



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2018

CORAM :

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P (MD) No.12535 of 2018

and

W.M.P. (MD) No.11403 of 2018

J.Malar Queen Carel

... Petitioner

Vs.

1. The Chief Educational Officer,
Kanyakumari District.

2. The District Educational Officer,
Thuckalay, Kanyakumari District.

3. The Correspondent,
L.M.S. (Girls) Higher Secondary School,
Neyyoor, Kanyakumari District.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 2nd respondent herein in O.Mu.No.2408/A1/2017 dated 25.01.2018 and quash the same and further direct the respondents 1 & 2 herein to approve forthwith the appointment of petitioner as Physical Education Teacher in the 3rd respondent school from 11.07.2016 onwards with salary and other attendant benefits.

For Petitioner : Mr.E.V.N.Siva

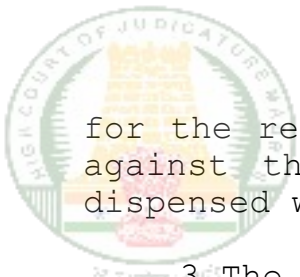
For Respondents : Mr.D.Muruganantham, AGP for RR1 and 2

ORDER

The prayer sought for in this writ petition is for a writ of certiorarified mandamus, calling for the records relating to the impugned order issued by the 2nd respondent herein in O.Mu.No.2408/A1/2017 dated 25.01.2018 and quash the same and further direct the respondents 1 & 2 herein to approve forthwith the appointment of petitioner as Physical Education Teacher in the 3rd respondent school from 11.07.2016 onwards with salary and other attendant benefits.

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

2. Heard Mr.E.V.N.Siva, learned counsel for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing



for the respondents. Since no adverse order is going to be passed against the third respondent, notice to the third respondent is dispensed with.

3. The petitioner was appointed as Physical Education Teacher at the third respondent school on 11.07.2016 and immediately she joined in the school and has been working there. The third respondent school based on the said appointment had sent the proposal to the second respondent for approval on 15.05.2017. However, the said proposal was rejected by the impugned order of the respondent dated 25.01.2018. In the said impugned order, the second respondent has given a reason that the third respondent should have obtained prior permission from the first respondent before making the appointment and since the said permission was not given, such appointment cannot be accepted. Therefore, it was rejected with a direction to submit a No Objection Certificate to be obtained from the first respondent. Challenging the said order, the present writ petition has been filed.

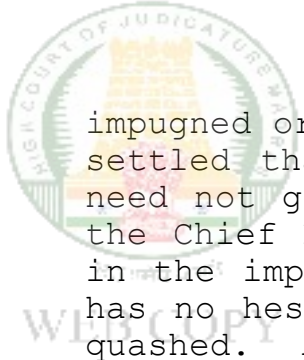
4. The learned Counsel for the petitioner would submit that the third respondent is a minority school and therefore, as per the settled legal position, such a minority school need not get any prior permission or No Objection Certificate from the official respondents or approving authority before making such appointment. The only requirement was that, appointment should be made in a sanctioned vacancy and based on such appointment, only post approval has to be sought for from the approving authority. When that being the position, the present reason cited in the impugned order cannot be sustained. Therefore, the learned counsel for the petitioner would submit that the impugned order is liable to be quashed.

5. I have heard Mr.D.Muruganantham, learned Additional Government Pleader appearing for the official respondents in this regard.

6. The learned Additional Government Pleader very fairly submits that the reason cited in the impugned order is not sustainable and therefore, the matter can be remitted back to the second respondent for reconsideration. However, the learned counsel for the petitioner submitted that as per the present procedure, only the first respondent is the authority to give approval and therefore, the issue cannot be once again remanded to the second respondent. In stead of, the third respondent can be permitted to resubmit the proposal to the first respondent and who in turn, be directed to consider the proposal for approval.

7. I have heard the said submissions made by both sides.

8. As rightly pointed out by the learned counsel for the petitioner as endorsed by the learned Additional Government Pleader appearing for the official respondents, the reason cited in the



impugned order is not sustainable. Since the legal position is well settled that being the minority institution, the third respondent need not get any No Objection Certificate or prior permission from the Chief Educational Officer is concerned. The only reason cited in the impugned order is no more valid reason. Hence, this Court has no hesitation to hold that the impugned order is liable to be quashed. Accordingly, it is quashed. The matter is remitted back to the first respondent for reconsideration of the proposal and in this regard, the third respondent can forward the proposal, if it is returned to them to the first respondent, within a period of two weeks from the date of receipt of a copy of this order and thereafter, on receipt of the same, the first respondent shall consider the proposal to be resubmitted by the third respondent and pass orders thereon, on merits and in accordance with law, within a period of four weeks thereafter.

9. With the above direction, this writ petition is ordered. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Chief Educational Officer,
Kanyakumari District.
2. The District Educational Officer,
Thuckalay, Kanyakumari District.

+1 CC to the Spl. Govt. Pleader SR.Nos.68204 & 68249
+1 CC to Mr.EVN.Siva, Advocate, SR.No.68350

Arul
SS/SKN/SAR 1/30.11.2018/3P/5C

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