



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)No.1497 of 2017

and

C.M.P.(MD)No.11940 of 2017

1.The Chief Educational Officer,
Tirunelveli.

2.The District Educational Officer,
Cheranmadevi,
Tirunelveli District

: Appellants/Respondents 1 & 2

Vs.

1.S.Josephin Vijaya

: 1st Respondent/Writ Petitioner

2.The Correspondent,

St. Antony's High School,

Somanathaperi,

Tirunelveli District.

: 2nd Respondent/3rd Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 12.07.2017 made in W.P.(MD)No.3570 of 2017.

Prayer in WP(MD). 3570/ 2017 :

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 order passed by the 2nd respondent in his proceedings in Na.Ka.No. 4414/A1/2016 dated 09.12.2016, quash the same and direct the 2nd respondent to approve the promotion for the petitioner as B.T. Assistant with effect from 01.06.2012 with all monetary benefits.

For Appellants : Mr.VR.Shanmuganathan,
Special Government Pleader

For Respondent No.1 : Mr.V.Panneerselvam

JUDGMENT

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

The Appellants/Respondents 1 and 2 have focussed the instant Intra-Court Writ Appeal as an 'Aggrieved Person' as against the order dated 12.07.2017 in W.P.(MD)No.3570 of 2017 passed by the Learned Single Judge.

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2. The Learned Single Judge, while passing the order in W.P.

(MD)No.3570 of 2017, on 12.07.2017, at Paragraph Nos.8 and 9 had observed the following:-

"8. Therefore, when it is an admitted case that when one Mr.Pauldurai working as Secondary Grade Teacher in the Middle School Section namely, Standards VI to VIII in the 3rd respondent School retired on reaching the age of superannuation on 31.05.2012, as per G.O.Ms.No.79, Secondary Education (U-1) Department, dated 14.06.2002 the post of Secondary Grade Teacher stands automatically upgraded into that of Graduate Teacher with effect from 01.06.2002.

9. Therefore, this Court finds no infirmity in the proposal sent by the 3rd respondent school and finding grave error in the impugned order dated 09.12.2016, this Court sets aside the same. The 1st respondent is hereby directed to approve the appointment of the petitioner as B.T. Assistant with effect from 01.06.2012 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order along with salary arrears and other benefits."

and allowed the Writ Petition.

3. Being dissatisfied with the order of the Learned Single Judge dated 12.07.2017, in allowing the Writ Petition in W.P.(MD)No. 3570 of 2017, the Appellants have preferred the present intra-Court Writ Appeal by projecting an argument that the Learned Single Judge should have seen that as a policy decision to improve the quality of education at Primary level, the Government issued G.O.Ms.No.79, School Education Department, dated 14.06.2002, which mentioned that from 2002-2003 academic year, whenever a vacancy arises in the post of Secondary Grade Teacher teaching classes VI to VIII, the posts would be converted to that of Middle Grade Graduate Teacher in a phased manner and B.Ed., qualified teachers would be appointed in Secondary Grade Teachers scale, but with one increment.

4. It is represented on behalf of the Appellants that inasmuch as there were two types of B.Ed., teachers, viz., one taking classes IX and X and another Classes VI to VIII, one with B.T. scale and other with Secondary Grade scale, in order to avoid confusion, the Government passed G.O.Ms.No.100, School Education Department, dated 27.06.2003, in and by which, B.Ed., Graduates shall be appointed to teach Classes VI to X and that whenever vacancies arise in Secondary Grade Posts, it will be filled up with B.Ed., Graduates in a phased manner and that they shall teach Maths, Science and English. In short, it is the submission of the Learned Special Government Pleader for the Appellants that the afore-stated Government Order in G.O.Ms.No.100, School Education Department, dated 27.06.2003, envisaged three types of teachers, viz., Secondary Grade Teachers for classes I to V, B.T. Assistant Teachers for Classes VI to X and P.G. Assistant Teachers for Classes XI and XII. Moreover, it is the



stand of the Appellants that they shall be appointed on a consolidated pay with effect from 01.06.2003 and that the said Government Order created about 12,000 posts and distributed it to various Schools.

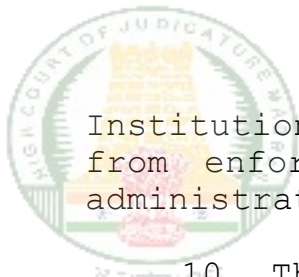
5. Advancing his arguments, the Learned Special Government Pleader points out that vide G.O.Ms.No.125, School Education Department, dated 12.11.2003, Rules were issued and thereafter, the candidates appointed in consolidated pay scale were brought to time scale with effect from 01.06.2006. Furthermore, it is brought to the notice of this Court on behalf of the Appellants that G.O.Ms.No.244, School Education Department, dated 22.09.2007 was passed to the effect that insofar as the B.T. Assistant (Tamil) Posts are concerned, two third shall be promoted from the post of Secondary Grade Teacher and rest one third shall be recruited by direct recruitment. Likewise, the Secondary Grade Teacher posts teaching classes VI to VIII converted to B.T. Assistant posts shall be filled up with not only on Maths, English and Science subjects, but also other subjects. Later, G.O.Ms.No.144, School Education Department, dated 04.07.2008 was passed extending G.O.Ms.No.244, dated 22.09.2007 to Aided Schools also.

