



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 20.07.2017
Pronounced on 04.08.2017

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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.1528 of 2014
and
M.P. (MD) .No.3 of 2014

A.Lourdu Packia Jeya

.. Appellant

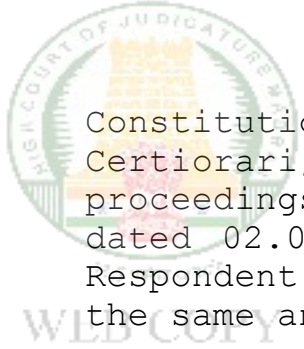
Vs.

1. The Chief Educational Officer,
Tuticorin District,
Tuticorin.
2. The District Educational Officer,
Kovilpatti,
Tuticorin District.
3. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.
4. The Manager,
R.C.Schools,
Tuticorin Dioces catholic Bishop's House,
5. The Correspondent,
St.Antony's High School,
Periyasamipuram,
Vembar Via, Vilathikulam Taluk,
Tuticorin District.

6.T.Antony Kingslin Rani

.. Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to allow the writ appeal by setting aside the order passed in W.P.(MD).No.3636 of 2013, dated 13.03.2014, on the file of this Court.



Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the 1st Respondent in Na.Ka.NO. 383/A3/2013 dated 02.02.2013 & the subsequent proceedings issued by the 3rd Respondent in Na.Ka.No. 3556/A3/2012 dated 07.02.2013 and quash the same and to pass such further or other orders.

For Appellant : Mr.G.Thalaimutharasu

For Respondents : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader
for RR1 To 3
Mr.A.Xavier Arulraj for RR4 and 5
Mr. F.Deepak for Mr. G.Sankaran
For R6

JUDGMENT

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

This third party appeal is directed against the order dated 13.03.2014 allowing W.P.(MD).No.3636 of 2013 filed by the sixth respondent herein.

2.According to the sixth respondent herein, she was appointed as Pre Vocational Instructor in Tailoring in St. Antony's High School, Periyasamipuram on 26 September 2008 in the regular vacancy caused by the retirement of the then incumbent. Her appointment to the post of Pre vocational Instructor (Tailoring) was approved by the department vide proceedings dated 26.09.2009 issued by the District Elementary Educational officer, Tuticorin. Grant in aid for payment of salary was also released. Thereafter, the said school was upgraded as High School and the writ petitioner was duly absorbed in the High School vide proceedings dated 19.10.2012. Subsequently, the Chief Educational Officer, Tuticorin issued proceedings dated 02.02.2013 cancelling the absorption of the Writ Petitioner in the fifth respondent school.

3.Pursuant to the order dated 02.02.2013 issued by the Chief Educational Officer, Tuticorin, the District Elementary Educational Officer, Tuticorin issued proceedings dated 07.02.2013, cancelling the approval of the Writ Petitioner's appointment.

4.Questioning both, the sixth respondent herein filed W.P. (MD).No.3636 of 2013. The learned Single Judge allowed the Writ Petitioner's appeal and quashed both the orders. Even though the department did not question the same, the appellant herein who is a third

party obtained leave and filed this intra-court Appeal.

5. Heard the learned counsel for the appellant and the learned Additional Government Pleader and also the learned counsel appearing for the fifth and sixth respondents.

6. The learned counsel appearing for the appellant pointed out that the orders impugned in the Writ Petition ought to have been sustained, since, the case of the Writ Petitioner was governed by Rule 15 (6-A), Annexure V-A(9) and not Rule 15 (6-A) annexure V (15).

