



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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Writ Petition (MD) No.16120 of 2016
in
W.M.P. (MD) No.11790 of 2016

The Correspondent,
Boniface High School,
Ariyandipuram Post,
Ilayankudi - 630 702,
Sivagangai District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

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

3.The District Educational Officer,
Sivagangai, Sivagangai District.

... Respondents

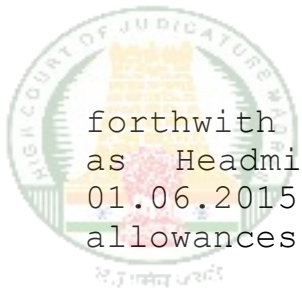
Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent District Educational Officer in Na.Ka.No.2161/A3/2015, dated 23.09.2015, quash the same and further direct the 3rd respondent District Educational Officer to approve forthwith the appointment of Tmt.A.P.Jeyarosi by way of promotion as Headmistress of the petitioner school w.e.f.01.06.2015 and disburse the grant-in-aid towards her salary with allowances and all other attendant benefits.

For Petitioner : Mr.T.Cibi Chakraborty

For Respondents : Mr.J.Gunaseelan Muthiah,
Government Advocate.

ORDER

<https://hcservices.ecourts.gov.in/hcservices/> Writ Petition is filed challenging the impugned proceedings issued by the third respondent dated 23.09.2015 and for issuing further direction to the third respondent to approve



forthwith the appointment of Tmt.A.P.Jeyarosi by way of promotion as Headmistress of the petitioner school with effect from 01.06.2015 and disburse the grant-in-aid towards her salary with allowances and all other attendant benefits.

2.It is the case of the petitioner that the petitioner is a minority institution and obtained a declaration from the 9th Assistant City Civil Court, Chennai, in O.S.No.4330 of 1982 with regard to minority status of the petitioner institution. The petitioner further submits that the post of Head Master in the petitioner institution fell vacant on 01.06.2015 due to the retirement of the then incumbent one Mr.Arul Pragasam on 31.05.2015. It appears that the petitioner appointed one Tmt.A.P.Jeyarosi as Headmistress by way of promotion with effect from 01.06.2015 and submitted proposal to the third respondent with necessary documents and particulars for grant of approval to the appointment. Despite the petitioner enclosed all necessary documents and particulars, the proposal was turned down by the third respondent only on the ground that the petitioner's status as minority institution has neither been approved by the Government nor by the High Court. The learned counsel for the petitioner submitted that the declaration of the minority status of the petitioner institution by the Civil Court in O.S.No.4330 of 1982 dated 08.08.1985 is sufficient for the respondent to recognize the petitioner institution as minority institution and the reason found in the order is contrary to the judgement of this Court in a catena of judgements. The learned counsel for the petitioner relied upon the judgement of a Hon'ble Division Bench of this Court in the case of **The Secretary, D.G.Vaishnav College v. Dr.T.Venkataraman** reported in **2001(4)CTC 641**.

3.The fact that the petitioner institution has been declared as a minority institution in the proceeding in O.S.No.4330/1982 on the file of the 9th Assistant City Civil Court, Chennai, by judgement dated 08.08.1985 is not in dispute. On further appeal by the Government in A.S.No.97 of 1987 on the file of the Second Additional Judge, City Civil Court, Chennai, the decree in O.S.No.4330 of 1982 was confirmed. The declaration granted by the City Civil Court, therefore, has become final. In such circumstances, this Court has categorically held in the case of **The Secretary, D.G.Vaishnav College v. Dr.T.Venkataraman** reported in **2001(4)CTC 641** that where the decree of Civil Court declaring minority status has become final, especially, where the Government also is a party to the proceedings before the Civil Court, the Government is bound by such decree unless there is specific legislation which declares such decree granted by Civil Court is not binding. The Division Bench has categorically approved the view expressed by a learned Single Judge of this Court in yet another Writ petition. The learned counsel for the petitioner also relied upon another judgement of this Court by a



learned Single Judge in the case in **Nalloor Vettuvanni Kandan Sastha Devaswom College at Attoor and N.V.K.S. Educational Agency, Vettuvanni, Marthandam, Kanyakumari District, rep by its Secretary Mr.S.Krishnamukar v. Government of Tamil Nadu** reported in (2010) 4 MLJ 517, where the judgement of Hon'ble Supreme Court in several cases were interpreted and held that the order rejecting the request of minority institution to treat the institution as a minority institution based on the declaration granted by a competent Court is bad and further observed that the order of Hon'ble Supreme Court cannot be applied to nullify a decree obtained by an institution which was not party to the proceedings before the Hon'ble Supreme Court. Similarly, in the case of **Kamaraj Memorial Higher Secondary School v. Government of Tamil Nadu** reported in (2010) 5 MLJ 172, it has been held that a declaration made by a competent Civil Court about the minority status of an institution need not apply to the Government to declare once again its status. Similar view was also expressed by the same Judge in another case in **Asan Memorial Association v. The State of Tamil Nadu** reported in 2009 Writ.L.R. 897. The learned counsel for the petitioner also relied upon another judgement of a learned Single Judge of this Court in W.P.No.1707 of 2011, dated 04.06.2012.

4. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

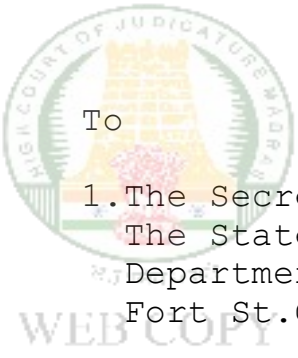
5. Considering the precedents relied upon by the learned counsel for the petitioner in this case, this Court accept the case of the petitioner that the impugned order passed by the third respondent is not sustainable. The petitioner's status as minority institution has already been declared by the Civil Court way back in 1985. It is now settled that it is not necessary for the petitioner, either to approach the Government or to seek further direction from this Court by filing a Writ Petition for recognizing the petitioner as a minority institution. In that view of the matter, the impugned order passed by the third respondent is set aside and the matter is remitted to the third respondent to consider the case of the petitioner purely on merits and in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True copy/



To

1.The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai - 600 009.

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

3.The District Educational Officer,
Sivagangai, Sivagangai District.

+1 cc to Special Government Pleader, SR.No:14700

+1 cc to Mr.T.Cibi Chakraborty , Advocate in SR.No. 14639

SRM

AE/RR/23.03.2017/4P/6C

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in

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