6. The Learned Special Government Pleader for the Appellants comes out with a stand that the Learned Single Judge should have seen that Regulations, in the interest of efficiency, discipline, health, sanitation, morality, public order, are not restriction in subsistence on the right of Minority Institutions. Apart from that, the Learned Special Government Pleader for the Appellants contends that the protection of Article 30 of the Constitution of India would not further be available to the Aided Schools.

7. The Learned Special Government Pleader submits that Minorities based on religion or language have fundamental freedom to establish and manage Educational Institutions of their own choice. However, the State has right to provide regulatory provisions for ensuring educational excellence, conditions of employment of teachers, ensuring health, hygiene, discipline and allied matters.

8. In pith and substance, the contention of the Learned Special Government Pleader for the Appellants is that such regulatory provisions do not interfere with the minorities fundamental right of administering their Educational Institution and added further, if regulatory provisions indirectly impinge upon minorities right of administration of their institution, it would not amount to interference with the fundamental freedom of the minorities, since the regulatory provisions are in the interest of minority institutions themselves.

9. Expatiating his arguments, the Learned Special Government Pleader takes a plea that a Minority Institution is to be fully equipped with educational excellence to keep in step with others in the state. Also that, it is projected on the side of the Appellants that the Learned Single Judge should have seen that the Minority



Institutions are bound by Law and, therefore, cannot claim immunity from enforcement of Law, in the garb of interference with the administration.

10. The Learned Special Government Pleader for the Appellants emphatically points out that the order of the Appellants in refusing to approve the appointment made against the Rules is as per law and the same is in order. Besides this, the Learned Special Government Pleader contends that the Learned Single Judge should have seen that conversion must precede appointment and in the instant case, the School had appointed on its own before the Department has converted the post to that of B.T. Assistant.

11. The Learned Counsel for the first Respondent fairly submits that the subject matter in issue is covered by a Division Bench Judgment of this Court in W.A.(MD)No.1350 of 2017, dated 14.11.2017 between the Government of Tamil Nadu, Represented by Secretary to Government, Department of School Education, Fort St. George, Madras-9 and three others V. J.Remila and another, whereby and whereunder, the Division Bench of this Court [Consisting of Hon'ble Mr.Justice M.Venugopal and Hon'ble Mr.Justice Abdul Quddhose], at Paragraph Nos.30 and 31, had observed the following:

"30.In the case on hand, it is not the case of the Appellants that the appointment procedure as regards the First Respondent was not fair, discriminatory and irrational. Therefore, applying the ratio held in the judgment reported in (2017) 3 SCC 619, cited supra, it is held by this Court that the grounds raised by the Appellants for sustaining the impugned proceedings dated 19.05.2014 and 21.09.2015, does not deserve any merit.

31.This Court opines that even though the State has the power to regulate Minority Educational Institutions in the interest of 'Efficiency', 'Discipline', 'Health', 'Sanitation', 'Morality', 'Public Order', the impugned proceedings dated 19.05.2014 in O.Mu.No.1143/A3/2014, on the file of the Third Appellants and the consequential proceedings dated 21.09.2015 in O.Mu.No.4309/AA1/2015, on the file of the Fourth Appellants, do not come within those parameters and therefore, the said impugned proceedings interferes with an overall administrative control of the Second Respondent Minority Institution over its staff and abridges/dilutes their right to establish and administer their Educational Institution."

and ultimately, came to the conclusion that there was no infirmity in the order passed by the Learned Single Judge therein and resultantly, dismissed the Writ Appeal.

12. This fact is not disputed on behalf of the Appellants.

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13. Following the Judgment in W.A.(MD)No.1350 of 2017, dated



14.11.2017, it is held by this Court that the order of the Learned Single Judge in W.P.(MD)No.3570 of 2017, dated 12.07.2017 does not suffer from any material irregularity or illegality in the eye of Law. Consequently, the Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Educational Officer,
Tirunelveli.

2.The District Educational Officer,
Cheranmadevi,
Tirunelveli District.

+1cc to Mr.V.Panneerselvam, Advocate, Sr.No.93496

Judgment made in
W.A.(MD)No.1497 of 2017
Dated: 14.12.2017
(2/2)

SML

JM/KK/SAR 1/10.01.2018/5P/4C