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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.06.2018

PRONOUNCED ON : 04.07.2018

C O R A M

**THE HONOURABLE MR.JUSTICE M.DURAISWAMY
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

W.A(MD)No.796 of 2018
and
C.M.P(MD)No.4721 of 2018

- 1.The Chief Educational Officer,
Trichy.
- 2.The District Educational Officer,
Musiri,
Trichy District.

... Appellants / Respondents

vs.

M/s.Swamy Vivekanandha Vidyalaya,
Higher Secondary School,
Rep. by its Secretary,
P.Ramasundar,
Vairichettipalayam - 621 012,
Trichy District.

... Respondent / Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order of this Court passed in W.P(MD)No.278 of 2018, dated 12.02.2018.

Prayer in WP(MD) . 278/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.4812/A1/2017 dated 28.12.2017 and quash the same as illegal and arbitrary and consequently directing the 1st respondent to grant permission for appointment of one V.Govindaraj in the post of BT Assistant (Science) in the petitioner school on the basis of the petitioners representation dated 15.02.2017 based on the student strength in the month of August 2016.

For Appellants : Mr.A.K.Baskarapandian,
Special Government Pleader

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondent : Mr.B.Saravanan

**JUDGMENT****DR. ANITA SUMANTH, J.**

This writ appeal has been filed at the instance of the Chief Educational Officer (in short 'CEO') and the District Educational Officer (in short 'DEO'), Trichy and challenges order dated 12.02.2018 allowing the writ petition filed by the Swamy Vivekanandha Vidyalaya, Higher Secondary School (in short 'school').

2. Brief facts in issue and the relevant dates and events are set out herein:

(i) The school is an aided Higher Secondary School and had, in respect of the academic year 2016-2017, student strength of 580 in respect of classes VI to X. The sanctioned number of Teachers as in that academic year was six.

(ii) As against a vacancy in one of the sanctioned posts, B.T. Assistant Science, that arose on 01.12.2016 by virtue of the promotion of one Mr. M. Rajendran, the school sought prior permission for direct recruitment and for filling up of the vacancy caused from 01.12.2016. Steps were thereafter taken by issuing advertisements and by calling for eligible candidates from the office of the District Employment Office (National Employment Service).

(iii) Pursuant thereto one Mr. V. Govindaraj was appointed on 20.04.2017 as a Teacher for the subject of Science in the school.

(iv) On 09.05.2017, a request was made to the DEO to approve the appointment of Mr. Govindaraj. The proposal was rejected on 30.05.2017 for the reason that no approval had been obtained prior to his appointment.

(v) In the meantime, the school had sought the issue of a Writ of Mandamus in W.P(MD) No. 10485 of 2017, directing the CEO to grant permission for filling up of the vacancy in the post of B.T. Assistant Science. The writ petition came to be disposed of by order dated 06.06.2017 directing the CEO to consider the representation of the school dated 15.02.2017 and pass appropriate orders, within four weeks from the date of receipt of the order of the Court.

(vi) Based on the reduced student strength for the academic year 2017-2018 an order of fixation of staff dated 05.12.2017 issued on the basis of student strength as on 01.08.2017 reduced the staff strength from six (as fixed for academic year 2016-17) to four for the subsequent year (2017-18).

(vii) Separately, and pursuant to the efforts made by the school seeking disposal of its representation dated 15.02.2017, the proposal was forwarded by the DEO to the CEO on 10.07.2017 and finally disposed of, rejecting the same on 28.12.2017.

(viii) The aforesaid order is the subject matter of Writ Petition in W.P(MD) No. 278 of 2018 that came to be allowed by the learned single Judge of this Court by means of the following order:

'The petitioner is an aided Higher Secondary School.

<https://hcservices.ecourts.gov.in/hcservices/>

During the academic year 2016-2017, the students strength was 580 for classes 6 to 10. Therefore, the sanctioned



strength would be 6. One V.Govindaraj was appointed against a sanctioned vacancy on 20.04.2017 as B.T.Assistant (Science). The school management submitted its proposal for approving the said appointment of Govindaraj. But, by the impugned order, the first respondent declined to grant approval by taking into account the students strength for the subsequent academic year namely 2017 - 2018.

2.It is true that in the subsequent academic year, namely 2017- 18, the students strength was 507. The impugned order is bad since it applies an erroneous and irrelevant yardstick. The approving authority ought to take into account the students strength and teachers strength, when the appointment order was actually made.

3.Therefore, instead of going by the students strength for the year 2016-17, the first respondent erroneously went by the students strength for the year 2017-18. On this ground, the order impugned in the writ petition is quashed. The first respondent is directed to approve the appointment of the said Govindaraj as B.T.Assistant (Science) in the petitioner's school with effect from 20.04.2017 and disburse all the consequential benefits forthwith without any delay.

