

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 20.02.2018****CORAM:****THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**

and

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**Writ Petition (MD).No.1569 of 2015**

and

MP(MD)Nos.1 to 3 of 2015

The Correspondent,
St.Britto Higher Secondary School,
Gnanaolivpuram, Madurai.
Madurai District-625 016.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented 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 Chief Educational Officer,
Madurai, Madurai District.
4. The District Educational Officer,
Madurai, Madurai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned Government Order issued by the first respondent State Government in G.O.Ms.No.104 [School Education - (D1) Department] dated 12.07.2002 and G.O.Ms.No.39 [School Education (D1) Department] dated 21.03.2003 and the consequential proceeding issued by the fourth respondent DEO in U.Mu.No.4690/Aa5/2014, dated 30.07.2014 refusing approval to the appointment of the Pre-vocational Instructor (Drawing), quash the same and further direct the fourth respondent DEO to give approval forthwith to the appointment of A.Jebamalai Raj as Pre-vocational Instructor (Drawing) and disburse the grant-in-aid towards his salary and allowances with all attendant benefits w.e.f. the date of his appointment ie., 26.03.2014.

For Petitioner : Mr.Issac Mohanlal
Senior Counsel
Mr.T.Cibi Chakraborty,

<https://hcservices.ecourts.gov.in/hcservices/>
For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

**ORDER**

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

Heard Mr.Issac Mohanlal, learned Senior counsel for the petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader for the respondents.

2. The petitioner, which is aided minority institution, has filed this petition challenging the proceedings of the fourth respondent, dated 30.07.2014. The undisputed fact is that the petitioner's school was sanctioned a post of Vocational Instructor in the subject Weaving and one Thiru S.Karunakaran was working as a weaving teacher and imparting education to the children of the School. It appears that the parents of the children, who are studying in the school, requested the Management to provide Vocational Instructor in Drawing instead of Weaving and they were of the opinion that it would be in the interest of the children, who are studying in the petitioner Institution. In the meantime, the Weaving Instructor Thiru S.Karunakaran retired from service, on attaining the age of superannuation, on 31.05.2012. It appears that in the said vacancy, the Management appointed one Thiru A.Jebamalai Raj, but he was not a Vocational Instructor in Weaving but was a Vocational Instructor in Drawing and was appointed on 26.03.2014. The Management forwarded the appointment for approval of the Department, which has been negatived by the fourth respondent, by the impugned order, by stating that there is no provision in the relevant Rules for granting such approval. Though the impugned proceedings dated 30.07.2014, does not stipulate the relevant Rule, which was relied on, the learned Special Government Pleader appearing for the respondents would submit that the relevant Rule is in the form of Government Order in G.O.(Ms.)No.39 [School Education (D-1) Department], dated 21.03.2003.

3. On a perusal of the said Rule, we find that there is virtually a ban seeking for conversion, except for two posts viz. Sewing and Music. In other words, if there is a post of Vocational Instructor in Sewing, sanctioned for a School, the School can seek for conversion into vocational instructor in Music and to no other branch.

4. In our considered view, on a reading of G.O.Ms.No.39, one gets an impression that there is an absolute ban, however the object of the Government Order for restricting the conversion between two posts is not very clear. In any event, if the Government Order is read as a whole, it appears that the intention of the Government is to consider as to whether there is a need for conversion of the post in a particular institution. But, it has been stated explicitly as the preamble of the Government Order says that conversion can be made only between Sewing and Music.



5. We are of the considered view that the Government Order should be read down, bearing in mind the need of the Students and since Vocational instruction has been found to be a very important particularly in the subject Agriculture. The Government should enable the Institution to decide upon what would be the need and what would be the requirement for the particular Institution. In the case of **The State of Tamil Nadu and others Vs. P.Bella Fernando and another** in W.A.(MD)No.421 of 2017, dated 19.04.2017, the Division Bench to which one of us was a party (T.S.S.J), considered the similar question as to whether the post of pre-vocational Instructor in Agriculture could have been filled up with a person possessing qualification in Sewing, without obtaining prior approval from the Government.

6. The Court, after considering the facts of the case, wherein it was stated that the School is situated in a costal area and the lands have become saline and the lands are unfit for raising crops and owing to that there were repeated requests from the Parents Teachers Association to the Management to introduce the Subject Sewing. This Court opined that the action of the Management cannot be faulted. It was pointed out that though it may be true that prior approval has not been obtained by the Management before the appointment of Prevocational Instructor in Sewing, noted that what is important to be seen is that two posts which has been sanctioned is the post of pre-vocational instructor, though the subjects may be different such as Agriculture, Weaving, Sewing and Music, it was held considering the factual situation pleaded by the Management, there can be no serious error committed by the Management in accommodating the pre-vocational instructor in Sewing instead of prevocational Instructor in Agriculture. Further, similar orders of appointment which were approved by the Department were also referred. The facts of the present case is no different from what was dealt by the Division Bench in the case of **the State of Tamil Nadu Vs. P.Bella Fernando** (supra).

7. Therefore, we are of the firm view that the conditions stipulated in G.O.Ms.No.39, dated 21.03.2003 should be read down to mean that the predominant aspect which has been considered is the need for the particular branch of vocational instruction and this need should be decided by the Institution considering the demand of the students / parents etc. Thus, the stand taken in the impugned communication dated 30.07.2014 is not tenable.

8. For the above reasons, the Writ Petition is allowed and the impugned proceedings are set aside and the respondents are directed to consider and approve the appointment of the pre-vocational instructor in Drawing in the post of pre-vocational instructor in Drawing which was already sanctioned and fell vacant on account of the retirement of Thiru S.Karunakaran. Such the



appointment of the new incumbent shall be approved from the date on which, he was appointed i.e., on 26.03.2014. The above direction be complied with within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed

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Sd/-

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Madurai, Madurai District.
4. The District Educational Officer,
Madurai, Madurai District.

+1cc to Mr.T.Cibi Chakraborty, Advocate Sr.No.49942

LS/AKV

VB/RSK/SAR4/28/04/2018/4P/6C

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20.02.2018