



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHANW.P(MD) No.14886 of 2015 and
M.P.(MD) Nos.1 and 2 of 2015

The Correspondent,
St.Joseph's Higher Secondary School,
Verkottu, Rameswaram-623 526.
Ramanathapuram District.

... Petitioner

-vs-

1. The Director of School Education,
College Road, Chennai-600 006.

2. The Joint Director of School Education,
College Road,
Chennai-600 006.

3. The Chief Educational Officer,
Ramanathapuram-623 501.
Ramanathapuram District.

4. The District Educational Officer,
Ramanathapuram-623 501.
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent Chief Educational Officer in Mu.Mu.No.1689/Aa2/2011 dated 28.03.2011 and the consequential proceedings issued by the 4th respondent DEO in Pa.Mu.No.2679/Aa3/2011 dated 28.06.2011 and O.Mu.No.6621/A3/2013 dated 26.11.2013, quash the same and further direct the 3rd and 4th respondents to approve forthwith the appointment of S.Justin Chinnathambi as B.T.Assistant in English in the petitioner's school with effect from the date of his appointment, i.e.23.07.2009 and to disburse the grant-in-aid towards his salary and other attendant benefits.

For Petitioner
For Respondents

: Mr.T.Cibi Chakraborty
: Mr.S.Sathish Kumar
Addl. Govt. Pleader

**O R D E R**

This writ petition has been filed, seeking to quash the impugned order dated 28.03.2011 passed by the 3rd respondent in Mu.Mu.No.1689/Aa2/2011 dated 28.03.2011 and the consequential proceedings issued by the 4th respondent DEO in Pa.Mu.No.2679/Aa3/2011 dated 28.06.2011 and O.Mu.No.6621/A3/2013 dated 26.11.2013, by which, the third respondent granted permission for conversion of the post from Secondary Grade Teacher into B.T.Assistant in English, subject to the condition that the subject conversion would be reckoned only with effect from 28.03.2011. The petitioner School (hereinafter referred to as "the school") also sought a direction to the 3rd and 4th respondents to approve forthwith the appointment of S.Justin Chinnathambi as B.T.Assistant in English in the petitioner's school with effect from the date of his appointment, i.e.23.07.2009 and to disburse the grant-in-aid towards his salary and other attendant benefits

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, appearing for the respondents.

3. The school is owned and administered by the Roman Catholic Diocese of Sivagangai, which is a religions minority. One post of Secondary Grade Teacher in the School fell vacant on 23.07.2009 on account of resignation of one M.Anthony Xavier Rajan. In that vacancy, the school appointed one S.Justin Chinna Thambi as B.T.Assistant with BA (English) and B.Ed.Qualification in terms of G.O.Ms.No.79 (Secondary Education-U1) dated 14.06.2002 and he joined duty on 23.07.2009.

4. The school submitted a proposal to the 4th respondent requesting to approve his appointment as BT Assistant from 23.07.2009 and disburse grant-in-aid towards his salary. But the fourth respondent returned the proposal vide proceedings dated 28.03.2011, pursuant to which consequential proceedings were also issued issued by the 4th respondent DEO in Pa.Mu.No.2679/Aa3/2011 dated 28.06.2011 and O.Mu.No.6621/A3/2013 dated 26.11.2013, on the ground stated supra. Aggrieved by the same, the petitioner is before this Court with the relief stated supra.

5.The learned counsel for the petitioner has submitted that the issue is covered by the judgment of the Hon'ble Division Bench of this Court and has relied upon the Judgment of the Division Bench of this Court in W.A.No.2058 of 2010 dated 21.03.2011, wherein it has been held as under:

<https://hcservices.ecourts.gov.in/hcservices/> Aggrieved by the order of the learned single Judge in W.P.No.19902 of 2008, dated 10.04.2009, allowing the writ petition filed for conversion of the BT Assistant



Post into English with effect from 3.9.2003 with all attendant benefits, the State along with its Subordinate Officers have come with the present appeal.