4. The writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed."

(ix)It is against the aforesaid order that the CEO and the DEO are in appeal.

3. Heard the detailed submissions of Mr.Baskarapandian, learned Special Government Pleader on behalf of the appellants and Mr.B.Saravanan, learned counsel for the caveator / school.

4. The facts, the dates and events as set out above are not in dispute.

5. Mr.Baskarapandian assails the order of the learned single Judge on the ground that an erroneous yardstick has been taken into account in allowing the writ petition. He would point out that the appointment of Mr.Govindaraj had been made on 20.04.2017, which was the last working day for academic year 2016 - 2017 and with the reduction in student strength and consequential staff fixation for the subsequent academic year, the appointment of Mr.Govindaraj as B.T Assistant(science) for academic year 2017-18 is rendered incorrect and illegal.

6. He places substantial reliance upon impugned order dated 28.12.2017 that according to him, sets out four grounds vitiating the appointment of Mr.Govindaraj being, no prior permission obtained in terms of Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (in short 'Rules'), the appointment itself



was at the fag end of the academic year, student strength has decreased for academic year 2017-2018 and as such, there was surplus of teachers in the school as on the date when the impugned order was rightly passed.

7. Mr. Saravanan puts forth a spirited defence pointing out that the application seeking prior approval had been submitted as early as on 15.02.2017 and it was only after going through the prescribed processes that the appointment had been made on 20.04.2017. He draws attention to the fact that even after the school approached this Court and obtained an order on 06.06.2017 directing disposal of the school's representation dated 15.02.2017, no action had been taken by the DEO / CEO till a notice for contempt had been issued by the school.

8. This is indeed correct. The order itself reveals that the DEO had forwarded application dated 15.02.2017 to the office of the CEO only on 10.07.2017. Thus, in all, there had been a delay of ten months in disposing of the representation seeking approval filed on 15.02.2017.

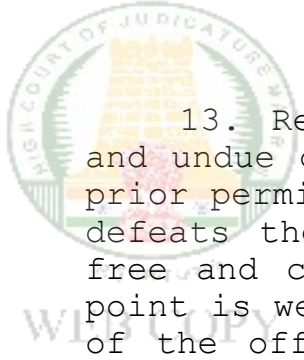
9. He relies upon Article 21(A) of the Constitution of India introduced with effect from 01.04.2010, urging that the very purpose of the Article, to provide education to all, was lost in the light of the delay and the lethargic attitude adopted by the concerned officials. Thus, according to him, the order passed by the learned single Judge dated 12.02.2018 called for no interference.

10. A perusal of the dates and events extracted makes one thing abundantly clear to us. There is substantial delay in filling up of the vacancy caused by the promotion of Mr. Rajendran with effect from 01.12.2016. The school has waited till 15.02.2017, to even seek prior approval. The appointment has been made on 20.04.2017 and it is only in June, 2016 that school has obtained a direction from this Court to the CEO for disposal of its representation. A reminder dated 08.12.2017 and a contempt notice dated 14.12.2017 have triggered the passing of the impugned order on 28.12.2017. There has thus been a delay of more than one year in filling up vacancy caused to the Post of B.T. Assistant Science. That is on the one hand.

11. On the other hand and as far as the DEO/CEO are concerned, this Court is of the unambiguous opinion that the delay of more than ten months in disposal of an application seeking prior permission for appointment in a sanctioned post in a school is unpardonable.

12. Mr. Saravanan has drawn attention to Article 21(A) of the Constitution of India inserted by Constitution (86th amendment) Act, 2002 with effect from 01.04.2010. Article 21(A) reads thus:

'21A. Right to education.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine'



13. Relying on the same, Mr.Saravanan would submit that long and undue delay in considering and ordering of applications seeking prior permission for the appointment of teachers in sanctioned posts defeats the very purpose of the constitutional mandate to provide free and compulsory education to all children in the country. His point is well taken. However, we believe that such delay on the part of the officials concerned goes against the constitutional scheme even otherwise and learned counsel is entitled to succeed in this argument even without pressing into service Article 21(A). It need hardly be emphasised that the concerned authorities should consider and dispose applications for grant of prior permission for appointment of teachers promptly and in a timely manner.

14. In the present case, the application was filed by the school on 15.02.2017 and has been forwarded by the office of the DEO to the office of the CEO only on 10.07.2017. The CEO sits on the same till December 2017 and it is only after receipt of a contempt notice from the school that the application has been disposed of on 28.12.2017.

15. The requirement of prior permission emanates out of regulation 15(4) of the Rules. Mr.Saravanan also emphasis a recent decision of this Court in the case of State of Tamil Nadu v. V.Sree Kala, (decision dated 20.04.2018) particularly paragraph No.23 that reads as follows:

'.... The provisions of Rule 15(4) of the Rules have been inserted with the laudable object of protecting the interest of faculty and staff of an Educational Institution. It should not, in our view, be used as a tool to militate against their interests. We have noticed elsewhere that the Teachers and non-teaching staff in question have been discharging their duties without receiving any salary from 2011 till date. They have not seen the colour of the coin as far as emoluments are concerned, pending formal approval of their appointments. This is indeed unfortunate, particularly, given the paucity of dedicated teachers in the system today.

