



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.08.2017

Pronounced on : 11.12.2017

WEB COPY

CORAM :

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

W.A(MD)No.913 of 2017
and
C.M.P.(MD) No.6116 of 2017

1.The Secretary to Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 9.

2.The Director of Elementary Education,
Chennai - 6.

3.The District Elementary Educational Officer,
Thoothukudi.

4.The Assistant Elementary Educational Officer,
Alwarthirunagari at Thenthiruperai,
Thoothukudi District.

... Appellants

vs.

1.G.John Wilson

2.The Correspondent,
TDTA Middle Schools,
Udayakulam Pastorate,
Thoothukudi District.

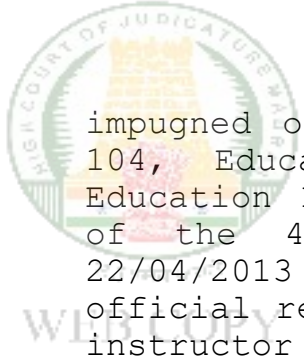
3.The Manager,
Primary and Middle Schools,
CSI Thoothukudi Nazareth Diocese,
Thoothukudi.

... Respondents

Prayer : Writ Appeal filed under clause 15 of the Letters Patent, to set aside the order dated 23.03.2017 passed in W.P.(MD) No.16960 of 2013 on the file of this Court.

Prayer in WP(MD). 16960/ 2013 :

<https://hcservices.ecourts.gov.in/hcservices/> 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 orders passed by Government of Tamil nadu in G.O.Ms.No. 104, Education Department, dated 12/07/2002 and G.O.Ms.no. 39, Education Department, dated 21/03/2003 and the consequential order of the 4th respondent passed in O.Mu.No. 326/a1/2013 dated 22/04/2013 and quash the same and consequently consequent direct the official respondents to approve the petitioners appontment as craft instructor in sewing in 5th respondent school from the date of the appointment.

For Appellants : Mr.T.S.Mohammed Mohideen
Additional Government Pleader
For Respondents : Mr.T.A.Ebenezer

JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

The Government of Tamil Nadu has filed this intra Court appeal questioning the order dated 23.03.2017 made in W.P.(MD) No.16960 of 2013 filed by the first respondent herein.

2.The case of the first respondent is that the second respondent herein is an aided minority school. It was having a sanctioned post of Craft Carpentering Teacher. On 01.02.2004, the School applied for conversion of the said post to that of Sewing Teacher. The application seeking conversion was kept pending. In the meanwhile, the writ petitioner was appointed as Craft Sewing Teacher in the school on 07.06.2004. The school management sent another proposal for conversion of the post along with the proposal for approving his appointment. A reminder was sent in 2009. The Department took the stand that the school had only a sanctioned post of Carpentering Teacher and therefore, the same cannot be filled up by a Sewing Teacher. The department passed an order dated 22.04.12013 rejecting the request of the school management. The same was challenged along with G.O.Ms.No.104 dated 12.07.2002 and G.O.Ms.No.39 dated 21.03.2009. The learned Judge allowed the writ petition and directed the department to approve the conversion of the post of Vocational Instructor in Sewing and grant approval for the appointment of the writ petitioner as Sewing Teacher with effect from 07.06.2004. Monetary benefits were also directed to be paid. This is under challenge in this intra Court appeal.

3.Heard the learned counsel for the Additional Government Pleader as well as the learned counsel for the writ petitioner/first respondent.

4.The learned counsel for the first respondent would place reliance on the orders dated 19.04.2007 and 21.04.2007 made in W.A. (MD) NOS.421 and 431 of 2017. He also filed typed set of papers enclosing earlier orders dated 26.02.2010 made in W.P.(MD) No.6303

of 2008 and order dated 20.03.2012 made in W.P.(MD) No.3548 of 2007 and order dated 19.11.2014 made in W.P.(MD) No.14537 of 2010.

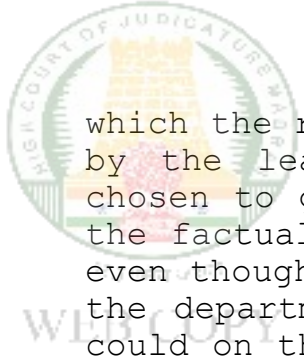
5.We have carefully gone through the decisions relied upon by the learned counsel for the writ petitioner.

6.We shall first examine the order dated 11.04.2017 made in W.A.(MD) No.421 of 2017. In the said case, the minority institution concerned had a sanctioned vacancy in the post of Pre-vocational Instructor (agriculture). But, without obtaining permission to convert the said post, they filled up the vacancy by appointing a Pre-vocational Instructor (Sewing). No prior approval was obtained. When the department declined to grant approval, the same was challenged by before this Court. The Division Bench dismissed the appeal filed by the Government after a discussion, which can be usefully extracted as under:

"7.In the case on hand, the first respondent management took a specific stand in the writ petition that after the retirement of Tmt.A.Irudaya Stella, on 31.05.2014, the students were not interested in agriculture subject and the school being situated in the seashore area and the water had become saline and unfit for raising saplings and crops and here was a constant request from the Parent Teachers Association in this regard, the management appointed the first respondent herein as Pre-Vocational Instructor (Sewing). It may be true that prior approval has not been obtained by the management before the appointment of Pre-Vocational Instructor (Sewing). But, what is important is that the post, which has been sanctioned is Pre-Vocational Instructor and the subject may be agriculture, carpentry, weaving, sewing and music.

8.Considering the factual situation pleaded by the management as well as the first respondent herein, there is no serious error committed by the management in accommodating the Pre-Vocational Instructor (agriculture). Further, it is brought to the notice of this Court that in respect of another similar appointment of one Tmt.J.Vanitha in Annai Terasa High School, Manappadu, by proceedings dated 12.03.2016, the District Educational Officer at Tirunelveli has approved the appointment. Thus, for all the above reasons, no good grounds are made out to interfere with the order passed by the Writ Court."

7.We say with utmost respect that we are not able to distill any ratio decidendi in any of the orders relied upon by the learned counsel for the writ petitioner/respondent herein. We may refer to the Article "Doctrine of Precedent and Stare Decisis in India" by SP.Gupta published in 2009 (3) SCC J-32 in this regard. When it is said that a case is binding, what it is that binds?. A previous case is binding only as to its ratio decidendi. The ratio decidendi of a case is the underlying principle or legal reason on



which the result of the case depends. In all the orders relied upon by the learned counsel for the writ petitioner, this Court has chosen to grant relief to the litigants before it after considering the factual situation. In none of the cases, it has been held that even though the sanctioned post could be one and prior permission of the department is required for converting the same, the Management could on their own go ahead and fill up vacancy and thereafter rush to the Court seeking ratification of their actions. When there was no sanctioned vacancy in the post of Sewing teacher, the question of appointing Sewing teacher does not arise. We are therefore constrained to set aside the order dated 23.03.2017 made in W.P.(MD) No.16960 of 2013.

8.This writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary to Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 9.

2.The Director of Elementary Education,
Chennai - 6.

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Alwarthirunagari at Thenthiruperai,
Thoothukudi District.

+One cc to The Special Government Pleader, SR.No.92654

+One cc to Mr.T.A.Ebenezer , Advocate, SR.No.92170

Arul

RL/7C/4P/KKR/SAR4/12/1/2018

Judgment made in
W.A(MD)No.913 of 2017

and
C.M.P. (MD) No.6116 of 2017
11.12.2017