



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A.(MD).Nos.486 and 487 of 2018
and
C.M.P.(MD) Nos.2906 to 2908 of 2018

1.The Secretary to Government,
Education Department,
State of Tamil Nadu,
Fort St. George, Chennai - 9.

2.The Director,
Teacher Education Research and Training,
Chennai.

3.The Principal,
District Teacher Education and
Training Institute,
Munanjipatti,
Tirunelveli District.

... Appellants both appeals

Vs.

J.Joseph Raj ... Respondent in W.A.486/2018

S.Nausath ... Respondent in W.A.487/2018

COMMON PRAYER:These appeals are filed under Clause 15 of the Letters Patent, to set aside the order dated 06.09.2017 and passed in W.P.(MD)Nos.16767 and 16768 of 2017.

Prayer in WP(MD). 16767/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus call for the records pertaining to the proceedings of the 3rd respondent in Na.Ka.No.338/E/2017 dated 10.08.2017 and quash the same and further direct the 3rd respondents



to approve transfer cum promotion proposal dated 04.10.2016 send by the management.

Prayer in WP(MD). 16768/ 2017 :

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Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified mandamus direction in the nature of Writ, call for the reocords pertaining to the 3rd respondent in Na.Ka.No.338/E/2017 dated 10.08.2017 and quash the same and further direct the respondents to approve appointment of petitioner as junior assistant at Sarah Tucker Teacher Training Institute and disburse all the service and monetary benefits from 20.10.2016.

In Both Appeals:

For Appellants : Mr. V.R.Shanmuganathan, Spl.G.P.

For Respondents : Mr.S.Chellapandian

JUDGMENT

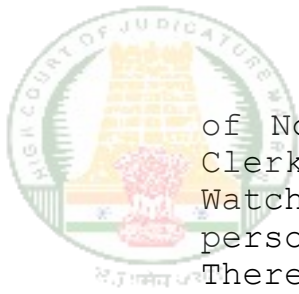
(Judgment of this Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.S.Chellapandian, learned counsel appearing for the respondent in both appeals.

2.These appeals are directed against the common order in W.P. (MD) Nos.16767 and 16768 of 2017 dated 06.09.2017.

3.An identical issue was considered by the Division Bench in the case of Secretary to Government, Education Department Vs. G.Mahendran David and another in W.A.(MD) No.390 of 2017 etc. batch dated 12.06.2017. The operative portion of the judgment reads as follows:

"4.In our considered view, the distinction which is sought to be made by the appellant Government is not tenable for more than one reason. Firstly, the problem arose on account of earlier decision taken by the Government in banning recruitment for several categories of posts throughout the State by order dated 29.11.2001. The order was in force till 07.02.2006. Though, it was lifted, the Government vide order dated 26.05.2006, reiterated the ban orders, which related to appointment



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of Non-teaching Staff such as Junior Assistants, Record Clerks, Office Assistants, Sweeper, Gardener, Waterman, Watchman etc,. This was put to challenge by aggrieved persons and the Government Order was quashed. Thereafter, the Government passed various Government Orders one of that being G.O.Ms.No.203 dated 23.07.2010, wherein, the Government took a decision that certain category of posts such as Watchman, Gardener cum Sweeper, Scavenger etc., are required to be out-sourced. These orders were put to challenge along with similar Government Orders and all orders were set aside.

5.Ultimately, the Division Bench in the case of A.Maria Selvam (supra), considered the batch of cases, wherein, review petitions were also tagged along, which arose due to orders passed in various writ petitions pertaining to approval of appointments in Non-teaching posts by Minority and Non-minority Aided Institutions and the Government Appeal has been dismissed by judgment dated 21.07.2015.

6.Consequently, when we perused the Government Order in G.O.Ms.No.40, School Education (U2) Department, dated 14.03.2013, we find that it pertains to Teacher Education Institutions. The learned Special Government pleader would strenuously contend that this is the Government Order which has been passed specifically for Teacher Education Institutions and therefore, the decision rendered by the Division Bench in the case of A.Maria Selvam (supra), cannot be made applicable. However, on a perusal of the said Government order it is seen that it reiterates the proposal made by the Government in respect of schools in G.O.Ms.No.203 dated 23.07.2010. The said Government order has been held to be un-enforceable and the sanctioned posts have been permitted to be filled up.

7.Therefore, the decision rendered by the Division Bench in the case of A.Maria Selvam (supra), would equally apply to Teacher Education Institutions as all the educational institutions fall under the very same Education Department and all the institutions were commonly imposed with ban of recruitment and similar directions issued to the schools to fill up the relevant posts by out-sourcing was held to be untenable. And in such circumstances, merely because the respondents are Teacher Education Institutions, or persons employed by them, there can be no distinction between both set of employees. Therefore, the present issue is clearly covered by the decision of the Division Bench in the case of A.Maria Selvam (supra), and it was dismissed.



8. Accordingly, these Writ Appeals stand dismissed. No costs. Consequently, connected Miscellaneous petitions are closed. "

By the said judgment, the appeals filed by the Government in similar cases were dismissed.

4. The learned Special Government Pleader does not dispute the legal position on the said issue.

5. Thus, following the decision in W.A.(MD) No.390 of 2017, these writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

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TE/SV MMS/SAR 4/13.04.2018/4P/4C