



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P. (MD) No. 23285 of 2016

S. Ferlin Jedidiah

... Petitioner

-Vs-

1. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.
2. The District Educational Officer,
Cheranmahadevi at Tirunelveli,
Tirunelveli District.
3. CMS Evangelical Suvi David Memorial,
Higher Secondary School,
Rep. by its Correspondent,
Karisal, Karisalpatti Post,
Tirunelveli District-627 414.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent herein in Na.Ka.No.1840 /A3/2016 dated Nil.06.2016 (signed on 22.09.2016), quash the same, and further direct the 2nd respondent herein to approve forthwith the appointment of the petitioner as Junior Assistant in the 3rd respondent school from 03.07.2006 onwards with salary and other benefits.

For Petitioner : Mr.E.V.N.Siva
For Respondents : Mrs.S.Srimathy (for R1 and R2)
Special Government Pleader
No Appearance (for R3)

ORDER

The prayer sought for in this Writ Petition is for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent herein in Na.Ka.No.1840/A3/2016 dated Nil.06.2016 (signed on 22.09.2016), quash the same, and further direct the 2nd respondent herein to approve forthwith the appointment of the petitioner as Junior Assistant in the 3rd respondent school from 03.07.2006 onwards with



salary and other benefits.

2. Heard Mr.E.V.N.Siva, learned counsel appearing for the petitioner and Mrs.S.Srimathy, learned Special Government Pleader, appearing for the respondents 1 and 2.

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3. The short facts, which are required to be noticed for the disposal of this Writ Petition, are as follows:-

(i) The third respondent is an aided minority higher secondary school, wherein, there had been a post called Junior Assistant fell vacant on 31.03.2003. In the said post, the petitioner was appointed on 03.07.2006 as Junior Assistant and accordingly, the petitioner joined in the service and has been continuously working. The petitioner has also produced the extract of attendance register (relevant portion) before this Court for perusal.

(ii) Therefore, based on such appointment, a proposal was sent by the Management of the third respondent School to the Official respondents for approval of the appointment of the petitioner on 21.08.2006. The said proposal was not immediately approved and had been kept pending.

(iii) It seems that in the meanwhile, there had been a dispute between two groups in the Management of the third respondent School and also there had been a litigation, which ultimately went to the Hon'ble Supreme Court in Civil Appeal Nos.5989 to 5991 of 2009, wherein, the Hon'ble Supreme Court, by an order dated 20th March 2012, directed the District Educational Officer, Cheranmahadevi at Tirunelveli / second respondent to manage and administer the society and the schools, till the decision of the Civil Court.

(iv) Pursuant to the said order passed by the Hon'ble Apex Court, till date there has been no approved Management as the issue with regard to the dispute for the Management has not been concluded by the Civil Court as directed by the Hon'ble Apex Court. Therefore, continuously, the second respondent has been, in the interim Management for disbursing the salary to the teaching and non-teaching staffs working in the third respondent School.

(v) Only in that circumstances, since the proposal of the appointment of the petitioner had been considered, the petitioner has already approached this Court in W.P.(MD)No.8934 of 2016, wherein, this Court, by an order dated 29.04.2016, directed the official respondents to consider the request of the petitioner, seeking approval to the appointment of the petitioner as Junior Assistant and pass orders there on. Only pursuant to the said direction issued by this Court, the present impugned order has been passed, whereby the proposal for approval of the appointment of the petitioner was rejected mainly on the ground that if at all the petitioner is continuously working in the third respondent School, the proposal should have been forwarded through the Headmaster



concerned and also on the reason that as per the letter dated 26.05.2016, therein had been ban for appointment of non-teaching staffs and there was no necessity arise to lift the said ban.

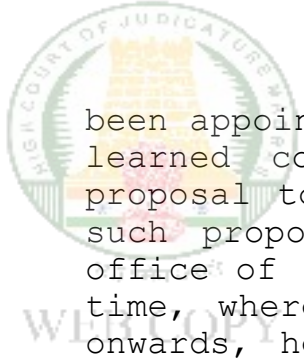
3. Heard the learned counsel appearing for the petitioner, who would submit that, the post was a sanctioned post, whereby the petitioner was appointed on 03.07.2006, as the post was vacated on 31.03.2003 by the retirement of the earlier incumbent. As the State Government imposed ban on appointments, proceedings was given by the competent authority on 30.06.2010 and thereafter, the proposal was sent by the same Management, therefore, the approval was denied. When that being the position, the reasons cited in the impugned order passed by the second respondent stating that the proposal should have been forwarded through the Headmaster of the third respondent School cannot be accepted and also the further reason of the Government letter dated 26.05.2016 cannot be a valid reason. The similar has been considered by this Court in ***Deva Asir V. The Secretary to Government, School Education Department and others*** reported in ***2016-3-L.W.152***, wherein it has been held that if an appointment is made in the approved / sanctioned vacancies of non-teaching staffs in the Aided Minority Schools, the same can be approved. In view of the above decision, the impugned order cannot stand and therefore, the prayer can be considered and granted.

