



WEB COPY

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.8998 of 2016
and
W.M.P.(MD).No.7180 of 2016

J.Adhisaya Raja Gani

... Petitioner

Vs.

1.The Director of School Education,
Chennai.

2.The District Educational Officer,
Cheranmadevi,
Tirunelveli District.

3.The Correspondent.
S.M.Khadar Meera Sahib Higher Secondary School,
Pettaikulam, Tirunelveli District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to approve the appointment of the petitioner as Weaving Teacher from the date of appointment i.e.01.08.2003 with all monetary benefits by considering the petitioner representation dated 18.04.2012 and the reminder dated 25.02.2015.

For Petitioner : Mr.V.Panneer Selvam

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.V.Panneer Selvam, learned counsel for the petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader for the respondents.

2.This writ petition has been filed to direct the respondents to approve the appointment of the petitioner as Weaving teacher from the date of appointment with all monetary benefits.

3.The legal question which falls for consideration in this writ petition is whether the respondent/Management in which the petitioner was appointed as a Weaving teacher could have appointed

her without obtaining the approval of the Department as there is an embargo that only two vocational streams are permissible viz., Sewing and Music.

4. This question 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, wherein the vacancy in the post of vocational instructor in Weaving was accommodated with a candidate, who is a vocational instructor in Drawing. This Court, after taking into consideration the various Government Orders, relied on by the respondents, allowed the Writ Petition by order dated 20.02.2018. 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."

5.As pointed out earlier, the only distinction in the case on hand is that a vacancy in the post of Weaving instructor is being filled up by another Weaving instructor.

6.In the light of the reasons given in the above referred order, the respondents cannot refuse to approve the appointment of the petitioner.

7.In the result, the Writ Petition is allowed and the respondents are directed to approve the appointment of the petitioner as Weaving teacher from 01.08.2003 with all monetary benefits within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/



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To

- 1.The Director of School Education,
Chennai.
- 2.The District Educational Officer,
Cheranmadevi,
Tirunelveli District.
- 3.The Correspondent.
S.M.Khadar Meera Sahib Higher Secondary School,
Pettaikulam, Tirunelveli District.

+One cc to M/s.V.Panneer Selvam, Advocate, SR.No.50005

ls/akv
RL/5C/4P/SKN/RSK/SAR1/6/4/2018

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