



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.966 of 2014

and

W.M.P. (MD) No.1 of 2014

R.David Ebenezer

... Petitioner

Vs.

1. The Director of School Education,
College Road, Chennai - 600 006.
2. The District Educational Officer,
District Education Office,
Tirunelveli.
3. St.John's Higher Secondary School,
Represented by its Correspondent,
Palayamkottai,
Tirunelveli - 627 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by 2nd respondent herein vide Na.Ka.No.7984/A4/2013, dated 31.12.2013 signed on 02.01.2014 and quash the same and consequently direct the 2nd respondent herein to approve the petitioner's appointment as Office Assistant in the 3rd respondent school with effect from 23.10.2009 within a time stipulated by this Court.

For Petitioner : Mr.T.A.Ebenezar
For R-1 and R-2 : Mr.M.Murugan,
Government Advocate.
For R-3 : Mr.J.Mohan Kumar

ORDER

This Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by 2nd respondent herein vide Na.Ka.No.7984/A4/2013, dated 31.12.2013 signed on 02.01.2014 and quash the same and consequently direct the 2nd respondent herein to approve the petitioner's appointment as Office Assistant in the 3rd respondent school with effect from 23.10.2009 within a time stipulated by this Court.



2. Heard, Mr.T.A.Ebenezar, learned counsel appearing for the petitioner and Mr.M.Murugan, learned Government Advocate appearing for the respondents 1 and 2 and Mr.J.Mohan Kumar, learned counsel appearing for the third respondent.

3. Mr.M.Murugan, learned Government Advocate takes notice for the respondents 1 and 2 and Mr.J.Mohan Kumar, learned counsel takes notice for the third respondent. By consent, the Writ petition itself is taken up for final disposal.

4. The petitioner in this Writ petition was appointed as Office Assistant by the third respondent.

5. The crucial fact whether the appointment was against the sanctioned post was directed to be verified by the learned Government Advocate and the learned Government Advocate after getting instructions, has conceded the factual position that the petitioner to whom the approval is sought for was appointed as against the sanctioned post. In this case, the appointment is made by the third respondent, a private school getting aid from the Government.

6. The question whether prior approval is required or not before appointing a non-teaching staff in a private aided institution has already been decided in favour of the petitioner holding that no prior permission is required. The attempt of the Government by restricting or preventing the private aided institution from making appointment as against sanctioned post was the subject matter of challenge in several Writ petitions and this Court has consistently allowed all the Writ petitions quashing the order refusing approval or other Government Orders or instructions preventing the private aided schools from making appointment on their own as against sanctioned post.

7. Hence, following the law laid down by this Court in number of Judgments, this Writ petition is allowed and the impugned order in Na.Ka.No.7984/A4/2013, dated 31.12.2013 passed by the second respondent is set aside. The second respondent, namely, the District Educational Officer, Tirunelveli, in this Writ petition is directed to accord approval to the appointment of the petitioner as Office Assistant in the third respondent school which is a private aided institution with effect from the date of joining in service with all monetary and other service benefits within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)



To,

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

2. The District Educational Officer,
District Education Office,
Tirunelveli.

+1cc to Mr.T.A.Ebenezar, Advocate Sr.No.600865

PMU

VB/SV/MMS/SAR3/27.06.2017/3P/4C

ORDER MADE IN

W.P. (MD) No.966 of 2014
and
W.M.P. (MD) No.1 of 2014

19.06.2017