



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.1628 of 2016

and

C.M.P. (MD) .No.12326 of 2016

1. The Secretary,
Department of School Education,
State of Tamil Nadu,
Secretariat, Fort St. George,
Chennai - 9.
2. The Director of School Education,
DPI Campus, Chennai - 6.
3. The District Educational Officer,
Tirunelveli

... Appellants

Vs.

1. Rajkumar
2. The Correspondent,
St. Xavier's Higher Secondary School,
Palayamkottai - 627 002.
Tirnelveli District

... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent, against the order dated 30.08.2016 made in W.P.(MD).No.13326 of 2016, on the file of this Court.

Prayer in WP(MD). 13326/ 2016 :

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 pertaining to the orders passed by the 3rd respondent in his proceedings in A.Thi.Mu.No.7185/A2/11 dated 4.1.2012 and quash the same as illegal and consequently direct the official respondents to approve the petitioners promotion as Junior Assistant in 4th respondent school from 20.4.2011 and to pay all the service and monetary benefits, according to LAW.

For Appellants

: Mr.T.S.Mohamed Mohideen
Additional Government Pleader

For Respondent 1

: Mr. T.A.Ebenezer

For Respondent 2

: M/S.A.Amala for
CIBI Chakraborty

**JUDGMENT**

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

The Education Department is on appeal challenging the order dated 30.08.2016 allowing W.P.(MD).No.13326 of 2016 filed by the first respondent herein.

2. The case of the writ petitioner is that the second respondent herein is an Aided Minority School and that he was appointed as Record Clerk on 01.06.2006 and his appointment was approved. Thereafter, the School Management promoted him to the post of Junior Assistant on 20.04.2011. But, the proposal was returned and the DEO, Tirunelveli by order dated 04.01.2012 refused to approve the promotion of the first respondent. The Writ Petition questioning the said order was allowed. Hence this intra-court appeal has been filed.

3. Heard the learned Additional Government Pleader appearing for the Government and the learned counsel for the respondents.

4. It is no doubt true that the order impugned in the writ petition states that promotion given in favour of the writ petitioner cannot be approved because the management had not obtained prior permission for filling up the vacancies.

5. The learned single Judge focused entirely on this aspect of the matter. The learned single Judge rightly held that the question of obtaining prior permission to fill up a sanctioned vacant post in any aided institution would not arise. In that view of the matter, the order impugned in the writ petition was quashed and direction was given for approving the promotion of the first respondent herein with all monetary benefits. But the learned single Judge omitted to note that the rejection order was on two grounds. The other ground was whether there was a sanctioned vacancy at all in the post of Junior Assistant. The management had not mentioned as to how the writ petitioner could be promoted to the post of Junior Assistant. This was because the second respondent herein was sanctioned with only three posts of Junior Assistants and as on 20.04.2011, there were already three Junior Assistants working in the said school. Thus, the promotion of the writ petitioner was clearly to a non-sanctioned post.

6. Therefore, the order dated 30.08.2016, allowing the W.P. (MD).No.13326 of 2016 is hereby set aside. But, at the same time, the first respondent cannot be left in lurch. We make it clear that the order allowing this Writ Appeal would not stand in the way of the management in considering the case of the writ petitioner for appointment by promotion to the post of Library Assistant, if he is otherwise eligible.



7. The Writ Appeal stands allowed, as indicated above. No costs. Consequently, the connected, Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
State of Tamil Nadu,
Secretariat, Fort St. George,
Chennai.

2. The Director of School Education,
DPI Campus, Chennai.

3. The District Educational Officer,
Tirunelveli

+ 1 CC TO MR.T.Cibi Chakraborty, ADVOCATE IN SR No.72545

+ 1 CC TO MR.T.A.Ebenezer, ADVOCATE IN SR No.72723

km/dss

MK/KP/SAR-4/3P/6C/21.09.2017

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