

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.887 and 888 of 2018

and

C.M.P.Nos.7732 and 7733 of 2018

- 1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.
 - 2.The Joint Director of School Education,
(Higher Secondary School),
College Road, Chennai - 600 006.
 - 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
 - 4.The District Educational Officer,
Thakkalai,
Kanyakumar District.
- Appellants
in both WAs

vs.

- 1.P.Vivekanandan
Vocational Instructor,
Arunachalam Higher Secondary School,
Thiruvettar Post,
Kanyakumari District.
- ... Respondent
in WA.No.887/2018

- 1.C.Jose Waltine,
Vocational Instructor,
Arunachalam Higher Secondary School,
Thiruvettar Post,
Kanyakumari District.
- ... Respondent
in WA.No.888/2018

- 2.The Correspondent,
Arunachalam Higher Secondary School,
Thiruvettar Post,
Kanyakumari District.
- ...2nd Respondent
in both WAs.

Prayer: Writ Appeals are filed under Clause 15 of the Letters Patent, against the order made in W.P.Nos.18516 and 18517 of 2010, dated 24.10.2017.

Common Prayer in W.P.No. 18516 & 18517/2010: Petition filed to issue a Writ of Certiorarified Mandamus Calling for the records relating to the order of the 2nd respondent passed in Na.Ka.No.106533/VI/E3/2009 dated 22.12.2009, quash the same and consequently direct the respondents 1 to 4 to approve the petitioner's appointment as Vocational Instructor at the 5th respondent school with effect from 11.8.2004 and 02.06.2003 respectively end pay them salary and other benefits.

For Appellants: Mr.C.Munuswamy
Special Government Pleader
(Education)

For Respondents: Ms.P.Mahalakshmi For Caveat

COMMON JUDGMENT

(Judgment of the Court was made by SUBRAMONIUM PRASAD, J)

The Government of Tamil Nadu, is challenging the order dated 24.10.2017, passed by the learned Single Judge in W.P.Nos.18516 and 18517 of 2010.

2. The writ petitioners were appointed as Vocational Instructors in Linguistic Minority school. Mr.P.Vivekanandan, was appointed on 11.08.2004 and Mr.C.Jose Waltine, was appointed on 02.06.2003 respectively, in the vacancies that arose due to retirement of the earlier appointees. The school approached the State to approve their appointment, as Vocational Instructors.

3. The approval sought for was rejected on the ground that the vacancies of Vocational Instructors which arise due to resignation or death, would be resumed by the Government and they cannot be appointed, to these posts. Vide Proceedings of the Tamilnadu Joint Director of School Education, Tamilnadu Vocational Education, Chennai, in Na.Ka.No.106533/V1/E3/2009, dated 22.12.2009, has rejected the application for approval of the writ petitioners, as under:-

"Thiru.P.Vivekananthan and Josewaltin were appointed as part time vocational Instructors by the school authorities of Arunachalam Higher Secondary School, Thiruvattar Kanyakumari District. They filed Writ Petition Nos.21508/09 and 21509/09 before the Madras High Court praying to issue directions to the second respondent Joint

Director (Vocational Education) to consider their application dated 23.07.2009 and to approve their appointment. The writ petitions were allowed and in the order dated 22.10.2009, referred above as reference No.1 the Hon'ble High Court directed the second respondent, the Joint Director, (vocational Education) to consider the application of the writ petitioners and pass appropriate orders regarding their appointment.

The application of the petitioners dated 23.07.2009 was considered as per the directions of the Madras High Court and the notes of the Nagercoil Chief Educational Officer.

Thiru P. Vivekanthan and Thiru Josewaltin were appointed in the retired place of vocational instructors in the Arunachalam Higher Secondary School and vocational Education at Thiruvattar, Kanyakumari District. The Chief Educational Officer, Nagercoil in his Letter OMU No:3785/A2/05 dated 15.10.2005 categorically stated that the said appointment shall not be approved. The Chief Educational Officer, Nagercoil has also stated that for the said two appointments, prior permission was not obtained from the Director of School Education.

