

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.No.1771 OF 2018

- 1 THE DIRECTOR OF ELEMENTARY
EDUCATION COLLEGE ROAD
CHENNAI.
- 2 THE DISTRICT ELEMENTARY
EDUCATION OFFICER COLLEGE ROAD CHENNAI.
- 3 THE ASSISTANT ELEMENTARY
EDUCATION OFFICER ROYAPURAM UNION NO.11
DAVIDSON STREET CHENNAI. ... appellants

vs

- 1 J. REVATHI
- 2 THE SECRETARY
B. SUBBRAYAN MIDDLE SCHOOL MOOLAKOTHALAM
BASIN BRIDGE CHENNAI. ... respondents

Appeal filed to set aside the order dated 03.01.2018 made in
Writ Petition No.34244 of 2017.

Prayer in Writ Petition No.34244 of 2017: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the 2nd respondent vide O.Mu.No.782/Aa2/2015 dated 22.05.2015 and consequential order of the 3rd respondent in Na.Ka.No.25/2016 dated 29.02.2016 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher in the 4th respondent school w.e.f. 09.02.2015, with all consequential monetary benefits.

For appellants : Mr.C.Munusamy, Spl.G.P.

For Respondents : Mr.T.Sellapandian, for R-2
Mr.S.N.Ravichandran for R-1

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The appointment of the first respondent as a Secondary Grade Teacher was not approved by the Elementary Educational Officer on the ground that prior permission was not taken for appointment in a Private School in accordance with Rule 15(4) (iv)(c) of the Tamil Nadu Private Schools Regulation Act. The order was set aside by the learned Single Judge and a Mandamus was issued for approval of appointment. Feeling aggrieved by the said direction, the State has come up with this intra court appeal.

2. The learned Special Government Pleader contended that appointment of the first respondent was made without taking prior approval from the Government and as such, it was an illegal appointment. The learned Government Pleader further submitted that the management was obliged to take prior permission from the Government for making appointment even against a sanctioned post. Since no such approval was given, the learned Single Judge was not justified in allowing the Writ Petition.

3. We have also heard the learned counsel for the first respondent.

4. The materials available on record indicates that there were two vacancies in the post of Secondary Grade Teacher in the Subbarayan Middle School, Moolakothalam Basin Bridge, Chennai 21. The management appointed two secondary grade teachers in the retirement vacancies. The application for approval was rejected by the Assistant Elementary Educational Officer. The said order was challenged by the School Management before the Writ Court in W.P.No.26684 of 2010. This Court, by order dated 6 September 2011, set aside the order passed by the Assistant Elementary Educational Officer and a Mandamus was issued to the Government to grant permission for appointment. Thereafter, Tmt.Sumathi was appointed on 2 December 2011. Proposal sent by the School management for appointment was rejected by the Government on the ground that she has not appeared for Teachers Eligibility Test. The said Tmt.Sumathi, resigned from service on 18 October 2014. Thereafter, the management initiated action for appointment to the post of Secondary Grade Teacher. Employment exchange, vide

proceedings dated 31 December 2014, furnished the names of candidates who were eligible for appointment. The management also issued a paper publication on 14 January 2015 notifying the vacancy. The first respondent submitted application pursuant to the said notification. She was fully eligible for appointment. The management conducted interview and ultimately the first respondent was selected. The first respondent joined duty thereafter, pursuant to the order dated 9 February 2012. The management submitted a proposal on 30 March 2015 for grant of approval to her appointment. It is the said proposal which was rejected by proceedings dated 22 May 2015.

