

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1449 of 2018

A.P. Vimal

..Appellant

Vs.

1. The Secretary to Government,
Department of School Education,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.
3. The Joint Director (Vocational),
College Road, DPI,
Chennai.
4. The Chief Educational Officer,
Vellore, Vellore District.
5. The Head Master,
Government Boys Higher Secondary
School,
Thimiri, Vellore District.

..Respondents

Prayer: Writ Appeal as against the order dated 24 July, 2017 in
W.P. No. 18780 of 2017.

W.P.18780/2017:

This Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari Mandamus calling for the records Na.Ka.9211/VI/E1/ 2016 dated 30.06.2016 from the file of 3rd respondent/Joint Director of School Education (Vocational) quash the same and direct the respondents to regularize service of the Petitioner by appointing him in the Permanent Post of Vocational Instructor Grade II in Educational Department.

For Appellant :: Mr.B. Vijay

For Respondents:: Mr.C. Munusamy,
Special Govt. Pleader

J U D G M E N T

(Judgment of the Court was delivered by K.K. SASIDHARAN,J.)

The writ petition in W.P. No. 18780 of 2017 filed by the appellant challenging the order dated 30 June, 2016 rejecting his claim for regularisation in the post of Vocational Instructor was dismissed by the learned Single Judge. Feeling aggrieved by the said order, the appellant has come up with this intra-court appeal.

2. The appellant was appointed as Vocational Instructor by the Parents-Teachers Association, Government Boys Higher Secondary School, Thimiri, Vellore District by order dated 6 January, 2010. The appellant relying on the Government Order in G.O.Ms. No. 35 School Education Department dated 9 February, 2007, regularising the services of temporary part-time Vocational Instructors, made a similar claim for regularisation before the Government. The Joint Director (Vocational), School Education, by order dated 30 June, 2016 rejected the representation for regularisation primarily on the ground that the appointment was made only through the Parents-Teachers Association. According to the Department of Education, the State was not responsible for making the appointment and as such, there is no question of regularisation of such appointment.

3. The learned Single Judge considered the issue raised by the appellant in the light of the judgment of the Honourable Supreme Court in State of Karnataka V. Uma Devi reported in 2006 (4) SCC 1. Though a contention was taken by the appellant in the writ petition that he has been working against a sanctioned post and there was no break in service, such contentions were not addressed to by the learned Single Judge.

4. The learned counsel for the appellant, by placing reliance on a recent judgment of this Court dated 23 January, 2019 in W.A. No. 2445 of 2018 contended that under similar circumstances, the Division Bench was pleased to approve the appointment of a Vocational Instructor. There is no question of extending the benefit of this judgment to the appellant unless the facts are clear.

5. The respondents have not filed counter affidavit in W.P. No. 18780 of 2017. Though there is a reference about the nature of appointment made by the Parents- Teachers Association, the Education Department has not come up with the entire background facts as to whether the employment was perennial in nature. In the absence of the basic facts, it would not be possible for this Court to adjudicate the issue raised by the appellant and more particularly, when a plea is made that his case is covered by the judgment of the Division Bench in W.A. No. 2445 of 2018. We are therefore of the view that the issue requires fresh consideration by the Writ Court.

6. The order dated 24 July, 2017 is set aside. The writ petition in W.P. No. 18780 of 2017 is restored to file.

7. The Registry is directed to post the writ petition before the concerned learned Single Judge as per roster for hearing. We grant liberty to the appellant to file an additional affidavit and produce materials in support of his plea for regularisation. We also direct the State to file a detailed counter affidavit taking into account the contentions taken in the affidavit filed in support of the writ petition in W.P. No. 18780 of 2017. The State must also make its stand clear as to whether the case of the appellant is covered by the judgment of the Division Bench dated 23 January, 2019 in W.A. No. 2445 of 2018.

8. The intra-court appeal is disposed of as indicated above.
No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Department of School Education,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.
3. The Joint Director (Vocational),
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4. The Chief Educational Officer,
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5. The Head Master,
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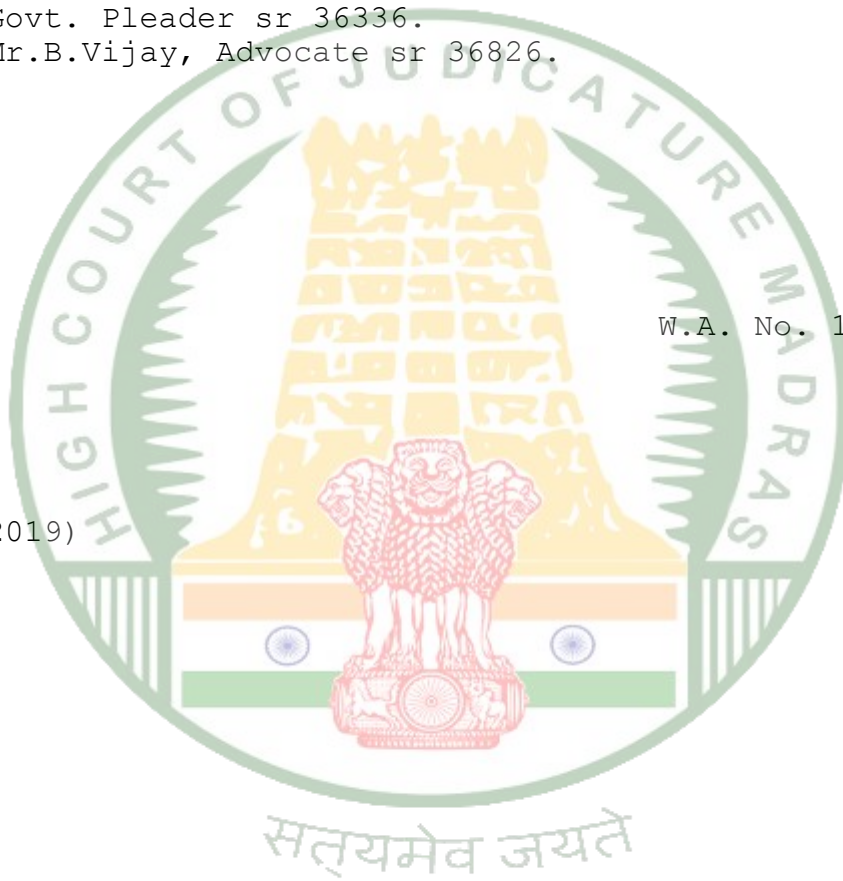
6. The Section officer
Writ Section (Posting)
High Court, Madras 104.

+1 CC to Govt. Pleader sr 36336.

+1 CC to Mr. B. Vijay, Advocate sr 36826.

W.A. No. 1449 of 2018

RJI (CO)
SP (07/06/2019)



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