

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.Nos.18516 and 18517 of 2010
and
M.P.Nos.1 and 1 of 2010

P.Vivekanandan .. Petitioner
in WP:18516/2010

C.Jose Waltine ... Petitioner
in WP:18517/2010

Vs.

1.The Government of Tamil Nadu
Rep. by its Secretary to Government
School Education Department
Fort St. George, Chennai - 600 009.

2.The Joint Director of School Education
(Higher Secondary Vocational)
College Road, Chennai - 600 006.

3.The Chief Educational Officer
Nagercoil, Kanyakumari District.

4.The District Educational Officer
Thakkalai, Kanyakumari District.

5.The Correspondent
Arunachalam Higher Secondary School
Thiruvettar P.O., Kanyakumari District. .. Respondents
in both the WPs

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent passed in Na.Ka.106533/V1/E3/2009, dated 22.12.2009, quash the same and consequently direct the respondents 1 to 4 to approve the petitioners' appointment as Vocational Instructors at the 5th respondent school with

effect from 11.8.2004 and 2.6.2003 respectively and pay them salary and other benefits.

(In both the WPs)

For Petitioners : Ms.P.Mahalakshmi

For Respondents : Mr.R.Govindasamy (for R1 to R4)

Special Government Pleader

No Appearance (for R5)

COMMON ORDER

The petitioners have filed these writ petitions seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent passed in Na.Ka.106533/V1/E3/2009, dated 22.12.2009, to quash the same and to consequently direct the respondents 1 to 4 to approve the appointment of the writ petitioners as Vocational Instructors in the 5th respondent school with effect from 11.8.2004 and 2.6.2003 respectively and pay them salary and other benefits.

2.The brief facts of the case are narrated as follows: The fifth respondent/School is a linguistic minority and a recognized school with grant-in-aid. The writ petitioners herein were appointed by the fifth respondent/school as Vocational Instructors with effect from 11.8.2004 and 2.6.2003 respectively in vacancies that arose due to retirement of the earlier appointees.

3.It is the case of the writ petitioners that Vocational Course, namely, Accountancy and Auditing Group, at the fifth respondent/school was duly sanctioned and approved by the proceedings of the Director of School Education dated 01.09.1983. By proceedings of the third respondent dated 18.2.1991 two full-time Vocational Instructors posts were allotted to the fifth respondent/School and it is the plea of the petitioners that by virtue of G.O.Ms.No.1719, dated 14.9.1978, the Correspondents of the aided schools are empowered to make appointments of Vocational Instructors in consultation with the Headmasters. It is added that the periodic staff fixation order issued by the respondent/authorities also shows the existence of the posts in the fifth respondent/school.

4.The fifth respondent/school, after appointing the writ petitioners, sent proposal to the fourth respondent for approval. However, the fourth respondent, by proceedings dated 8.4.2005, returned the proposal on the ground that the posts cannot be filled up as there was ban imposed by the Department. The appeal preferred by the fifth respondent/school to the second respondent on 11.3.2005 did not evoke any response. The writ petitioners waited for four long years and thereafter sent representations to the second respondent on 23.7.2009 seeking approval of their appointment as Vocational Instructor from the date of their appointment.

5.It is averred that on the date of appointment of the writ petitioners there was no ban on recruitment subsisting and, therefore, the returning of the proposal by the fourth respondent is bad in the eye of law. It is also pleaded that the fifth respondent/school, being a minority school, is entitled to appoint teachers in vacancies that arise in sanctioned posts, without seeking prior permission from the respondent/authorities.

6.Thereafter, by proceedings dated 22.12.2009, which is impugned in these writ petitions, the second respondent rejected the request of the writ petitioners holding that the posts are sanctioned only to the teachers and not to the fifth respondent/school and, therefore, once the teachers resign or retire or die or leave the school, the said post will be resumed to the respondent/department.

7.Assailing the said order dated 22.12.2009, the writ petitioners have filed these writ petitions for the relief stated supra.

8.Ms.P.Mahalakshmi, learned counsel for the writ petitioners submitted that the reasoning given by the second respondent that the post is sanctioned only to the teacher and not to the school is against all established procedures and law declared by this Court in various decisions. She further contended that the post is sanctioned only to the fifth respondent/school and not to an individual and, therefore, the fifth respondent is at liberty to fill up the post inasmuch as the same is a sanctioned post and there is no ban on appointment.

9.She further contended that even if the post is found to be surplus, the teacher appointed in the said sanctioned post cannot be sent out and has to be deployed to some

other needy school as per G.O.Ms.No.525 and, therefore, the reasoning given by the second respondent is erroneous, unreasonable and unsustainable in the eye of law.

10.Per contra, Mr.R.Govindasamy, learned Special Government Pleader appearing on behalf of respondents 1 to 4 contended that based on G.O.Ms.No.991, Education Department, dated 16.07.1990, the post of Vocational Instructor cannot be filled up after 16.07.1990 and if any post falls vacant, such post will automatically cease to function and the said post shall be deemed to be surrendered to Government. It is contended that the appointment of the writ petitioners was made when the ban imposed by the government was in force and, therefore, the appointments cannot be approved.