2.Learned Addl.Government Pleader appearing for the appellants submitted that when the respondent Management sought for conversion from the post of PG Assistant History to PG Assistant English with effect from 3.9.2003, the date on which the concerned teacher was appointed, the second appellant allowed the conversion sought for by the respondent with effect from 8.12.2005, instead of 3.9.2003 on the ground tht no prior permission of the Chief Educational Officer is sought for. Since the refusal on the part of the appellants is in accordance with G.O.Ms.No.285, Educational Department, dated 1.10.1999, the impugned order is liable to be set aside.

3.We have perused the materials on record. It is seen that one Thiru S.Sebastian, who served as B.T.Assistant (History) was promoted as PG Assistant with effect from 03.09.2003 and in the said post the appellant was appointed with effect from 03.09.2003. On the aforesaid factual scenario, the learned single Judge by relying on the earlier decision of this Court reported in 2005 - WLR - 515 (M.Sivakumar v. The Government of Tamil Nadu by Secretary, Education Department, Fort St.George, Chennai & 2 others) has set aside the order passed by the appellant. It is not the case of the appellants that the aforesaid decision is not applicable to the facts of the present case. Since the post fell vacant on 3.9.2003 and the respondent had appointed the concerned teacher on 3.9.2003, we do not see any illegality in the order passed by the learned single Judge and the appellants cannot resist the claim of the respondent on the ground that prior permission ought to have been sought for.

4.In view of the above, we do not see any reason to entertain the writ appeal, which is accordingly dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed."

6. It is seen that in yet another judgment in W.A.(MD) Nos.828 of 2014 and 129 to 132 of 2015, dated 22.04.2016, the Hon'ble Division Bench of this Court, by referring to its earlier judgment dated 21.03.2011, held as follows:

"11.In view of the above consistent decisions of this Court on the issue, we are of the view that the issue is no more res integra. As rightly contended by the learned counsel for the 1st respondents/teachers, approval has to be granted only from the date of appointment and not from a later date, namely from the date on which permission for post conversion was granted.



12. Contention by the appellants that the returned proposals were not challenged by the management and hence it has to be treated as accepted and hence the teachers have no right to question the same cannot be accepted. It has to be seen that ultimately, it is the teachers who are affected. Therefore, even if the management has not taken up the cause, the aggrieved teacher has every reason to question the returned proposals. The educational authorities ought to have considered that the very object of the the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules made thereunder are to protect the interests of the teachers and students. Therefore, right of the teacher cannot be said to be extinguished. Power of the educational authorities to issue directions to fill-up the posts on conversion cannot be questioned. At the same time, the schools should be given latitude to fill-up the required posts. If Maths and other subject teachers are already working in a school, the management should have the right to fill up the posts with other subjects, if there is a need for filling up the posts with the required subjects.

13. In the light of the decision in W.A.No.2058 of 2010, dated 21.03.2011 and the discussions, all the writ appeals are dismissed. No order as to costs. Connected miscellaneous petitions are closed.

7. Heard the learned Additional Government Pleader appearing for the respondents, who fairly submitted that the issue on hand is squarely covered by the judgments of the Hon'ble Division Bench of this Court.

8. In view of the legal position enunciated in W.A.(MD) Nos.828 of 2014 and 129 to 132 of 2015, dated 22.04.2016 and also finding that the issue on hand is no more res integra and the approval has to be granted from the date of appointment and not from the later date, viz., from the date on which permission for post conversion was granted, this Court is of the view that the impugned orders dated 28.03.2011, 28.06.2011 and 26.11.2013 are liable to be set aside.

9. Accordingly, this writ petition is allowed and the impugned orders dated 28.03.2011, 28.06.2011 and 26.11.2013 are set aside. The respondents 3 & 4 are directed to approve forthwith the appointment of S. Justin Chinnathambi as P.T. Assistant in English in the petitioner's school with effect from the date of his appointment, i.e. 23.07.2009 and pay the



arrears of salary and other benefits within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The Director of School Education,
College Road, Chennai-600 006.
2. The Joint Director of School Education,
College, Road, Chennai-600 006.
3. The Chief Educational Officer,
Ramanathapuram-623 501.
Ramanathapuram District.
4. The District Educational Officer,
Ramanathapuram-623 501.
Ramanathapuram District.

+1cc to M/S.T.Cibi Chakraborty Advocate SR.No.11060

W.P(MD) No.14886 of 2015
27.02.2017

JM/MR/SAR 3/17.04.2017/5P/6C