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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.939 of 2017

T.Maria Viagula Jeya

... 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 Elementary School Education,
College Road, Chennai-600 006.
- 3.The District Elementary Educational Officer,
Tuticorin, Tuticorin District.
- 4.The Assistant Elementary Educational Officer,
Srivaikuntam, Tuticorin District
- 5.The Correspondent.
St. Aloysius Middle School,
Korkai - 628 80,
Tuticorin 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 proceedings issued by the fourth respondent herein vide O.Mu.No.98/A1/2016 dated 16.09.2016 quash the same and further direct the third respondent herein to approve the appointment of the petitioner as pre-vocational instructor (Sewing) in the fifth respondent school and disburse salary and other attendant benefits w.e.f. 01.12.2015.

For Petitioner : Mr.A.Ajith Geethan

For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

O R D E R

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

Heard Mr.A.Ajith Geethan, learned counsel for the petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader for the respondents.



2.This writ petition has been filed by a vocational instructor in Sewing, who was appointed in the fifth respondent School, challenging the order passed by the fourth respondent, dated 16.09.2016, by which the request for approval of her appointment was negatived. The reason for refusing to approve the petitioner's appointment was stating that the post of vocational instructor can be filled up only with a candidate with Agriculture qualification and not Sewing.

3. The similar issue was considered by the Division Bench in the case of *The Correspondent, St.Britto Higher Secondary School, Vs. State of Tamil Nadu and others* in W.P.(MD)No.1569 of 2015. In the said case, the Department refused to approve the appointment, since a vocational instructor in Drawing was appointed instead of Weaving. The Division Bench by order, dated 20.02.2018, allowed the writ petition. The operative portion of the order reads as follows:-

"...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



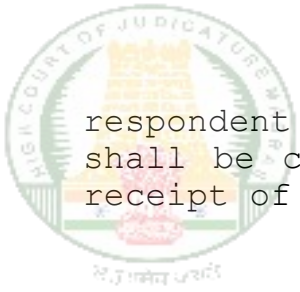
opined that the action of the Management cannot be faulted. It was pointed out that though it may be true that prior approval has not been obtained by the Management before the appointment of Prevocational Instructor in Sewing, noted that what is important to be seen is that two posts which has been 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 above referred decision would squarely applied to the facts and circumstances of the case on hand. Thus, by following the above referred order, the impugned order passed by the fourth respondent has to be set aside.

5.In the result, the writ petition is allowed and the impugned order passed by the fourth respondent, dated 16.09.2016 is set aside and the respondents 3 and 4 are directed to approve the appointment of the petitioner as vocational instructor (Sewing) in the fifth



respondent School and disburse all monetary benefits. This direction shall be complied within a period of eight weeks from the date of receipt of a copy of this order. No costs.

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/True Copy/

Sd/-
Assistant Registrar(AS)

Sub-Assistant Registrar

To

- 1.The Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of Elementary School Education,
College Road, Chennai-600 006.
- 3.The District Elementary Educational Officer,
Tuticorin, Tuticorin District.
- 4.The Assistant Elementary Educational Officer,
Srivaikundam, Tuticorin District
- 5.The Correspondent.
St. Aloysius Middle School,
Korkai - 628 80,
Tuticorin District.

+One cc to M/s.A.Ajith Geethan, Advocate, SR.No.50321

ls/akv
RL/7C/4P/SKN/RSK/SAR1/6/4/2018

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