

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
AND  
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.499 of 2018  
and C.M.P.No.4680 of 2018

1. Director of School Education,  
Chennai-6.
2. Chief Educational Officer,  
Chennai-15.
3. District Educational Officer,  
Chennai (North), Chennai-8.
4. Government of Tamil Nadu,  
Rep. by its Secretary,  
School Education Department,  
Fort St. George, Chennai-9. .... Appellants/1 to 4 Respondents

..Vs..

Sree Muthukumarasamy P.Venugopal,  
Chetty Higher Secondary School,  
Rep. by its Secretary,  
No.1, Rotler Street, Choolai,  
Chennai-09. .... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent to set aside the impugned order dated 07.07.2017 passed by this Court in Writ Petition No.26811 of 2010.

W.P.No.26811 of 2010:

Writ Petition filed under article 226 of the constitution of India for the issuance of a Writ of Mandamus, Directing the respondents to sanction one post of Junior Assistant to the petitioner school considering the request of the petitioner school and recommended by the 3rd respondent in his proceedings Na.Ka.No.1252/Aa1/2010 dt.23.2.2010 and the proceedings Na.Ka.No.1252/Aa1/2010 dt.16.4.2010.

For Appellants : Mr.K.Karthikeyan,  
Government Advocate(Education)

For Respondent : Mr.P.Ganesan,  
for M/s.C.S.Associates

#### JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

This intra court appeal is directed against the order dated 07 July, 2017 in Writ Petition No.26811 of 2010 whereby and whereunder, the learned Single Judge issued a positive direction to the appellants to sanction the post of Junior Assistant within a period of eight weeks.

2. We have heard the learned Government Advocate on behalf of the appellants and the learned counsel for the respondent.

3. By consent, the appeal is taken up for final disposal during the time of admission.

4. The respondent filed a writ petition in W.P.No.26811 of 2010 directing the Department of Education to sanction one post of Junior Assistant taking into account the representation submitted earlier.

5. Before the writ court, the District Educational Officer, Chennai filed a counter affidavit opposing the prayer. According to the District Educational Officer, the sanction of post is the prerogative of the Government and no Mandamus could be issued to the State to sanction a particular post.

6. The learned Single Judge allowed the writ petition with an observation that the school in question was upgraded as Higher Secondary School and there is need for sanctioning one post of Junior Assistant. The appellants were directed to sanction the post of Junior Assistant.

7. The question as to whether the institution has made out a case for sanctioning a particular post is essentially an administrative function. It is not within the province of the Court to direct the sanction of post. There was no adverse order suffered by the respondent so as to enable the writ court to test the validity of such order. The learned Single Judge instead of issuing a positive direction ought to have directed the appellants to consider the case of the respondent in the light of the relevant Government Orders. However, in the subject case, the learned Single Judge issued a positive direction for sanctioning the post of Junior Assistant.

8. The Hon'ble Supreme Court in P.U.Joshi and Others v.

Accountant General, Ahmedabad and others [ (2003) 2 SCC 632] indicated that the classification or abolition of posts, amalgamation and bifurcation of departments and re-structuring are all executive functions and the judicial review is very limited. The Supreme Court said:

"10. ....Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. "

9. The issue before the Hon'ble Supreme Court in State of Tamil Nadu Vs. Amala Annai Higher Secondary School (Judgment dated 28 August, 2009 in Civil Appeal No.5855 of 2009) was in relation to the direction issued by the High Court to the Government to sanction one post of Junior Assistant. The Supreme Court deprecated the practice of the High Court issuing direction for sanctioning the post. While setting aside the order passed by the learned Single Judge and the appellate judgment of the Division Bench, the Supreme Court sounded a word of caution in the following words:

"Last but not least, the High Court erred in directing the present Appellant No.1 to sanction one post of Junior Assistant to the Respondent No.1-AAHS School from June 1, 1994 overlooking and ignoring that creation and sanction of posts is a prerogative of the executive and the courts cannot arrogate to themselves a purely executive power."

10. The direction for sanctioning a post was given notwithstanding the categorical pronouncement given by the Supreme Court time and again that it is not within the province of the High Court to direct the State to sanction the post. Several factors have to be taken in to account by the Government before sanctioning the post. No such consideration was made by the learned Single Judge while directing the appellants to sanction the post of Junior Assistant. We are therefore of the view that the impugned order is liable to be set aside.

11. In the result, the order dated 07 July, 2017 is set aside. The writ petition in W.P.No.26811 of 2010 is dismissed. However, we make it clear that this order will not stand in the way of the respondent from making an application for sanctioning the post, subject to eligibility. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

arr/abr

To

1. Director of School Education,  
Chennai-6.

2. Chief Educational Officer,  
Chennai-15.

3. District Educational Officer,  
Chennai (North), Chennai-8.

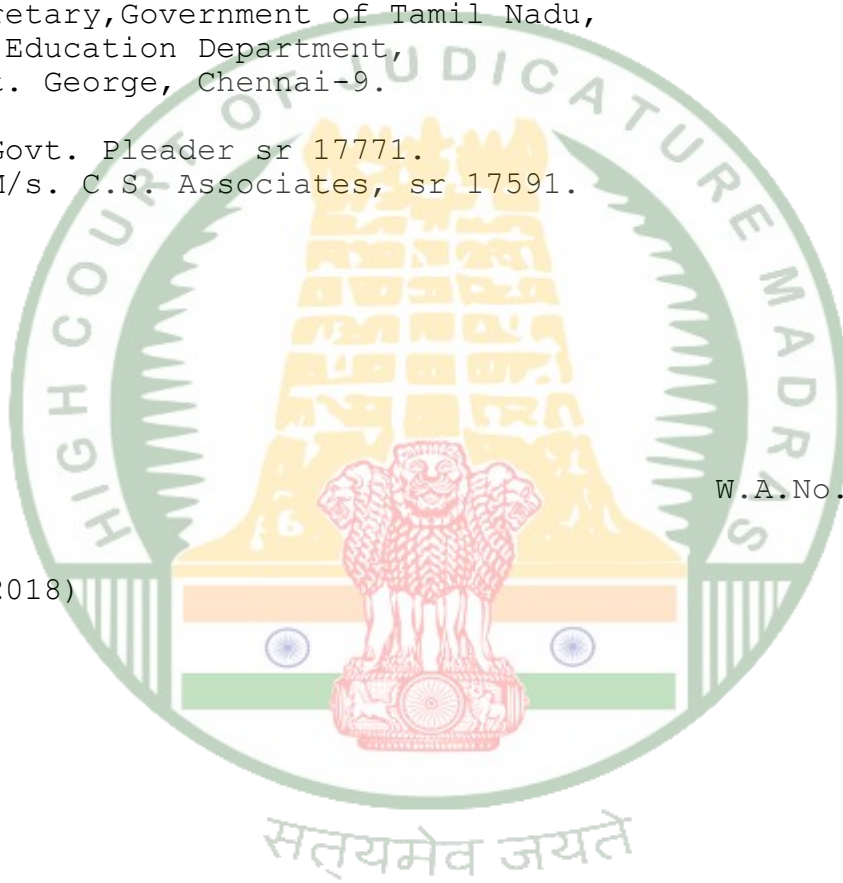
4. The Secretary, Government of Tamil Nadu,  
School Education Department,  
Fort St. George, Chennai-9.

+1 CC to Govt. Pleader sr 17771.

+1 Cc to M/s. C.S. Associates, sr 17591.

RR (CO)  
SP (26/03/2018)

W.A.No.499 of 2018



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