

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.10870 of 2003

Ubaibas Girls Higher Secondary School,
Represented by its Correspondent
Janab S.Ubaidulla ... Petitioner

Vs.

1.The Government of Tamilnadu
rep. by its Secretary,
Education Department,
Fort St. George, Chennai - 9.

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Certiorarified Mandamus, calling for the records of the 2nd respondent viz. the Director of School Education, Chennai, the order passed in his Proceedings Na.Ka.No.51108/W6/W2/02-A dated 06.03.2003 and quash the same direct them restore two post which were sanctioned under order dated 24.09.2001 and 04.12.2001.

For Petitioner : Mr.Zaffarullah Khan

For Respondents: Mr.R.Govindasamy

Special Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records of the second respondent pertaining to proceedings in Na.Ka.No.51108/W6/W2/02-A, dated 06.03.2003, to quash the same and to direct them to restore the two posts which were sanctioned under orders dated 24.09.2001 and 04.12.2001.

2.The brief facts of the case, insofar as they are relevant for the disposal of this writ petition, are as follows: The petitioner/school is an aided minority Higher Secondary School

established for imparting formal education to the girls belonging to the backward community.

3.It is the case of the petitioner/school that vide G.O.Ms.No.340, Education (D1) Department, dated 1.4.1992, the Government had accorded permission to all Higher Secondary Schools to have the staff strength of Five Post Graduate Assistants. Consequent to the same, the first respondent, vide G.O.Ms.No.120, Education, Science and Technology (HS2) Department, dated 17.2.1995, sanctioned five posts of Post Graduate Assistants to the petitioner/school. Thereafter, vide G.O.Ms.No.61, School Education Department, dated 31.3.2001, the first respondent sanctioned three additional Post Graduate Assistants to the schools which had already got Five Post Graduate Assistants.

4.It is averred that the second respondent had sanctioned two posts of Post Graduate Assistants in English and Maths vide his proceedings dated 24.09.2001 and another one post of Post Graduate Assistant in Home Science vide proceedings dated 04.12.2001. It is the specific case of the petitioner is that the said three posts were sanctioned based upon G.O.Ms.No.525, Education Department, dated 21.12.1997, and G.O.Ms.No.61, School Education Department, dated 31.03.2001.

5.When things stood thus, it is alleged that the District Educational Officer, Tiruppatur, served a notice dated 19.02.2002, denying the approval for three additional Post Graduate Assistants which had been sanctioned and allotted by the second respondent vide proceedings dated 24.09.2001 and 04.12.2001. Challenge to the said notice was the subject matter of separate writ proceedings, which is discussed infra.

6.Pursuant to the said notice, the second respondent vide proceedings dated 6.3.2003, which is impugned in this writ petition, held that for the petitioner/school to be eligible for Eight Post Graduate Assistants, there should be minimum of two groups as on 01.04.1992 and since the petitioner/school did not satisfy the said condition, the posts sanctioned by the second respondent vide proceedings dated 24.09.2001 and 04.12.2001 are resumed.

7.Assailing the said proceedings dated 06.03.2003 of the second respondent, the present writ petition is filed for the relief stated supra.

8.I heard Mr.Zaffarullah Khan, learned counsel appearing for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing on behalf of the respondents.

9. In view of the subsequent developments which took place during the pendency of this writ petition, which are narrated hereunder, this Court does not propose to delve deep into the contentions raised on either side.

10. When similar proceedings as that of the order passed by the second respondent dated 06.03.2003 were challenged by the aggrieved Post Graduate Assistants in a batch of writ petitions, viz., W.P.Nos.10354 of 2003, etc., a learned Single Judge, by order dated 02.07.2014, quashed the said order dated 06.03.2003, and held as under:

"3 ... The appointment of the writ petitioners though earlier in point of time, are admittedly against the sanctioned post and approval is granted from the date of sanction of the post by the Government. That being so, the show cause notice issued by the second respondent for cancelling the post sanctioned by the Government that too after approval of the appointment of petitioners is per se illegal and is hence liable to be set aside. As the appointment of the petitioners against the sanctioned posts was already approved and the management maintains the students strength and number of periods within the fixed norms from the date of approval, the payment of annual increment payable to be petitioner cannot be postponed.

4. In the result, the show cause notice issued by the second respondent, which is impugned in W.P.Nos.10354 to 10358 of 2003 stands quashed. The respondents are directed to pay annual increments to the petitioners payable to the petitioners with effect from their respective due dates, within eight weeks from the date of receipt of copy of this order."

11. Even in the case on hand, the posts were filled pursuant to the sanction accorded by the respondent authorities and it is not disputed that the school maintains the students strength and number of periods within the fixed norms from the date of approval.

