

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.15094 of 2014

and

MP No.1 of 2014 and WMP.No.1771 of 2017

H.Sharmila

.. Petitioner

Vs

1. The Director of School Education,
College Road, Chennai 06.
2. The Chief Educational Officer,
Panagal Building,
Saidapet, chennai 15.
3. The District Educational Officer,
Chennai South,
Egmore, Chennai.
4. The Secretary and Correspondent,
Kesari Higher Secondary School,
No.8, Sir Theagaraya Road,
T.Nagar,
Chennai-600 017.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the proceedings in pursuant to the impugned order passed by the 3rd respondent in Proceedings No. Aa.Thi.Mu.No.1041/A2/2014 dated 13.03.2014 and quash the same and consequently direct the respondents to approve the appointment of the petitioner in the post of Junior Assistant with effect from the date of appointment on 13.03.2014 with full salary and other consequential benefits.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.P.Raja

Government Advocate R1 to R3

For Respondent 4: No appearance

O R D E R

This writ petition has been filed by the petitioner with a prayer to call for the records of the proceedings in which the impugned order in proceedings No. Aa.Thi.Mu.No.1041/A2/2014 dated 13.03.2014 has been passed by the 3rd respondent rejecting the approval of the appointment of the writ petitioner and quash the same and directing the respondents to approve the appointment in the post of Junior Assistant with effect from the date of his appointment i.e on 13.03.2014, with full salary and other consequential benefits.

2. It appears that the Kesari Educational Society runs through Telugu Linguistic Minority Educational Institution one in the name of Kesari Higher Secondary School, T.Nagar, Chennai 600 017 and the other in the name of Kesari Higher Secondary School, Mylapore, Chennai 600 004. The aforesaid schools have been allowed for direct payment on 15.03.2004. The petitioner was appointed by the Kesari Higher Secondary School, T.Nagar i.e the 4th respondent/School, as a Junior Assistant on 13.03.2014 against a sanctioned post, vacancy to which occurred due to the compulsory retirement of Smt.C.Kanakamma, Junior Assistant on 11.10.2002. After her appointment, the 4th respondent sent a proposal to the 3rd respondent viz., the District Educational Officer, Egmore, Chennai to approve the appointment of the writ petitioner, but no order was passed on the same. However, the representation of the petitioner was rejected in a mechanical manner vide the impugned order. Hence, this writ petition has been filed by the petitioner seeking the relief as aforesaid inter alia on the ground that since he has been regularly appointed against the existing vacancy, the refusal to approval his appointment was illegal and improper.

3. The aforesaid has been countered by the respondents 1 and 2 on the ground that since the petitioner's appointment was not made in accordance with the rules of the Government Orders in force. More particularly, contrary to the G.O No.115 of School Education Department dated 30.05.2007 and also G.O.No.203 of School Education Department dated 23.07.2010 directed to obtain prior order of the Government to fill up the post, the petitioner's prayer seeking the approval of his appointment which is illegal and devoid of merits and accordingly, this writ petition is liable to be dismissed. The writ petition has been countered by the respondents with an averment that since the school was under direct management due to the management dispute and then the school Management Committee had no right to appoint any persons, but illegally the petitioner was appointed that too without obtaining the prior approval of the authority as prescribed in G.O No.115 of School Education Department dated

30.05.2007 and also G.O.No.203 of School Education Department dated 23.07.2010, the petitioner's appointment was illegal and as such, the representation in this regard was rejected and hence this writ petition is devoid of merits.

4. It is the submission of the learned counsel appearing for the petitioner that the case of the petitioner is covered by many Judgments of this Court, inasmuch as no prior approval is required for filling up of the sanctioned post by the management, wherein, it has been categorically held that no prior approval is required for filling up the sanctioned post by the management in private aided educational institutions. For the said reason, the Government order issued, which is also subsequent to the appointment of the petitioner, cannot stand in the way of approving the service of the petitioner. Otherwise also, aforesaid decision rendered by this Court in WA.(MD) No.582 of 2006 which has also been relied upon in WP (MD) No.14115 to 14119 of 2016 etc., batch cases, so also, this Court in WP Nos.29998 of 2017 along with connected cases have taken note of the law in this regard and disposed of the same. In so far as the Government Order is concerned, this Court quashed the aforesaid GO in WP.(MD) Nos.11481 of 2008 along with connected writ petitions. Hence, the resistance made by the respondent to approve the appointment, also justifying the rejection of the representation of the petitioner, is without any substance and as such, liable to be quashed and hence, the 3rd respondent is directed to approve the appointment of the petitioner.

5. In response, the learned counsel appearing for the respondent would submit that there is no impediment to grant the approval to the petitioner, in view of the fact that the matter is covered by the decision of this Court in number of writ petitions particularly in WP.(MD) Nos.11481 of 2008 so also, the Government order has been quashed in the aforesaid writ petitions.

6. Heard the submissions of learned counsel appearing for the petitioner as well as the learned counsel appearing on behalf of respondents.

7. Considering the fact that the learned counsel appearing for the petitioner submits that the case of the petitioner is covered by the decisions rendered in the aforesaid writ petitions, this writ petition stands disposed of, with a direction to the respondents to reconsider the approval of the appointment of the petitioner taking note of the fact of the aforesaid decisions rendered in the aforesaid case, within a period of four weeks from the date of receipt of copy of this order.

8 With the aforesaid order, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Director of School Education,
College Road, Chennai 06.
2. The Chief Educational Officer,
Panagal Building,
Saidapet, Chennai 15.
3. The District Educational Officer,
Chennai South,
Egmore, Chennai.
4. The Secretary and Correspondent,
Kesari Higher Secondary School,
No.8, Sir Theagaraya Road,
T.Nagar,
Chennai-600 017.

+1 CC to Mr.G.Sankaran, advocate sr 11531.
+1 CC to Govt. Pleader sr 12169.

सत्यमेव जयते

W.P.No.15094 of 2014

SP(02/03/2018)

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