

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.31336 of 2014
and
M.P.Nos.1 & 2 of 2014

DVC Higher Secondary School
Srimushnam
Cuddalore 608 703
Rep.by its Secretary
N.V.Senthilnathan

... Petitioner

Vs.

- 1.The State of Tamil nadu
Rep.by its Secretary,
School Education Department,
Fort St.George,
Chennai 600 009.
- 2.The Director of School Education
College Road, Chennai 600 006.
- 3.The Chief Educational Officer,
Cuddalore, Cuddalore District.
- 4.The District Educational Officer,
Viruddhachalam, Cuddalore District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus to call for the records from the 3rd respondent in his impugned proceedings in Na.Ka.No.1196/A3/2014 dt.28.10.2014, quash the same and consequently direct the respondents to approve the post of Thiru.A.Brabhakaran, B.T.Assistant (Science) now working in the petitioner institution with effect from 02.06.2010 and pay his wages.

For Petitioner .. Mr.B.Rabu Manohar

For Respondents .. Mr.A.Zakkir Hussain,
Government Advocate.

ORDER

Challenging the order of the first respondent dated 28.10.2014 and for a consequential direction to the respondents to approve the post of Thiru.A.Brabhakaran, B.T.Assistant (Science) now working in the petitioner institution with effect from 02.06.2010 and pay his wages, the present writ petition has been filed.

2. The case of the petitioner is that a vacancy arose in the year 2008 for the post of B.T. Assistant (Science), on retirement of the existing incumbent in the post. On 18.03.2009, permission was granted to the petitioner's school. The petitioner's school, after following the procedure, as laid down the Tamil Nadu Private Schools (Regulation), Rules 1974. One A.Brabakaran, is working as B.T. Assistant (Science) with effect from 31.05.2010. For approval of the appointment of the Science teacher, a proposal was forwarded to the fourth respondent on 15.04.2011. Since no action was taken by the fourth respondent, the petitioner's school was constrained to approach this Court in W.P.No.30169 of 2012. This Court, after considering the submission of the parties, disposed of the writ petition, vide order dated 31.12.2013 by directing the third respondent viz., the Chief Educational Officer, Cuddalore, to dispose of the pending proposal, within a period of six weeks from the date of receipt of a copy of this order.

3. In pursuance of the direction issued by this Court, the third respondent has passed the impugned order dated 28.10.2014, rejecting the proposal sent by the petitioner's school for approving the appointment of A.Brabakaran, as B.T.Assistant (Science). According to the impugned order, the petitioner did not follow the communal roster and also the appointment was contrary to the Act and the proposal for approval was rejected by the respondents. Assailing the rejection order, the present writ petition has been filed by the petitioner's school.

4. The learned counsel appearing for the petitioner strenuously contended that the rejection order of the third respondent cannot be sustained in law for the reason that no valid reason has been set out in the order negating the proposal sent by the school. The learned counsel strenuously further contended that while appointing the said teacher, communal roster was followed and in support of the contention attention of this Court was drawn in respect of the earlier appointment of two teachers against the roster point at Nos.2 & 3 in 200 roster point system. The said appointments were subject matter of the writ petition in W.P.Nos.17804 and 17285 of 2011, in which, this Court has directed to approve the appointment of two persons vide order dated 01.08.2011.

According to the learned counsel for the petitioner, the third point in which, the present vacancy arose as against the quota reserved for backward class and the said A.Brabakaran, belongs to backward class. Therefore, the learned counsel for the petitioner would further submit that the communal roster has been adhered by following the communal roster system.

5. The other objection put forth by the third respondent was undue delay for forwarding the proposal, since the appointment order was issued to the said A.Brabakaran on 31.05.2010 and forwarded the proposal of the appointment to the fourth respondent on 15.04.2011 and also the objection is regarding the appointment itself which taken place after more than one year from the date of permission granted for appointment of B.T.Assistant (Science) on 18.03.2009 itself. In respect of the said objection, the learned counsel appearing for the petitioner submit that since earlier two appointments were pending approval before the Authority, the present appointment could not be forwarded and pending clearance of the earlier appointments and therefore, the delay was neither intentional nor wanton. As regards the appointment, after one year from the date of permission from the third respondent, it is submitted that the petitioner's school has to follow the due procedure and therefore, there occasioned a delay which, cannot be construed to be undue or unnecessary.

