



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD) No.716 of 2014
and
M.P.(MD).No.1 of 2014

1. The State of Tamil Nadu
Through its Secretary
Education Department
Fort St. George, Chennai - 600 009
2. The Director of School Education
College Road, Chennai - 600 006
3. The Chief Educational Officer
Pudhukottai
Pudhukottai District
4. The District Educational Officer
Pudhukottai
Pudhukottai District

... Appellants/Respondents

-vs-

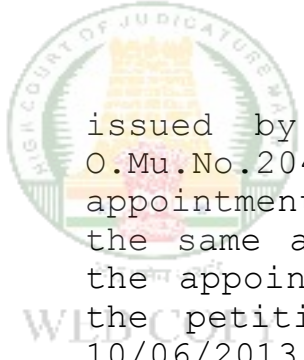
The Correspondent
St.Thomas Higher Secondary School
Nazareth, Kunnathur Post
Pudhukottai District - 621 316

... Responden/Writ Petitioner

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 10.03.2014 in W.P.(MD).No.16983 of 2013, on the file of this Court.

Prayer in WP(MD). 16983/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 3rd respondent Chief Educational Officer vide proceedings Mu.Mu.No.6815/A5/2011 dated 27.02.2012 (refusing to convert the BT Assistant in English into that of BT Assistant in Tamil) and the consequential proceedings



issued by the 4th respondent District Educational Officer in O.Mu.No.2049/A5/2013 dated 24.06.2013 (refusing approval to the appointment of Tmt.Alice Mary as B.T.Assistant in Tamil) and quash the same and further direct the respondents to forthwith approve the appointment of Tmt.Alice Mary as B.T.Assistant in Tamil in the petitioner school from the date of her appointment viz., 10/06/2013 with salary and all other attendant benefits.

For Appellants : Mr.V.R.Shanmuganathan,
Special Government Pleader.

For Respondent : Mr.S.Xavier Rajini

J U D G M E N T

[Judgment of the Court by T.S.SIVAGNANAM, J.]

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants / respondents and Mr.S.Xavier Rajini, learned counsel appearing for the respondent / writ petitioner.

2. This Writ Appeal is filed by the Government against the order, dated 10.03.2014, made in W.P.(MD).No.16983 of 2013.

3. The respondent / writ petitioner filed the writ petition challenging the proceedings of the third appellant / Chief Educational Officer, dated 27.02.2012, rejecting his request for conversion of B.T.Assistant in English into that of B.T.Assistant in Tamil and the consequential proceedings of the fourth appellant / District Educational Officer, dated 24.06.2013, refusing the approval to the appointment of one Tmt.Alice Mary as B.T.Assistant in Tamil and also for a direction to the appellants / respondents to approve her appointment and to pay salary and other benefits from the date of her appointment.

4. The learned Single Judge, while considering the matter referred to the decision of the Division Bench, in W.A.No.1198 of 2007 and allowed the writ petition. The legal question involved in this matter is as to whether the Minority Institution can be compelled to follow a subject roster without there being appropriate amendment to the relevant Rules. This issue was considered by the Division Bench and it was held in favour of the institution. It was pointed out by the learned counsels on either side that the case of the appellants / respondents itself is based on G.O.(Ms).No.144, Education (D1) Department, dated 04.07.2008. This Government Order was subject matter of challenge in **R.Emerson**



2012 and this Court by order, dated 22.08.2013, allowed the said writ petition and quashed the said Government Order. The operative portion of the said order, dated 22.03.2013, reads as follows:

" 3. Similar issue was considered by this Court in the decision reported in 2006(5) CTC 504 - The Corporate Management, CSI Corporate Schools, CSI Diocese of Kanyakumari, Nagarcoil vs. The State of Tamil Nadu, rep by its Secretary, Chennai and others and this Court quashed the Circular, dated 26.10.2004 issued, restricting the number of teachers having degrees in the same subject in a school.

4. The said decision was considered by a Division Bench of the Principal Seat in the Judgment dated 20.09.2007 made in W.A.No.1198 of 2007 wherein it is held thus:

"3. In fact the legal implication of the said proceedings dated 26.10.2004, was considered by this Court in the light of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (in short T.W. Act 29 of 1974) in the Correspondent, Britannia Higher Secondary School, Chennai vs. State of Tamil Nadu, rep. by its Secretary, Department of School Education, Chennai and others (2007 (2) MLJ 760) and held that the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate teachers. That was also the decision taken earlier by the Madurai Bench of Madras High Court in the corporate Manager, CSI Corporate Schools Vs. State of Tamil Nadu (2006 (5) CTC 504). It was also considered in the above said cases that the executive instruction cannot supersede the statutory provision, by relying upon the decision of the Supreme Court in B.N. Nagarajan Vs. State of Karnataka (1979 II LLJ 209 (SC), which was subsequently reiterated by the Supreme Court in V.Sreenivasa Reddy Vs. Government of A.P. (AIR 1995 SC 586). Therefore, by virtue of the above said judgments, it is the categoric decision of this Court that the proceedings of the second appellant dated 26.10.2004 by imposing subject roster in making appointment is not Valid and is in violation of the provisions of the Act 29/74. In view of the same, there is absolutely no reason to interfere with the order of the learned Single Judge.



WEB COPY

Consequently, the writ appeal fails and the same is dismissed with direction to the appellants to approve the appointment of V.J. Titus Prabhakar (Mathematics) with effect from the date of his appointment with salary and other benefits within a period of four weeks from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed".

5. We are informed by the learned Special Government Pleader that as against the said order, no writ appeal has been preferred by the Government.

6. In the light of the above, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary,
Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Pudhukottai, Pudhukottai District.
4. The District Educational Officer,
Pudhukottai, Pudhukottai District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 50235
+ 1 CC TO Mr.T.CIBI CHAKRABOORTHY, ADVOCATE IN SR No. 50030

SKM/KRK

TE/JC/SAR-II : 28/04/2017 : 4P/7C