

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2017

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.26621 of 2003
& WPMP.No.32528 of 2003

The Bishop- Chairman
Church of South India Diocese of Coimbatore
No.204, Bishop's House,
Race Course,
Coimbatore 641 018.

...Petitioner

-Vs-

1. The State of Tamil Nadu
rep. By its Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai 600 006.
- 3.The District Elementary Educational Officer,
Coimbatore, Coimbatore District.
- 4.The District Elementary Educational Officer,
Udhagamandalam, The Nilgiris 643 001.
- 5.The District Elementary Educational Officer,
Erode District, Erode.
- 6.The District Elementary Educational Officer,
Salem, Salem District.
- 7.The District Elementary Educational Officer,
Dharmapuri, Dharmapuri District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings issued by the second respondent Director of Elementary Education in Na.Ka.No.25873/AC-1/2002 dated 26.05.2003 (prohibiting the appointment of teachers in private schools from 01.06.2003) and quash the same and further direct the respondents herein to approve and release the salary to the staff as may be appointed against sanctioned posts in the petitioner's schools annexed to this writ petition.

For Petitioner : Mr.P.Godson Swaminath

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 for the records pertaining to the impugned proceedings issued by the second respondent in Na.Ka.No.25873/AC-1/2002, dated 26.05.2003 (prohibiting the appointment of teachers in private schools from 01.06.2003) and quash the same and further direct the respondents to approve and release the salary to the staff as may be appointed against the sanctioned posts in the petitioner's schools annexed to this writ petition.

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

The Church of South India is a limited company incorporated under the Indian Companies Act, 1913 on 26.09.1947, under the name of 'The Church of South India Trust Association'. The said Church had been demarcated into 21 Dioceses. Out of 21, Coimbatore is one of the diocese where, the Districts like Erode, Salem, Dharmapuri etc., are covered. Under the Coimbatore diocese, there are 82 schools functioning and they are administered by a single unit, under the over all administration of the diocese as a Corporate Body. The said administrative body would make appointments, postings and transfer of teachers and other employees in various schools coming under the control of the management. The schools for the purpose of getting aid from the Government from time to time, have been sanctioning the teaching and non-teaching posts. While so, 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 schools 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.P.Godson Swaminath, learned counsel for the petitioner and Mr.A.Zakir Hussain, learned Government

Advocate appearing for the respondents.

6. Mr.P.Godson Swaminath, 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 and 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 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu
Department of School Education,
Fort St. George,
Chennai 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai 600 006.
- 3.The District Elementary Educational Officer,
Coimbatore, Coimbatore District.
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Udhagamandalam, The Nilgiris 643 001.
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Erode District, Erode.
- 6.The District Elementary Educational Officer,
Salem, Salem District.
- 7.The District Elementary Educational Officer,
Dharmapuri, Dharmapuri District.

+1cc to Mr.P.Godson Swaminath, Advocate, S.R.No.86667

+1cc to the Government Pleader, S.R.No.87412

W.P.No.26621 of 2003

KS (CO)
RRK (22/01/2018)