12. Yet another vital fact which gains prominence in this case is that when the petitioner/school challenged the notice dated 19.02.2002 issued by the District Educational Officer, Tiruppatur, by which the proposals for approval of three Post Graduate Assistants in the petitioner/school was returned on the ground that the school did not satisfy the conditions stipulated in G.O.Ms.No.61, School Education Department, dated 31.03.2001, by filing W.P.No.10787 of 2002, this Court, by order dated 25.02.2010, held as under:

"2. When the matter came up for hearing on 22.2.2010, learned counsel for the petitioner submitted that subsequent to the filing of the Writ Petition, the District Educational Officer, Tirupattur has approved the appointment of the Post Graduate Assistants. However to ascertain the same, the matter was directed to be listed today.

3. On this day, on instructions from the respondents, Mr.A.Suresh, learned Government Advocate submitted that out of the three posts, two posts were approved on 9.4.2003 and the third post was also approved on 7.11.2007 by the District Educational Officer, Tirupattur. His submission is placed on record.

4. In view of the same, nothing remains to be adjudicated in the present writ petition. Hence, the Writ Petition is disposed of."

(emphasis supplied)

13.From a reading of the said order dated 25.02.2010, supra, it is clear that the three posts were approved by the District Educational Officer, Tirupattur.

14.That apart, even by virtue of the interim stay granted by this Court on 09.04.2003, which was made absolute on 23.12.2003, the Post Graduate Assistants continue to work even as on date. Therefore, the proceedings dated 06.03.2003 of the second respondent had never been acted upon till date and the respondent authorities have also approved the two posts, which are the subject matter of the present writ petition.

15.In the result:

(a) this writ petition is allowed by setting aside the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.51108/W6/W2/02-A dated 06.03.2003;

(b) the respondents are directed to restore the two posts which were already sanctioned as per the orders dated 24.09.2001 and 04.12.2001;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-v)

//True Copy//

Sub Assistant Registrar

vs
To

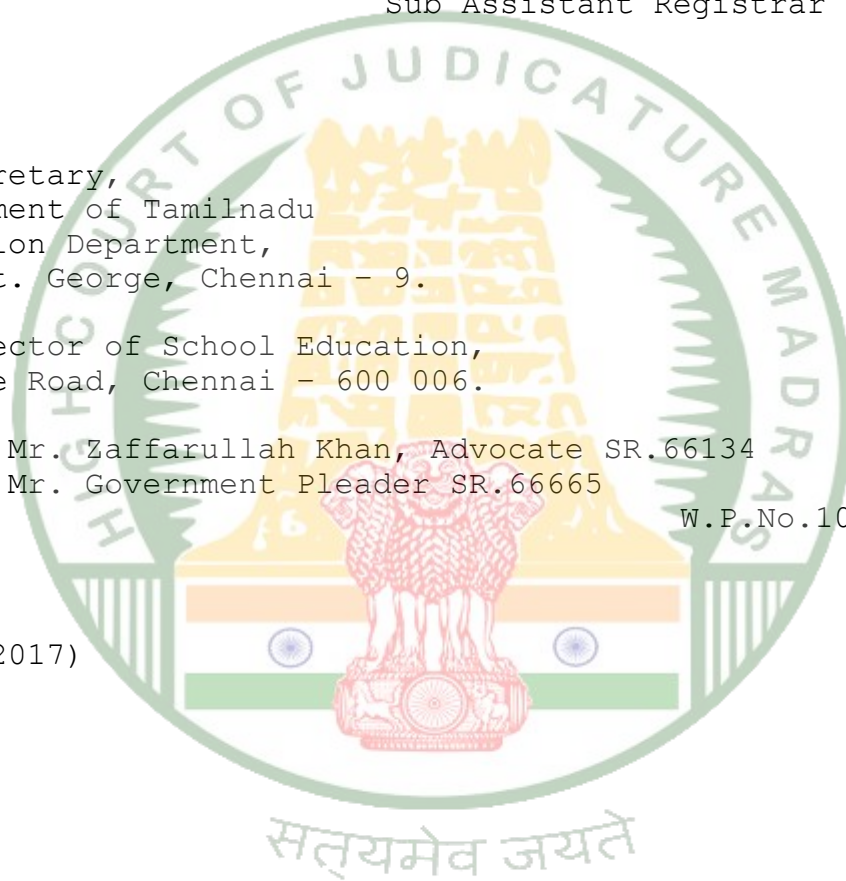
1.The Secretary,
Government of Tamilnadu
Education Department,
Fort St. George, Chennai - 9.

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

+ 1 cc to Mr. Zaffarullah Khan, Advocate SR.66134
+ 1 cc to Mr. Government Pleader SR.66665

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