



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2017

CORAM :

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THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**Writ Petition(MD)No.16960 of 2013andM.P(MD)No.1 of 2013

G.John Wilson

... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-9.
2. The Director of Elementary Education,
Chennai-6.
3. The District Elementary Educational Officer,
Thoothukudi.
4. The Assistant Elementary Educational Officer,
Alwarthirunagari, At Thenthiruperai,
Thoothukudi District.
5. The Correspondent,
TDTA Middle School,
Udayarkulam Pastorate,
Thoothukudi District.
6. The Manager,
Primary and Middle Schools,
CSI Thoothukudi Nazareth Diocese,
Thoothukudi.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned orders passed by Government of Tamil Nadu in G.O.Ms.No.104, Education Department, dated 12.07.2002 and G.O.Ms.No.39, Education Department, dated 21.03.2003 and the consequential order of the fourth respondent passed in O.Mu.No. 326/A1/2013 and 22.04.2013 and quash the same and consequently direct the official respondents to approve the petitioner's appointment as craft instructor in sewing in fifth respondent school from the date of the appointment.



For Petitioner : Mr.T.A.Ebeneser
For Respondents 1 to 4 : Mr.S.Satheesh Kumar,
Additional Government Pleader.
For Respondents 5 and 6 :Mr.N.Subramanian

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ORDER

Challenging the non approval of the appointment of the petitioner as a sewing teacher on the ground that the original post of Vocational Instructor that was sanctioned for the petitioner school namely, T.D.T.A Middle School, Udayarkulam, could not have been filled up with a Sewing Teacher without prior permission of the Department, the petitioner has come forward with this writ petition.

2.It is an admitted fact that the school namely, T.D.T.A Middle School has been sanctioned a post of Vocational Instructor in Carpentry. It is also admitted fact that the teacher who was working as Vocational Instructor in Carpentry had retired and the management had applied to the authorities for conversion of the post from Vocational Instructor in Carpentry to the post of Vocational Instructor in Sewing as early as on 01.02.2004. The said application has been returned by the Department 05.06.2009. In the meantime, the management had appointed the petitioner as Sewing Teacher and sought for approval of the said appointment. The Assistant Elementary Educational Officer, Alwarthirunagari has returned the said request for approval on the ground that as per G.O.Ms.No.39, School Education Department, dated 21.3.2003, there can be interchange of Vocational Instructors between Music and Sewing and any other Vocational Instructor posts, cannot be converted.

3.This Court in W.P.(MD)No.14537 of 2011, dated 19.11.2014 (The Correspondent, St., Benedict's Middle School, Pathinathapuram Vs.The State of Tamil Nadu) had considered the effect of G.O.Ms.No.39, dated 21.03.2003. Following the earlier order passed by this Court in W.P(MD)No.20503 of 2004, this Court had held that the refusal of permission to convert the post of Vocational Instructor in Agriculture to that of Sewing Teacher is improper. The relevant portion of the said order reads as follows:-

".....As per the Government Order, the petitioner Management is now unable to fill up the vacancy of agricultural teacher. The materials made available herein would reveal that there is need for one post of Sewing Teacher in the petitioner Management, which is situated in the rural area as the people are socially and economically backward. In the event of Sewing Teacher being appointed in the school it will be helpful to learn the craft and that will enable the students to earn livelihood on later stage. Hence, it is the bounden duty of the Education Department to fulfil



the need of the Management and the students in order to comply with one of the constitutional rights i.e., right to education. Therefore, there is absolutely no reason for denying the conversion of existing post from one subject to another subject. When there is no reason to deny the conversion, there is equally no ground available to the respondents to approve the sanction of the appointment in the post, which is already existing, but for different subject and the same would in no way prejudice the Education Department. On the other hand, it would be helpful to the Management and the students community. Failure to consider this aspect by the authority concerned has resulted in passing erroneous order rejecting the petitioner's proposal for conversion of the post and for granting approval of the appointment made to the post. In my considered view such refusal is arbitrary and totally on non-application of mind and is in violation of constitutional right and hence, legally unsustainable.

6.The learned single Judge of this Court in yet another W.P(MD)No.20503 of 2004 filed by another school for the very same relief has decided the issue in favour of the petitioner Management and directed the Educational Authority to approve the conversion of the post of Drawing Master as Music Teacher.

7.In the result, the impugned order stands quashed and the second respondent, Director of Elementary Education, Chennai and the third respondent District Elementary Educational Officer, Tirunelveli are directed to allow and approve conversion of the post of vocational instructor in agricultural subject as Sewing Teacher and to grant approval to the appointment of T.Jeya Flora as Sewing Teacher with effect from 11.06.2008 with all monetary benefits. The above exercise shall be completed within eight weeks from the date of receipt of a copy of this order."

4.I am in full agreement with the above said observations of this Court. In view of the same, the impugned order dated 22.04.2013 passed by the fourth respondent is quashed. Consequently, the District Elementary Educational Officer, the third respondent herein is directed to approve the conversion of post of Vocational Instructor in Carpentry as Sewing Teacher and grant approval to the appointment of the petitioner as Sewing Teacher with effect from 07.06.2004, namely, the date on which, he was initially appointed. It is needless to point out that the petitioner would be entitled to all monetary benefits pursuant to his appointment. The third respondent shall pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.



5. The writ petition stands allowed accordingly. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

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/True Copy/

Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-9.
2. The Director of Elementary Education,
Chennai-6.
3. The District Elementary Educational Officer,
Thoothukudi.
4. The Assistant Elementary Educational Officer,
Alwarthirunagari, At Thenthiruperai,
Thoothukudi District.

+1cc to M/S.T.A.Ebeneser Advocate SR.No.17236

+1cc to M/S.S.Subbiah Advocate SR.No.17313

+1cc to Special Government Pleader, SR.No.18189

Writ Petition (MD) No.16960 of 2013

and

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23.03.2017

sms/vsg

JM/MR/SAR 3/17.04.2017/4P/8C