

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2017

CORAM :

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.29125 of 2017
and
W.M.P.No.31384 of 2017

V.Dillirajan

... Petitioner

Vs.

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

2.The Chief Educational Officer,
Chennai Chief Educational Office,
Chennai District-600 015.

3.The District Educational Officer,
North Chennai,
Chennai District -602 008.

4.the Correspondent,
V.P.A. Soundarapondian Higher Secondary School,
Ayanavaram-600 023,
Chennai District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the order passed by the 3rd respondent in his proceedings in Oo.Mu.No.3900/Aa5/2017, dated 17.10.2017, and to quash the same and to direct the 3rd respondent to approve the appointment of the petitioner as Lab Assistant from the date of his joining the said post and pay salary and other benefits to the petitioner by considering the proposal sent by the 4th respondent Management on 07.09.2017.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.R.A.S.Senthivel, AGP
for R1 to R3

ORDER

Mr.R.A.S.Senthilvel, learned Additional Government Pleader, took notice for the respondents 1 to 3.

2.This writ petition has been filed challenging the impugned order dated 17.10.2017 in Oo.Mu.No.3900/Aa5/2017, passed by the District Educational Officer, North Chennai, (3rd respondent herein), refusing to grant approval for the appointment of the petitioner Dillirajan, who has been appointed as Lab Assistant in the V.P.A. Soundarapondian Higher Secondary School, Ayanavaram, Chennai (4th respondent school), which is sanctioned post fell vacant on account of retirement of one Mrs.S.Bhavani from 31.10.2013.

3.It is submitted by the learned counsel appearing for the petitioner that the 4th respondent school is a minority private aided school, having more than 1631 students, and it employed one Mrs.S.Bhavani as Lab Assistant. On reaching the age of superannuation, the said Bhavani, Lab Assistant, retired from service with effect from 31.10.2013. The petitioner applied for the said post, based on a paper advertisement as well as notice displayed in the notice board of the school. On receipt of the petitioner's application and satisfied with the qualification of the petitioner for the post of Lab Assistant, the 4th respondent invited the petitioner to come for an interview on 31.11.2017 along with others. Finding that the petitioner is eligible for the said post, the 4th respondent selected and appointed the petitioner as Lab Assistant with effect from 07.09.2017 and a resolution was also passed by the School Committee to that effect. Thereafter, the proposal has been sent to the 3rd respondent for approval of his appointment to the post of Lab Assistant. But, the said proposal has been wrongly rejected by the 3rd respondent, referring to G.O.Ms.No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001, and also stating that the ban for filling up any non-teaching post has not been lifted.

4.It is not known how the 3rd respondent, while holding a responsible post of District Educational Officer in Chennai, is unaware of the order passed by this Court setting aside the said G.O.Ms.No.212, P & AR Dept, dated 29.11.2001, which is also reported in 2008(5) CTC 648 [Thiruvalluvar Higher Secondary School Vs. The Government of Tamil Nadu], wherein after referring to the earlier decisions of this Court in W.P.(MD). No.484 of 2007, dated 30.10.2017, and W.A.(MD).Nos.308 & 456 of 2008 & W.A.(MD).No.456 of 2008, dated 04.08.2008, it has been held as follows

"4. Similar issue as to whether after lifting of the ban, approval of appointment of a person appointed

in a non-teaching post in an aided school can be kept pending and whether the said person is entitled to get salary at least from the date on which the ban order was lifted, was considered by me in W.P.(MD)No.484 of 2007 by order dated 30.10.2007 and I have allowed the Writ Petition and in paragraph No.19 and 20, held as follows:-

"19. Similar ban order issued by the Department on the ground that new norms are contemplated and pending the same no appointment in aided schools are to be made was set aside by this Court in W.P.No.10237 of 1994 by order dated 16.08.1999. Since the petitioner was appointed from 5.6.2002 and he is continuously working in the sanctioned post, the respondents may be justified in not approving the appointment of the petitioner from 05.06.2002 to 06.02.2006. The petitioner has got a right to get his appointment approved, once the ban order is lifted. Admittedly, the ban order imposed, not to fill up the posts, was lifted on 07.02.2006. Hence, the petitioner has got every right to get his post approved with salary and other benefits with effect from 07.02.2006. Once the ban order is lifted, the provisions contained in rule 15(1) and (3) of the tamil nadu recognized private schools (regulations) act, 1973, comes into operation and the petitioner is deemed to be appointed on regular basis, as he was appointed within the sanctioned post in the fourth respondent school.

