

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM

THE HONOURABLE MR.JUSTICE MR. S.S.SUNDAR

W.P.No.22505 of 2008

The Manager,
RC Schools, Salem Diocese Society
(Salem-Namakal Districts)
Mary Palace
No. 63, Thammannan Road,
Salem-636 009

... Petitioner

Versus

1. The State of Tamilnadu
Rep. By its Secretary
Department of School Education,
Fort St. George, Chennai-600 009

2. The Director of School Education
College Road, Chennai-600 006

3. The Joint Director of School Education
College Road, Chennai-600 006

4. The Chief Educational Officer
Salem District
Salem -636 001

5. The District Educational Officer
Salem, Salem District-636 007

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd respondent Director in Na.Ka.No. 103515/W5(2)/2007 dated 23.02.2008 (withdrawing the post of PG Assistant in Political Science from petitioner's Little Flower Higher Secondary, School, Salem), Quash the same and further DIRECT the 2nd respondent herein to convert forthwith the said post of PG Assistant in political Science into that of PG Assistant in Commerce w.e.f. 30.07.2002 with all attendant benefits including salary and allowances.

For Petitioner : Mr. P.Godson Viswanath
For Respondent : Mr. K.Karthikeyan
Government Advocate

O R D E R

This Writ Petition has been filed by the petitioner seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd respondent Director in Na.Ka.No. 103515/W5(2)/2007 dated 23.02.2008 (withdrawing the post of PG Assistant in Political Science from petitioner's Little Flower Higher Secondary, School, Salem), Quash the same and further direct the 2nd respondent herein to convert forthwith the said post of PG Assistant in Political Science into that of PG Assistant in Commerce w.e.f. 30.07.2002 with all attendant benefits including salary and allowances.

2. The petitioner in the Writ Petition is the Manager of the School, which is established and administered by the Roman Catholic of Diocese Society, Salem, which is recognized as religious Minority. The number of staff and the amount of grant are fixed periodically as per Government guidelines. When the Writ Petition was filed, the petitioner School had 52 teachers (1 Headmaster, 14 PG Assistants, 16 BT Assistants and 21 Secondary Grade Teachers). There are also 5 BT Tamil Teachers, 1 Physical Director, 5 Physical Education Teachers, 1 Carpenter, One Drawing Master, 3 Vocational Instructors and 11 Non-Teaching staffs are also there in the school, which had the students strength of 3026.

3. It is stated by the petitioner that as per the work load calculated on the basis of the students strength, the School should have minimum of two commerce teachers in the Higher Secondary Sections. However, it is contended by the petitioner that the Government had sanctioned only one post of commerce teacher. Though the petitioner was making representations to be directed for the sanction of atleast one more teacher for commerce from the year 1999, it is stated that the Director has not passed any orders so far.

4. The CEO, while settling the staff fixation from the academic year 1999-2000, has been showing the school's eligibility for two PG Assistants in Commerce. It is not in dispute that one post of PG Assistant in Political Science fell vacant in the School in the year 2002, in view of the termination of the then incumbent by name Mr. M.Vincent Paul.

5. The group Political Science was also closed in the School in the year 2002. Since the School had to surrender the post of commerce Teacher, the petitioner has made a representation to CEO in January 2004 requesting the CEO to convert the vacant post of PG Assistant in Political Science

into that of PG Assistant in Commerce as the School was in need of a Commerce teacher.

6. Further representations were also made by the petitioner. After calling for the records relating to staff fixation from the year 2003-2004, the CEO submitted the proposal to the Director of School Education by its communication dated 07.03.2007 recommending for conversion for the post of PG Assistant (Political Science) into that of PG Assistant (Commerce). However, the Director namely, the second respondent in this Writ Petition has passed the impugned order on 23.02.2008 stating that as per the students strength available in the School during the Academic year 2007-2008, the Chief Educational Officer has surrendered the post of PG Assistant (Political Science) and hence the said post is brought under common post. The second respondent has not given any finding as to the request of the petitioner's School for conversion of post.

7. Challenging the order passed by the second respondent dated 23.02.2008, the above Writ Petition came to be filed.

8. The learned counsel appearing for the petitioner pointed out that the post of PG Assistant in Political Science was vacant and surplus in the School and that the petitioner was requesting the fourth respondent to convert the post into PG Assistant in commerce. Since such representations were not considered and the conversion of the post from PG Assistant in Political Science into one as PG Assistant in commerce is required by the School and it is permissible, learned counsel for the petitioner submitted that the order of the 2nd respondent is without an application of mind.

9. The 4th respondent has filed a counter Affidavit. It is contended by the 4th respondent that the conversion of teacher post from one subject to another subject is permissible only with a prior approval of the department as per G.O.(MS). No. 285 dated 01.10.1999. Since the petitioner has appointed a PG Assistant in commerce in the post of PG Assistant in Political Science on their own without obtaining prior permission of the department, it is stated that the appointment of PG Assistant in Commerce is irregular and cannot be approved by the Department. It is further stated in the counter Affidavit that the petitioner cannot seek for conversion of the post of PG Assistant in Political Science into PG Assistant in commerce with effect from the year 2002 with salary and attendant benefits is not possible. This court has granted stay of operation of the impugned order and it is in force.

10. The learned counsel for the petitioner submitted that the conversion is not sought for with retrospective effect. Since the petitioner has made the representation for conversion of post from the year 1999, the learned counsel for the petitioner submitted that the respondent ought to have granted

conversion of post and then passed an order approving the appointment of BT Assistant in commerce. The learned counsel for the petitioner further submitted that the Writ Petition was filed in the year 2008 and the respondent may be directed to consider the position as on date and pass appropriate orders within a stipulated time.

11. It is also stated that the impugned order passed by the 2nd respondent is against law and unconstitutional, as it affects the fundamental right to free education of the children. The learned Government Advocate representing the respondents reiterated what has been stated in the counter affidavit and submitted further that the respondents have no objection to consider the request of the petitioner for conversion on merits and to take decision having regard to the facts and circumstances as on this date.

12. Having regard to the specific stand taken by the petitioner and the limited scope of prayer that is now sought before this Court by the petitioner counsel, this Court is of the view that the following direction can be issued to the respondents 2 and 4:-

(i) The petitioner is permitted to file an application for conversion as required within the period of two weeks from the date of receipt of copy of this order;

(ii) The second respondent shall consider the representation of the petitioner and pass orders on merits after giving an opportunity to the petitioner within a period of six weeks from the date of receipt of the application from the petitioner.

13. It is made clear that the decision of the second respondent will be on the basis of the students strength and work load as on date and in case the petitioner is found eligible to have the conversion of the post of BT Assistant political science into that of the post in Commerce, the same shall be done in accordance with law. The impugned order shall have no legal implication if the petitioner is found eligible for conversion of post.

14. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsg/mpa

To

1. The Secretary
State of Tamilnadu
Department of School Education,
Fort St. George, Chennai-600 009
2. The Director of School Education
College Road, Chennai-600 006
3. The Joint Director of School Education
College Road, Chennai-600 006
4. The Chief Educational Officer
Salem District
Salem -636 001
5. The District Educational Officer
Salem, Salem District-636 007

+1cc to Mr.P.Godson Swaminath, Advocate SR.NO.57062
+1cc to Government Pleader SR.NO.56843

MR(CO)
sm:30.10.2018

W.P.No.22505 of 2008

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