4. Per contra, the learned Special Government Pleader would submit that, there had been no approved management for the past several years in the third respondent School and only for the purpose of disbursing salary, the second respondent had been in charge of the Management, that too, as per the directions of the Hon'ble Supreme Court of India as cited supra. Therefore, the claim now made by the petitioner that he was appointed in the year 2006, since then he has been continuously working in the said school, cannot have any weightage, for which, there is no direct proposal from the Management or from the Headmaster of the School presently working and therefore, in the absence of this, the claim of the petitioner cannot be considered. Accordingly, it was rightly rejected.

5. Since no Approved Management is admittedly available in the third respondent School, none appears before this Court and since there is no adverse order going to be passed, notice to the third respondent is dispensed with.

6. I have considered the rival submissions made by the learned counsel appearing for the respective parties and perused the materials placed before this Court.

7. It is an admitted fact that the post of Junior Assistant is a sanctioned post, where the earlier incumbent was working and vacated on 31.03.2003. Therefore, the said post became vacant, which has already been approved or sanctioned. Since the petitioner is a qualified person to hold the post of Junior Assistant, he has



been appointed on 03.07.2006, as has been rightly pointed out by the learned counsel for the petitioner. The Management has sent proposal to the the competent authority on 21.08.2006 and based on such proposal of the Approved Management which had been in the office of the third respondent School during the relevant point of time, wherein the petitioner was appointed on 03.07.2006 and then onwards, he had been continuously working in the third respondent School. Regarding the said factor, the learned counsel for the petitioner has relied upon the extract of the Attendance Register in this regard.

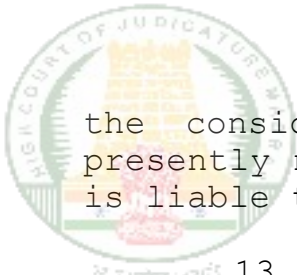
8. When the proposal was sent by the Management on 21.08.2006, the same had been kept pending and no decision seems to have been taken by the second respondent. In the meanwhile, there had been a dispute in the management itself, as it became two groups and ultimately, the matter has gone to the Hon'ble Apex Court, wherein, the aforesaid order was passed, directing the second respondent to take over the Management till the decision is taken by the competent Civil Court. It is informed before this Court that, so far no decision is taken by the competent civil Court, as directed by the Hon'ble Apex Court and therefore, the second respondent had been continuously in the post of the Management of the third respondent school.

9. The contention that the second respondent had been continuously in the management of the third respondent school only for the purpose of disbursement of salary cannot be accepted in *toto*. Because, it is not mere the job of disbursing salary to the Aided Recognised School and other aspects can also be gone into by the second respondent. They had not taken any decision with regard to the appointment of the staff.

10. Herein the case on hand, the petitioner had already been appointed by the Approved Management in the year 2006 and the proposal was also sent to the second respondent on 21.08.2006 to approve the appointment of the petitioner. If the said appointment created any doubt, the third respondent school could have been directed to furnish the relevant records, which could have been called for from the headmaster of the third respondent school, based on which, the decision should have been arrived at. Instead of doing so, the second respondent has gone to the extent of stating that the proposal since have been furnished at the latter point of time it cannot be approved.

11. With regard to the said reason pertaining to the letter dated 26.05.2006 of the Government in letter No.11462 / D2/2016 is concerned, the issue has already been settled in this regard, moreover, insofar as the minority school is concerned, there can be any insistent that they should get prior approval for appointment.

12. Therefore, both the reasons cited in the impugned order cannot stand in the legal scrutiny and therefore, this Court is of



the considered view that the impugned order with the reasons presently mentioned therein cannot be sustained and accordingly, it is liable to be quashed and therefore, it is quashed.

13. In the result, there shall be a direction to the second respondent to consider the proposal of appointment of the petitioner from 03.07.2006 as Junior Assistant at the third respondent School and pass necessary orders for grant of approval to the said appointment, after verifying the records from the third respondent school. In this regard, the second respondent can call for through the headmaster concerned if he requires any records. Once such approval is made, it is needless to mention that the petitioner is entitled to claim all service benefits including monitory benefits. Needful as indicated above shall be done by the second respondent within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.
2. The District Educational Officer,
Cheranmahadevi at Tirunelveli,
Tirunelveli District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 63102
+ 1 CC TO Mr.EVN.SIVA, ADVOCATE IN SR No. 63190

TA
TE/SKN/SAR-4 : 05/12/2018 : 5P/5C

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