



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

Writ Petition(MD)No.11603 of 2011

and

M.P(MD)No.1 of 2011

C.Jebasingh

... Petitioner

Vs.

1.The Additional Assistant Elementary
Education Officer, Kalakad,
Tirunelveli District 627 501.

2.The District Elementary Educational Officer,
Tirunelveli.

3.The Correspondent,
T.D.T.A, Primary & Middle Schools,
Perumalkulam Pastorate, Kalakad,
Tirunelveli District 627 502.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus, directing the respondents 1 and 2 to approve the appointment of the Petitioner in the 3rd respondent's school as Physical Vocational Instructor (Sewing) with effect from 11-12-2008 and consequentially direct the Respondents 1 and 2 to pay the Petitioner the Salary and all attendant benefits in the said post from 11-12-2008.

For Petitioner : Mr.S.Chellapandian

For Respondents 1&2 : Mr.S.Satheesh Kumar,
Additional Government Pleader

For 3rd Respondent : No appearance

ORDER

The petitioner seeks for the issuance of a writ of mandamus to direct the respondents to approve his appointment as vocational instructor in tailoring with effect from 11.12.2008 and consequently direct the respondents to pay the petitioner's salary and attendant benefits.

<https://hcservices.ecourts.gov.in/hcservices> According to the petitioner, he was appointed to the post of vocational instructor in tailoring in the third respondent school on 10.12.2008. The said post namely, vocational instructor



(tailoring) fell vacant due to the promotion of the incumbent Mrs. Esther Deva Kirubai. The authorities originally on 25.04.2009 returned the application submitted by the management for approval of the appointment stating that there is no student strength. The application was again resubmitted relying upon the fact that the post namely, vocational instructor (sewing) is a sanctioned post and therefore, the approval to the said post cannot be rejected on the ground of fall in students strength. This time, the application was returned stating that the same may be resubmitted after obtaining the staff fixation report for the year 2010-2011. The application was resubmitted along with the staff fixation report. This time, the application was returned stating that the approval granted for the promotion of Mrs. Esther Deva Kirubai should be produced along with the joining report of the petitioner. It is, at this juncture, the petitioner has come forward with the above writ petition.

3. The refusal to approve the appointment on the ground of lack of students strength cannot be sustained in view of the judgment of the Division Bench of this Court in W.A(MD)No.703 of 2009 dated 01.02.2011 wherein it was made clear that the approval sought for to a sanctioned post cannot be refused on the ground of fall in students strength. The Division Bench in the said decision has followed the earlier decision of this Court in W.A (MD)No.1263 of 2001.

4. Insofar as the other grounds on which the application seems to have been returned, Mr. S. Chellapandian, learned counsel for the petitioner would submit that even assuming the promotion is not approved, the respondents cannot reject the approval for the appointment of the petitioner as the post of vocational instructor (sewing) has fallen in vacant and it should be allowed to fill up the sanctioned post. I am in entire agreement with the submission of the learned counsel for the petitioner. Once it is admitted that the post of vocational instructor (sewing) is a sanctioned post and the same is borne out by the staff fixation report for the years 2008-2009, 2009-2010 and 2010-2011, the authorities cannot refuse to approve the appointment.

5. In the counter affidavit, it is claimed that as per G.O. Ms. No. 132, dated 27.04.1998 a minimum of 250 students is required for the purpose of appointment of vocational instructor. The said Government Order would apply only to Government schools. In G.O. Ms. No. 104, dated 12.07.2002, it is made clear that the Government aided schools can fill up the posts which fell vacant after the date of the said Government order.

6. From the records, it could be seen that the post became vacant only during the year 2000 and the petitioner was appointed to a sanctioned post which fell vacant after issuance of G.O. Ms. No. 104 dated 12.07.2002.



7. In the light of the above, this writ petition is allowed and the respondents are directed to approve the appointment of the petitioner with effect from 11.12.2008 namely, the date on which he was appointed and pay the arrears of salary and other service and monetary benefits due and payable to the petitioner. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P(MD)No.1 of 2011 is closed.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The Additional Assistant Elementary
Education Officer, Kalakad,
Tirunelveli District 627 501.

2. The District Elementary Educational Officer,
Tirunelveli.

+One cc to Mr.S.Chellapandian, Advocate, SR.No.59181

sms
RL/4C/3P/RSK/SAR4/22/6/2017

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