6. The learned Government Advocate appearing for the respondents would also object the appointment as contrary to the provisions of the Tamil Nadu Private School Regulation Act particularly, Rule 15(A) of the Private Schools (Regulation) Rules, 1974, which envisages that a person who is appointed to a category, shall be on probation, for a total period of two years from his joining duty. Whereas, in the instant case, the appointment order states that teacher for the probation is only for a period of one year. But the learned counsel appearing for the petitioner would submit that though it is mentioned in the appointment letter as one year for the period of probation, the said probation has also been extended in terms of Tamil Nadu Private Schools (Regulation) Rules, 1974. In any event, this rule cannot be held against the petitioner's school and on that score alone the approval need not be rejected.

7. This Court has given its anxious consideration to rival submission of the parties, after perusing the relevant records and pleadings thereon.

8. This Court is of the view that the approval was rejected on the stated grounds cannot be maintained under law, since it appears that the petitioner's school has substantially complied with the provisions of the Tamil Nadu Private Schools

(Regulation) Rules, 1974, while appointing the said A.Brabakaran on 31.05.2010. Therefore, the objection regarding delay raised by the authorities cannot be sustained. In that view of the matter, the contention regarding delay needs to be brushed aside, as devoid of merits.

9. Moreover considering the circumstances and facts which formed the basis of the writ petition, it ought to be seen that a clear case has been made out by the petitioner's school as against the impugned order passed by the third respondent. In such view of the matter, consideration of all the aspects both in terms of law and in terms of factual position, this Court has no hesitation in allowing the writ petition.

10. In the circumstances, the impugned order dated 28.10.2014 is set aside. The third respondent is directed to pass orders for granting approval of appointment of A.Brabakaran, dated 31.05.2010 and pass orders within a period of two months from the date of receipt of a copy of this order. On being granted approval, whatever benefits which would flow consequent to the present order, shall also be granted by the competent authority.

The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

kkd

To

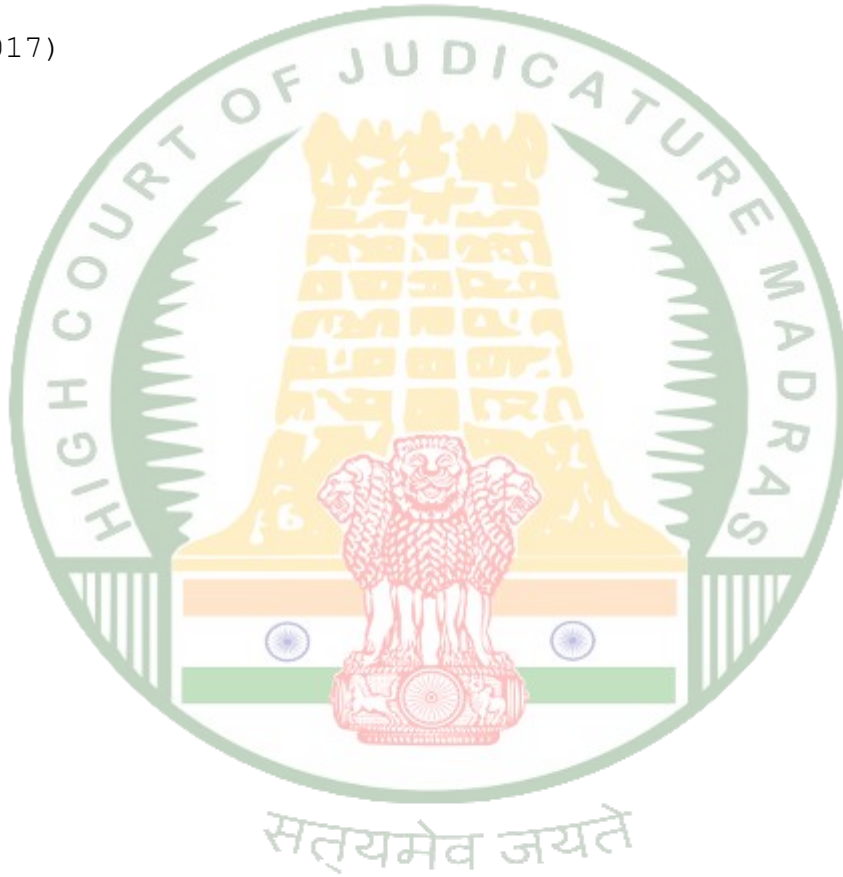
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2. The Director of School Education
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Viruddhachalam, Cuddalore District.

+lcc to the Government Pleader Sr. 49398
+lcc to Mr.B.Rabu Manohar, Advocate Sr. 48946

W.P.No.31336 of 2014
and
M.P.Nos.1 & 2 of 2014

MG (CO)
VR(18/8/2017)



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