

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.24066 of 2003

Young Men's Christian Association
Madras, rep. By its General
Secretary, Mr.G.Ebinesan

...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 District Educational Officer,
Chennai East,
Thayar Sahib Street,
Chennai 600 002.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandmus calling for the records pertaining to the impugned proceedings issued by the second respondent in his proceedings Na.Ka.No.45914/W6/2003 dated 26.05.2003 and quash the same and consequently direct the respondents herein to approve the appointments made in the vacant posts from 01.06.2003 in the petitioner's YMCA Boys Town High School with salary and other benefits

For Petitioner : Mr.S.Dharmakkan

For Respondents: Mr.A.Zakir Hussain, GA

O R D E R

The prayer sought for in this writ petition is for a writ of Certiorarified mandamus to call records pertaining to the impugned proceedings issued by the second respondent in his proceedings Na.Ka.No.45914/W6/2003 dated 26.05.2003 and quash the same and consequently direct the respondents herein to approve the appointments made in the vacant posts from 01.06.2003 in the petitioner's YMCA Boys Town High School with salary and other benefits.

2.The short facts leading to the filing of this writ petition is as follows:

The Young Men's Christian Association, Madras has established Boys Town High School in the year 1945. The said Boys Town High School is a recognized minority institution within the meaning of Article 30(i) of the Constitution of India. It has standards from 1 to 10 and nearly about 1200 pupils were studying in the said school. There were 27 Secondary Grade teachers, one headmaster and one Physical Education teacher working in the said school. The school has 29 sanctioned teaching posts approved by the respondents. There exists two secondary grade teachers vacancies, one arose out of retirement and the other on account of resignation of a teacher. While the petitioner took steps to fill up those two vacancies, all of a sudden the present impugned order dated 26.05.2003, was issued in the form of Government letter.

3.According to the impugned order dated 26.05.2003, the Government considering the proposal to determine to downgrade certain teaching posts, which have already been sanctioned to various private aided schools. Till a decision is taken by the Government, in this regard, regarding downgrading the posts, no appointment to the vacancies arising as on 01.06.2003 in these schools, shall be filled up by the respondent/management.

4.Because of this impugned communication, putting a ban on the appointment to be made for the sanctioned posts of teachers in the school coming under the control of the petitioner, the petitioner has challenged the said communication dated 20.06.2005, in this writ petition.

5. I have heard Mr.S.Dharmakkan, learned counsel for the petitioner and Mr.A.Zakir Hussain, learned Government Advocate appearing for the respondents.

6. Mr.S.Dharmakkan, learned counsel for the petitioner would submit that the very same impugned communication was under challenge in a batch of writ petitions filed by various

institutions and the managements. The said batch of such cases, challenging the very same impugned communication were clubbed together and heard and disposed of by this Court, by a common order dated 09.10.2003, in W.P.No.18650 of 2003 etc., batch, in the matter of Viveka Poorana Elementary School & Others vs. The Director of Elementary Education, Madras & Others.

7. Learned counsel for the petitioner would further submit that in the said judgment in the batch of cases, the very same impugned communication has already been quashed and therefore, the learned counsel would submit that the issue raised in this writ petition is covered by the said decision.

8. I have heard Mr.A.Zahir Hussain, learned Government Advocate appearing for the respondents, who would also state that the said order was passed by this Court quashing the very communication dated 26.05.2003 which is impugned herein. The said order was passed on 09.10.2003 in the said batch of cases, after having considering the issue at length it has ultimately concluded as follows:

"Learned counsel appearing for some of the petitioners represented that in some of the cases by virtue of interim order obtained from this Court appointments have been made specifically subject to the Government Order that may be passed. Inasmuch as the Government Order No.100 dated 27.6.2003 does not govern the appointments in private aided school, that Government Order is not applicable to them. Hence, those appointments will have to be considered as valid notwithstanding the impugned circulars. In some other cases, some appointments have already been made before 1.6.2003 but approval has not been given in view of the impugned circulars. Inasmuch as the impugned circulars are held invalid in so far as it relates to the writ petitioners and inasmuch as no Government Order has been passed so far relating to the aided private schools the appointments made does not suffer from any illegality; in so far as the appointments made before the issuance of the impugned circular there is no ground to refuse the grant of approval. But it is for the authorities to consider the same and pass orders. Hence, the respondents are directed to consider those cases within four weeks from the date of receipt of copy of this order and pass orders.

13. In result, with the above directions the writ petitions are allowed. No costs. Consequently connected WPMPs are closed."

9. Since the very impugned communication of the second respondent in Na.Ka.No.25873/AC-1/2002, dated 26.05.2003 has already been held to be invalid, in the aforesaid order in a batch of cases, this writ petition is covered by the said decision of this Court, as the very same order is challenged herein also.

10. In the result, the impugned order is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

1. The State of Tamil Nadu
rep. By its Secretary,
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2. The Director of School Education,
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+1 CC to Govt. Pleader sr 87411.

W.P.No.24066 of 2003

SP(11/01/2018)