11.I heard Ms.P.Mahalakshmi, learned counsel appearing for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondent in both the writ petitions and perused the documents available on record.

12.A perusal of the documents shows that by G.O.Ms.No.991, Education Department, dated 16.07.1990, all the Chief Educational Officers were directed not to make any fresh appointment of part-time teachers (Vocational), without obtaining the prior permission of the Director of School Education. However, by G.O.Ms.No.1177, Education (HS3) Department, dated 01.12.1992, the Government lifted the ban on filling up of vacant posts of Part-time Vocational Instructors on conditions that there is no extra financial commitment to Government and that the total number of sanctioned posts of part-time Vocational Instructors should not be exceeded.

13.In the case on hand, a bare perusal of the appointment orders of the writ petitioners dated 11.08.2004 and 02.06.2003 shows that they were appointed in retirement vacancies in sanctioned posts and the same was made obviously after passing of G.O.Ms.No.1177, Education (HS3) Department, dated 01.12.1992, lifting the ban on appointments, subject to certain conditions. That apart, it is not the plea of the respondent authorities that there is extra financial commitment to Government by virtue of the appointment of the writ petitioners and that the total number of sanctioned posts of part-time Vocational Instructors had exceeded. Admittedly, the petitioners have been appointed in retirement vacancies and, therefore, no extra financial commitment or increase in the sanctioned

posts is made. The averment in the affidavit filed in support of the writ petition that the staff fixation order shows the said sanctioned posts is also not disputed by the respondent authorities in their counter affidavit or across the bar. Therefore, this plea of the learned Special Government Pleader appearing on behalf of the respondent authorities cannot be countenanced.

14. The next contention of the learned Special Government Pleader appearing on behalf of the respondent authorities that the posts are sanctioned only to the teachers and not to the fifth respondent/school and, therefore, once the teachers resign or retire or die or leave the school, the said post will be resumed to the respondent/department, also does not hold water in view of the decision of a Division Bench of this Court in *The State of Tamil Nadu and others v. The Correspondent, St. Joseph's Malankara Shyrian Catholic Higher Secondary School*, [Judgment dated 31.7.2013 made in W.A. (MD) No.652 of 2013], wherein it was held as under:

"4. The issue as to whether a person appointed in a sanctioned post by a minority school can be denied approval of appointment was considered by a Division Bench of this Court in W.A (MD) No.16 of 2011, dated 25.1.2011, wherein in paragraph Nos.(3) to (5), it is held thus:

'(3) Learned counsel appearing for the first respondent submits that one of the special teacher post (Sewing) became vacant and in the said vacancy, the first respondent was appointed from 15.7.2004 and she is serving in the second respondent school all these years. Learned counsel for the first respondent also submitted that the said sanctioned post is in existence and the appellants neither declared the said post as surplus nor resumed the post till date from the second respondent school. To prove the availability of the post, the staff fixation orders of the school is filed. The reason stated by the District Elementary Educational Officer for rejecting the request for approval was that there is reduction of student strength. The very same issue was considered by the Division Bench in

W.A.No.1263 of 2001, by order dated 22.1.2004, wherein this Court has held that if a person is appointed in a sanctioned post, the approval cannot be rejected and if there is a fall in strength and the post become surplus after granting approval to the post, the said teacher along with the post could be transferred/deployed to a needy school. The same is the view taken by the learned Single Judge in this case by relying upon the various other judgments.

(4) The learned counsel for the first respondent also submitted that an identical case was allowed by the learned Single Judge in W.P.No.7218 of 2008 by order dated 4.8.2009 and without filing an appeal against the said order, the said order was implemented by the very same second appellant in this appeal by order dated 18.9.2009.

(5) The said fact is also not disputed by the learned Special Government Pleader appearing for the appellants.

5. Applying the said judgment to the facts of the present case, there is no error in the order passed by the learned Single Judge...."

15. In the case on hand, nowhere it has been stated by the respondent authorities that the sanctioned posts have been declared surplus or that the same have been resumed. Therefore, the law enunciated in the decision cited supra squarely applies to the case on hand.

16. In the result:

(a) both the writ petitions are allowed and the impugned order passed by the 2nd respondent in Na.Ka.106533/V1/E3/2009, dated 22.12.2009, are set aside;

(b) a direction is issued to the respondents authorities to approve the appointment of the writ petitioners in the 5th respondent school from 11.08.2004 and 02.06.2003 respectively and to pay them salary and other benefits forthwith;

(c) such exercise shall be carried out by the respondents authorities within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

vs

To

- 1.The Secretary to Government
Government of Tamil Nadu
School Education Department
Fort St. George, Chennai - 600 009.
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(Higher Secondary Vocational)
College Road, Chennai - 600 006.
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Thiruvettar P.O., Kanyakumari District.

2 ccs to Mr.P. Mahalakshmi, Advocate, Sr. 75093, 75094

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M.P.Nos.1 and 1 of 2010

SSI (CO)
kk 25/11