



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.24071 of 2017andW.M.P.(MD)Nos.20217 to 20219 of 2017

The Secretary,
Guruvappa Higher Secondary School,
Neikkarapatti, S.K.C.Nagar,
Palani - 624 615,
Dindigul District.

... 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,
Dindigul, Dindigul District.

4.The District Educational Officer,
Palani, Dindigul District.

... Respondents

Prayer: Writ Petitions are 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.5436/A4/2017, dated 07.12.2017 denying permission to fillup the sanctioned post of Pre-vocational Instructor (Agriculture), quash the same and further direct the respondents to give permission to fillup the post of Pre-vocational Instructor (Agriculture).

For Petitioner

: Mr.Issac Mohanlal
Senior Counsel for Issac Chambers
: Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondents

O R D E R

(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. This writ petition has been filed by the non-minority institution requesting for filling up the vacancy in the post of Vocational Instructor (Agriculture) with a new incumbent, in the same post. However, the fourth respondent, by the impugned proceedings, dated 07.12.2017 referring the G.O.Ms.No.39, dated 21.03.2003, has rejected the request of the Management for conversion.

3. Similar issue was considered by the Division Bench in W.P. (MD).No.1569 of 2015. The only difference being the writ petitioner therein was a minority aided institution, whereas the petitioner in this case is the non-minority aided institution. In the said writ petition, the Court considered the effect of G.O.Ms.No.39, dated 21.03.2003, and also as to how the Government Order needs to be interpreted. Though in that writ petition as well as in this writ petition, the petitioners have challenged the validity of G.O.Ms.No.39, at this stage, it would be useful to refer to the portion of the order.

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 not been stipulated 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



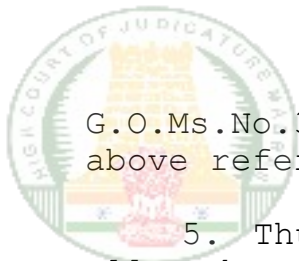
possessing qualification in Sewing, without obtaining prior approval from the Government.

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 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.

4. The reasons assigned in the above order would equally apply to the case on hand and the distinction between the non-minority and minority is of a little avail as the issue is as to how the



G.O.Ms.No.39, has to be interpreted, which has been shown in the above referred order.

5. Thus, for the above reasons, the writ petition is partly allowed and the proceedings of the fourth respondent, dated 07.12.2017 is set aside and the fourth respondent is directed to grant permission to the petitioner Institution to fill-up the post of Vocational Instructor (Agriculture) as the post has fell vacant, consequent upon the retirement of the existing incumbent on 18.10.2002. The petitioner Management, on obtaining such orders, shall follow the procedures under the provisions of Tamil Nadu Private Schools Regulations Act and to fill up the fully qualified hand as per the qualification prescribed for Vocational Instructor in Agriculture under the Rules and the above following due procedure. The permission shall be accorded to the Institution within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(W)

/True copy/

Sub Assistant Registrar

To

1.The Secretary,
State of Tamil Nadu,
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,
Dindigul, Dindigul District.

4.The District Educational Officer,
Palani, Dindigul District.

+1CC TO M/S.ISSAC CHAMBERS, ADVOCATE, SR NO.49946

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and

W.M.P.(MD)Nos.20217 to 20219 of 2017
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Is/akv

MS/KKR/SAR-1/12.04.2018/4P.6C