Tamilnadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 4.The District Educational Officer,
Cheranmahadevi @ Tirunelveli,
Tirunelveli District.
- 5.The Correspondent,
St. Mary's Higher Secondary School,
Uvari - 627 658,
Tirunelveli District.

... Respondents.

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the fourth respondent herein to approve the appointment of the petitioner as Pre Vocational Instructor (Sewing) and disburse salary and other attendant benefits w.e.f., 02.11.2011 within a reasonable time as may be specified by this Honourable Court.

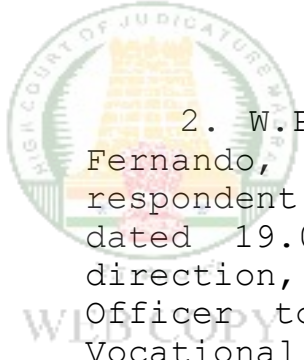
For Petitioner
For R-1 to R-4

For R-5

:Mr.A.Ajith Geethan
:Mr.R.Anandharaj,
Government Advocate
: No Appearance

COMMON ORDER

Since the issue raised in both the Writ Petitions is one and the same, they have been taken up together and disposed of by this common order.



2. W.P(MD)No.10507 of 2015 has been filed by one Mrs.F.Bella Fernando, challenging the impugned order passed by the fourth respondent District Educational Officer vide Na.Ka.No.190/A4/2015, dated 19.01.2015 to quash the same and for a consequential direction, directing the fourth respondent District Educational Officer to approve the appointment of the petitioner as Pre Vocational Instructor (Sewing) and disburse the salary and other attendant benefits w.e.f., 01.12.2014.

3. W.P(MD)No.10508 of 2015 has been filed by one Mrs.Anna Malar, seeking issuance of a Writ of Mandamus directing the fourth respondent herein to approve the appointment of the petitioner as Pre Vocational Instructor (Sewing) and disburse salary and other attendant benefits w.e.f., 02.11.2011 within a stipulated time.

4. The learned counsel for the petitioners would submit that the petitioners are appointed as Sewing Mistress in the fifth respondents schools, which is a sanctioned Post in agriculture subject. The fifth respondent schools are Minority Educational Institutions in terms of Article 30 of the Constitution of India. Since the Post of Agriculture Teacher fell vacant, taking note of the fact that the students coming to the school are not showing much interest in the subject of agriculture and there is no sufficient water facilities, the fifth respondents schools had changed over the agriculture Post into sewing and appointed the petitioners. But the grievance of the petitioners is that the respondents are not paying salary because of the conversion of agriculture subject into Sewing subject.

5. Subsequently, the fifth respondent Schools submitted a proposal to the District Educational Officer, Tuticorin, seeking approval of appointment of the petitioners by conversion of Post. But the same was returned directing the schools to seek prior permission from the Director of School Education, for conversion of Post from Agriculture to Sewing. Thereafter, the schools re-submitted the proposal to District Educational Officer to approve the appointment of the petitioner as Pre-vocational Instructor (Sewing) w.e.f., their date of appointment. But, no orders have been passed. Hence, the petitioners are before this Court.

6. Concluding his argument, the learned counsel for the petitioners submitted that the issue raised in the present Writ Petitions, is fully covered by the order of this Court, dated 20.09.2010, passed in W.P(MD)No.11501 of 2008, holding that G.O.Ms.No.39, School Education Department, dated 21.03.2005, specifically stated that for appointment of Sewing Teacher from 12.07.2002, no prior approval of the School, is required.

<https://hcservices.courts.gov.in/hcservices> The learned Government Advocate appearing for the respondents also submitted that the observation made in the order passed in W.P(MD)No.11501 of 2008 says that no prior approval of

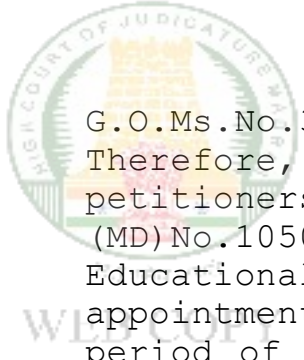


the school, is required for appointment of Sewing Teacher, from 12.07.2002.

8. In this regard, it is relevant to extract Paragraph No.4 of the order passed in W.P(MD)No.11501 of 2008:

"I have considered the case of the petitioner for granting approval to the appointment of J.Vasanthi. In any event, the petitioner management was not in a position to run the agriculture subject, due to insufficient water facilities for cultivating any crops or saplings for the reason that the school is very closely situated near to sea. Further, the minimum potable water, which is required for raising saplings is not readily available. The petitioner management has requested the above said Post of agriculture subject into the post of sewing teacher. Further, the learned counsel appearing for the petitioner also brought to the notice of this Court that G.O.,Ms.No.39, School Education Department, dated 21.03.2005, wherein in para No.5, it was specifically stated that for appointment of sewing teacher from 12.07.2002, no prior approval of the school, is required, for which, the learned Government Advocate appearing for the respondents, though attempted to defend the impugned order, in my reading of the G.O.ms.No.39, dated 21.03.2003, it gives a clear out meaning thereby a refusal of the first respondent to approve the appointment of J.Vasanthi as Sewing Teacher, on the ground that the petitioner school failed to get prior approval cannot be illegal. In any event, the petitioner school even at the time of introducing the agriculture subject for appointing one agriculture teacher also did not get the prior approval, only after appointing the agriculture teacher, moved an application seeking approval of the appointment of agriculture teacher. The very same first respondent has rightly approved the appointment agriculture teacher. While so, the refusal of approval to the appointment of J.Vasanthi, who has been working as a Sewing Teacher cannot be accepted."

9. The above observation clearly shows that as per G.O.Ms.No.39, School Education Department, dated 21.03.2005, for appointment of Sewing Teacher from 12.07.2002, no prior approval of the School, is required. In the present case, it is not in dispute that the petitioners were appointed as Sewing Teacher on 02.11.2011 respectively, which are sanctioned post, for permanent vacancy in agriculture subject. Further, the order of appointment of the petitioners made is supported with the



G.O.Ms.No.39, School Education Department, dated 21.03.2005. Therefore, the refusal to approve the appointment of the petitioners, is untenable. Accordingly, the order impugned in W.P (MD)No.10507 of 2015, is hereby set aside. The District Educational Officers concerned, are hereby directed to approve the appointment of the petitioners and release the salary within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the Writ Petitions are disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

1.The Secretary, State of Tamilnadu,
Department of School Education,
For St. George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Tuticorin, Tuticorin District.

4.The District Educational Officer,
Tuticorin, Tuticorin District.

+2CC to Mr.A.Ajith Geethan, Advocate Sr.No.34137, 34136

GJM/GSV/PM/19.7.16-5p-7c

W.P (MD) Nos.10507 and 10508 of 2015
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