5. There is no doubt that the Tamil Nadu Private Schools Regulation Act, contain a provision for taking prior permission even for filling up a sanctioned post. However, the facts of the present case does not require such a course to be taken for the simple reason that this court on an earlier action directed the Educational Department to grant permission for appointment of two secondary grade teachers. This court by order dated 6 September 2011 in W.P.No.26684/2010 directed the educational authorities to grant permission to the management for appointing two secondary grade teachers. The said order has become final. It is a matter of record that Tmt.Sumathi was appointed and thereafter, she resigned on account of her non possession of TET. It was only to fill up the vacancy caused due to the resignation of Tmt.Sumathi, action was taken by the management. Since permission has already been granted by this Court by order dated 6 September 2011, with a further direction to fill up the vacancy, the initial permission will hold good even for the appointment of the first respondent. We are therefore of the view that the writ court was correct in quashing the order impugned in the Writ Petition and issuing a Mandamus for grant of permission.

6. We direct the Department of Elementary Education represented by its Director to accord approval for appointment of the first respondent. The order of approval should contain the date of actual appointment. The appointment should be effective from 1 February 2018, the date indicated in the order passed by the learned Single Judge for passing orders for approval of appointment. However, we make it clear that the first respondent would be entitled to salary only from the date of approval and not from the date of initial appointment, which we fix as 1 February 2018. The said date would be taken into account for all other practical purposes, including counting the period for pensionary benefits. The order passed by the learned Single Judge is modified to the extent indicated above.

7. The intra court appeal is allowed in part. No costs. Consequently, C.M.P.Nos.18907 and 14210 of 2018 are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

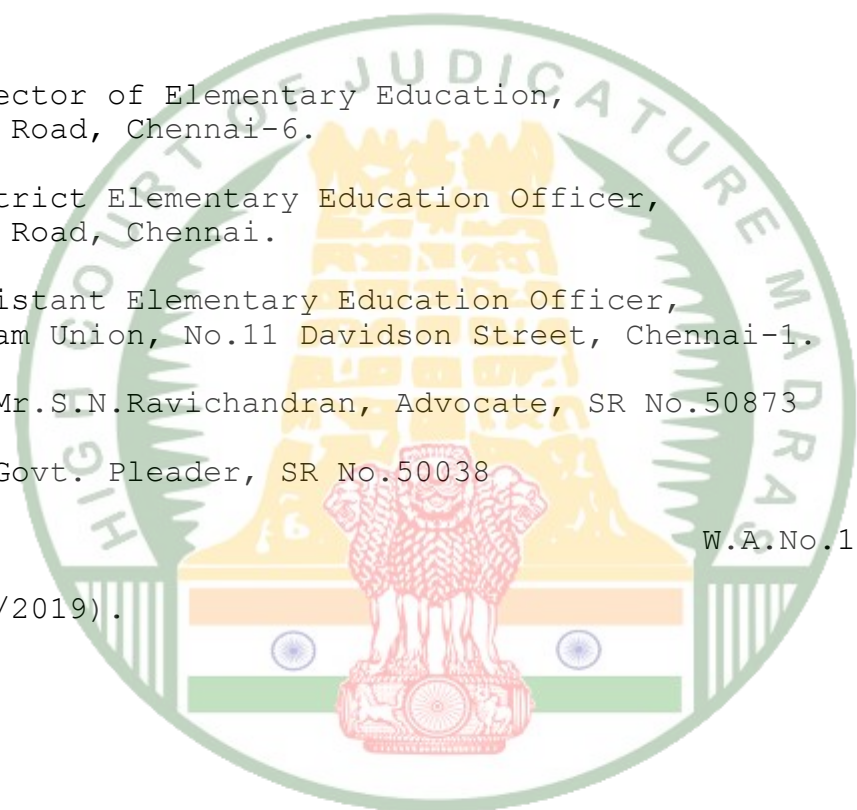
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To

- 1.The Director of Elementary Education,
College Road, Chennai-6.
 - 2.The District Elementary Education Officer,
College Road, Chennai.
 - 3.The Assistant Elementary Education Officer,
Royapuram Union, No.11 Davidson Street, Chennai-1.
- +1 CC to Mr.S.N.Ravichandran, Advocate, SR No.50873
+1 CC to Govt. Pleader, SR No.50038

W.A.No.1771 OF 2018

GP(CO)
SSM(30/07/2019).

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF MADRAS" are written in a circular path around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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