7. The learned counsel appearing for the appellant contended that the learned single Judge did not refer to the correct provisions and thus erred in allowing the writ petition. We called upon the learned Additional Government Pleader appearing for the official respondents to clarify the position. The third respondent has filed his counter affidavit. In the said counter affidavit, it has been mentioned that in the fifth respondent school one Fathima was working as Sewing Teacher. When she retired, vacancy arose and in her place, the sixth respondent here was appointed. When the said middle school was upgraded as High School, the sixth respondent was also absorbed along with others. The sixth respondent was absorbed only as Pre Vocational Instructor (Sewing). As per annexure V-A(9) of Tamil Nadu Private Schools Regulations Act, qualification required for Junior Grade Technical Sewing Instructor is as under:

"1. A Pass in SSLC

and

2. Government Technical Examination (Higher Grade in Needle Work and Dress making and Higher Grade in Embroidery)

Or

Industrial School Certificate

Or

National Trade Certificate awarded by the National Council for Training in Vocational Trades, Govt. Of India or the Diploma awarded by the Director General of Re-settlement and employment, New Delhi in Embroidery and Needle Work;

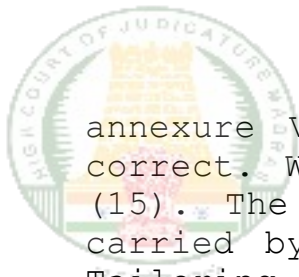
Or

Diploma in Costume Designing and Dress making issued by the State Board of Technical Education and Training, Chennai

and

3. Technical Teacher's Certificate".

8. Admittedly the sixth respondent here is not possessing Technical Teacher's Certificate. Before the learned Single Judge, the learned Counsel appearing for the writ petitioner had contended that the relevant qualification is what is prescribed in



annexure V (15). It is now seen that this contention is not correct. What is relevant is Annexure V-A(9) and not Annexure V (15). The wrong provision was cited and the learned judge got carried by the same. There is a difference between the post of Tailoring Instructor and the post of Sewing Instructor.

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9.The learned Additional Government Pleader fairly submitted before this Bench that an appeal ought to have been filed by the department. In any event, now that the correct legal position has been placed in this Writ Appeal, we have no hesitation to set aside the order allowing the writ petition.

10.The Writ Petitioner / sixth respondent herein is having only Technical Examination Certificate. On the other hand what is required for the post in question is Technical Teachers Certificate. Technical Teachers Certificate Course is conducted by the Director of Technical Education and is a two years Course. The Course includes drawing, sewing and music also. It is completely different from Technical Examination Certificate. When the sixth respondent is possessing only Technical Examination Certificate, the same cannot be a qualification for a Sewing Teacher. It is unfortunate that a wrong provision was cited before the learned single Judge. It is true that the learned single Judge took note of the fact that orders impugned in the writ petition was passed in violation of principles of natural of justice. But, on that ground we do not want to sustain the order allowing the Writ Petition. Remitting the matter to the file of the respondent would only be a case of useless formality. We are satisfied that the Writ Petitioner did not possess the qualification prescribed under the Statute. Unqualified persons cannot be appointed to a sanctioned post.

12.The third respondent has filed his counter affidavit setting out the factual position as well as the law governing the case. In fact, it should have been done before the learned single Judge. If the learned single has been appraised of the correct legal position, the writ petition would not have been allowed.

13.We therefore set aside the order dated 13.03.2014 made in W.P.(MD).No.3636 of 2013. The Intra Court appeal is accordingly allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/



To:

1. The Chief Educational Officer,
Tuticorin District,
Tuticorin.

2. The District Educational Officer,
Kovilpatti,
Tuticorin District.

3. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.

+1 cc to The Special Government Pleader in SR.No.71355
+1cc to Mr.G.Thalaimutharasu, Advocate in SR.No.70466
+1cc to Mr.G.Sankaran, Advocate in SR.No.70527
+1cc to Mr.V.John Kennedy, Advocate in SR.No.70393

Arul/dsk

AE/SKN RSK/SAR2/09.08.2017/5P/8C

**Pre-delivery JUDGMENT MADE IN
W.A(MD) No.1528 of 2014
and
M.P. (MD) .No.3 of 2014
04.08.2017**