...'

16. In the light of the sequence of dates and events that we have noticed above and as admitted by the parties, we accept the argument of Mr.Saravanan to the effect that the appellants have grossly delayed the grant of approval for the appointment of Mr.Govindaraj to the sanctioned post of B.T.Assistant.

17. Having said so, we cannot also lose sight of the curious position that Mr.Govindaraj has been appointed by the school on 30.04.2017, which is the last working day of the academic year. According to Mr.Baskarapandian, the appointment ought not to have been made at the fag end of the academic year particularly seeing that the students strength had come down in the following academic year.



18. Mr.Saravanan would respond stating that it was only in December, 2017 that the staff fixation had been done for academic year 2017-2018 and thus, the school would have been unaware prior thereto as to the number of posts that would be sanctioned. In any event, according to him, the correctness or otherwise of the appointment has to be assessed only with respect to the position that obtained as on the date of appointment.

19. We agree that the validity or otherwise of an appointment has to be tested only with respect to the position that prevailed as on the date of appointment of the candidate. However, this position cannot be blindly followed in a case such as the present, where the teacher concerned has not taught even a single day in academic year 2016-17 but has been discharging duties only in academic year 2017-18 when his presence was clearly and admittedly superfluous.

20. Even assuming that the appointment was made keeping the best interests of the students at heart and to ensure the presence of the teacher upon commencement of the next academic year, upon re-opening of the school for academic year 2017-2018, the school would be well aware of the reduced student strength. There cannot be any justification thereafter for the continuance of the services of Mr.Govindaraj.

21. When the matter came up for final hearing before the learned single judge on 12.02.2018, the position as regards the reduced students strength and the consequent reduction in sanctioned post as far as academic year 2017-2018 is concerned had crystallized. In such circumstances, we do not see any reason for the continuance of the services of Mr.Govindaraj beyond that period seeing as his appointment is superfluous as on that date.

22. The learned single Judge has taken a view that the correctness or otherwise of the appointment of Mr.Govindaraj has to be seen in the light of the students strength as on the date of appointment.

23. We are unable to accept this view in the present case as it would tantamount to confirming the appointment of an individual, admittedly superfluous in the context of staff fixation for the academic year 2017-2018 and whose appointment had admittedly, been made on the last day of the previous academic year. The order of the learned single Judge does not take into account this vital circumstance and we consequently, set aside the same.

24. In the light of the discussion above, we set aside the appointment of Mr.Govindraj. His re-deployment or otherwise is a matter to be considered by the authorities in accordance with applicable Rules and Regulations.



25. Before parting, we take judicial note of the position that applications seeking approval for the appointment of teachers in sanctioned posts are kept inordinately pending in the offices of the concerned authorities. This is certainly not in the interests of either the concerned school, the students or available candidates awaiting employment. The filing of the application seeking approval is itself done, in many cases including the present, only subsequent to the creation of the vacancy. The time taken thereafter to process and order the same results in substantial delay during which existing teachers are constrained to step in and fill in for the vacancy caused or appointments are made by the school pending grant of approval. The resultant uncertainty is both unnecessary and undesirable. Thus, and in the light of the discussion aforesaid, the following directions are issued that may be scrupulously followed by the schools as well as authorities concerned:

(1) In cases of anticipated vacancies such as those caused by promotion or retirement of a teacher, steps seeking prior permission for appointment should be taken by the concerned school well in advance of such vacancy.

(2) In cases where a vacancy in a sanctioned post arises unexpectedly, as in the case of a transfer or other reason by which a teacher becomes suddenly unavailable, the application seeking prior approval should be filed by the concerned Institution within two weeks from the date of creation of the vacancy.

(3) The offices of the CEO/DEO are directed to ensure that an application received seeking approval, either prior or post appointment of teacher in a sanctioned post be disposed of as expeditiously as possible, in any event, within four weeks from the date of receipt of the same.

26. In the result, the writ appeal is allowed, the order of the learned single Judge is set aside and the impugned order dated 28.12.2017 terminating the appointment of Mr. Govindaraj is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

1. The Chief Educational Officer,
Trichy.

2. The District Educational Officer,
Musiri,

<https://hcservices.ecourts.gov.in/hcservices/>
Trichy District.



+1cc to Special Government Pleader, SR.No.71517.
+1cc to Mr.B.Saravanan, Advocate, SR.No.71227.

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JUDGMENT MADE IN
W.A (MD) No.796 of 2018
04.07.2018

RAM/SV/SAR 2/16.07.2018/8P/5C