20. For all the reasons stated above, the impugned orders are set aside with a direction to the respondents to approve the appointment of the petitioner as Lab Assistant with effect from 07.02.2006. The third respondent is directed to pass orders approving the appointment of the petitioner with effect from 07.02.2006 and pay arrears of salary from 07.02.2006 within a period of four weeks from the date of receipt of a copy of this order".

5. The learned counsel for the petitioner submits that the above order was challenged by the respondent

Education Department in W.A.(MD) No.308 of 2008 and the said Writ Appeal was dismissed by a Division Bench of Madurai Bench on 4.8.2008. The Division Bench dismissed the Writ Appeal by observing as follows:

"4. After considering the rival submissions made on either side, following the judgment of the Supreme Court and order of this Court, the learned Single Judge set aside the orders of the appellants with a direction to approve the appointment of the respondent/petitioner as Lab Assistant with effect from 7.2.2006 and the third appellant was directed to pass orders approving the appointment of the first respondent with effect from 7.2.2006 within a period of four weeks from the date of receipt of copy of the order.

5. We find no infirmity or illegality in the order of the learned Judge dated 30.10.2007 passed in W.P.(MD)No.484 of 2007. Therefore, the Writ Appeal fails and the same is dismissed".

The learned counsel for the petitioner further submitted that the first respondent in W.A.(MD)No.308 of 2008 filed separate Appeal in W.A.(MD)No.456 of 2008 and challenged the order not giving direction to approve the appointment from the date of appointment till the date of lifting of the ban and the said Writ Appeal was also allowed by the Madurai Bench of this Court on 4.8.2008 by observing as follows:-

"2. Heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents 1 to 3.

3. The learned counsel for the appellant submits that the appointment of the appellant from the date of appointment should have been approved by the learned Single Judge instead of restricting the prayer.

4. It has been brought to our notice that in similar circumstances the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date

of his initial appointment. Therefore, the orders of the learned Single Judge need to be modified to this extent. Accordingly, the Writ Appeal is allowed modifying the order of the learned Single Judge dated 30.10.2007 made in W.P.(MD) No.484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment.

6. In the light of the above referred judgments of the Division Bench, the impugned order dated 06.03.2003 is set aside with a direction to the fourth respondent to approve the appointment of S.K.Rajasekar working in the petitioner school as Junior Assistant, with effect from 01.07.2002 with all monetary benefits. Necessary orders to that effect is directed to be passed by the fourth respondent within a period of two weeks from the date of receipt of a copy of this order and the arrears of salary payable to the said S.K.Rajasekar is directed to be paid within four weeks therefrom"

The above said decision is squarely applicable to the present facts of the case also. A perusal of the above said judgment would show that the District Educational Officer, Chennai, Thirupattur, Vellore District as well as the Chief Educational Officer, Vellore District, are the parties in that case. When the said order passed by this Court in respect of Thiruvalluvar Higher Secondary School, Palamaner Road, Gudiyattam, Vellore District, is binding on the authorities, the impugned order ought not to have been passed refusing to grant approval of the appointment of the petitioner. Therefore, the impugned order being per se, unjustified, is liable to be set aside.

5.Secondly, it has to be seen that the post of Lab Assistant for the 4th respondent was a sanctioned one. The order dated 21st October, 2016, issued by the Chief Educational Officer, Chennai, the very same 3rd respondent has granted sanction to the post of Lab Assistant. Therefore, it is not known how the approval for appointment to the post of Lab Assistant, which fell vacant on account of the retirement of one S.Bhavani on 31.10.2013, when it was filled up by the 4th respondent school after passing appropriate resolution by the School Committee and inviting applications from eligible candidates and holding interview, has been refused by the respondents.

For all these reasons, the writ petition is allowed and the official respondents are hereby directed to approve the appointment of the petitioner working in the 4th respondent school as Lab Assistant, with all monetary benefits from the date of his appointment, within a period of four weeks from the date of receipt of a copy of this order.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

ssv

To

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

2.The Chief Educational Officer,
Chennai Chief Educational Office,
Chennai District-600 015.

3.The District Educational Officer,
North Chennai,
Chennai District -602 008.

+1cc to Mr.P.Ganesan, Advocate in sr.no.81003

W.P.No.29125 of 2017
and
W.M.P.No.31384 of 2017

NR 18/12/2017

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