The vocational Instructor is to be appointed from the part time vocational instructors considering the state wide seniority and after obtaining prior permission from the Government. The said posts not allotted to the school. If the instructor retires, resigns, dies or left for another job, the said post is to be surrendered to the Department. On any account the school authorities have no right to appoint a person in such posts and it was duly informed by the office as per Naka No:115506/W26/2002 dated 28.08.2003.

Hence for the reasons stated above, Thiru P.Vivekanathan and Jose Waltin appointed by the said High Secondary School as part time vocational instructors cannot be approved and the Chief Educational Officer, Nagercoil in his letter dated 15.10.2005 has categorically stated in. So also as per the Proceedings Na.Ka.No:115506/W26/2002 dated 28.08.2003 the application to approve the posts of the vocational Teachers cannot be accepted and this is for your information."

4. The said order is challenged in W.P.Nos.18516 and 18517 of 2010.

5. The learned Single Judge by the impugned order dated 24.10.2017, in W.P.Nos.18516 and 18517 of 2010, allowed the writ petitions.

6. Being aggrieved by the same, instant writ appeals have been filed by the appellants.

7. The learned Single Judge relied on the Judgment of the Division Bench of this Court in W.A.(MD).No.652 of 2013 in State of Tamil Nadu and others vs. The Correspondent, St.Joseph's Malankara Shyrian Catholic Higher Secondary School, which held that nowhere it has been stated that the sanction posts, which have been declared surplus, on account of death or resignation of existing teachers, will be resumed by the Government.

8. Even though the learned Single Judge has quoted a relevant portion of the said judgment, at the risk of repetition, few paragraphs are once again been quoted, as hereunder:-

"4.The issue as to whether a person appointed in a sanctioned post by a minority school can be denied approval of appointment was considered by a Division Bench of this Court in W.A.(MD) No.16 of 2011, dated 25.1.2011, wherein in paragraph Nos. (3) to (5), it is held thus:-

3) Learned counsel appearing for the first respondent submits that one of the special teacher post (Sewing) became vacant and in the said vacancy, the first respondent was appointed from 15.7.2004 and she is serving in the second respondent school all these years. Learned counsel for the first respondent also submitted that the said sanctioned post is in existence and the appellants neither declared the said post as surplus nor resumed the post till date from the second respondent school. To prove the availability of the post, the staff fixation orders of the school is filed. The reason stated by the District Elementary Educational Officer for rejecting the request for approval was that there is reduction of student strength. The very same issue was considered by the Division Bench in W.A.No.1263 of 2001, by order dated 22.1.2004, wherein this Court has held that if a person is appointed in a sanctioned post, the approval cannot be rejected and if there is a fall in strength and the post become surplus after granting approval to the post, the said teacher

along with the post could be transferred/deployed to a needy school. The same is the view taken by the learned Single Judge in this case by relying upon the various other judgments.

(4) The learned counsel for the first respondent also submitted that an identical case was allowed by the learned Single Judge in W.P.No.7218 of 2008 by order dated 4.8.2009 and without filing an appeal against the said order, the said order was implemented by the very same second appellant in this appeal by order dated 18.9.2009.

(5) The said fact is also not disputed by the learned Special Government Pleader appearing for the appellants.

5. Applying the said judgment to the facts of the present case, there is no error in the order passed by the learned Single Judge."

9. It has been brought to our notice that Special Leave Petition has been filed against the said judgment, being Special Leave to Appeal (C)No.-----/2014 in CC.No(s).13000/2014, and that the same has been dismissed by the Hon'ble Supreme Court, by the order dated 25.08.2014.

10. It is also brought to our notice that the School Education Department, for the years 2003 - 04 and 2008 - 09, has sanctioned two posts of Vocational Instructors in Accountancy and Auditing, been held by the writ petitioners, as the sanctioned strength for the Arunachalam Higher Secondary School, Thiruvettar, Kanyakumari District.

11. In view of the fact that there are two sanctioned posts and that the issue is settled by the judgment of the Hon'ble Division Bench of this Court, as quoted supra, there is no merit in the instant writ appeals and the same stands dismissed. No Costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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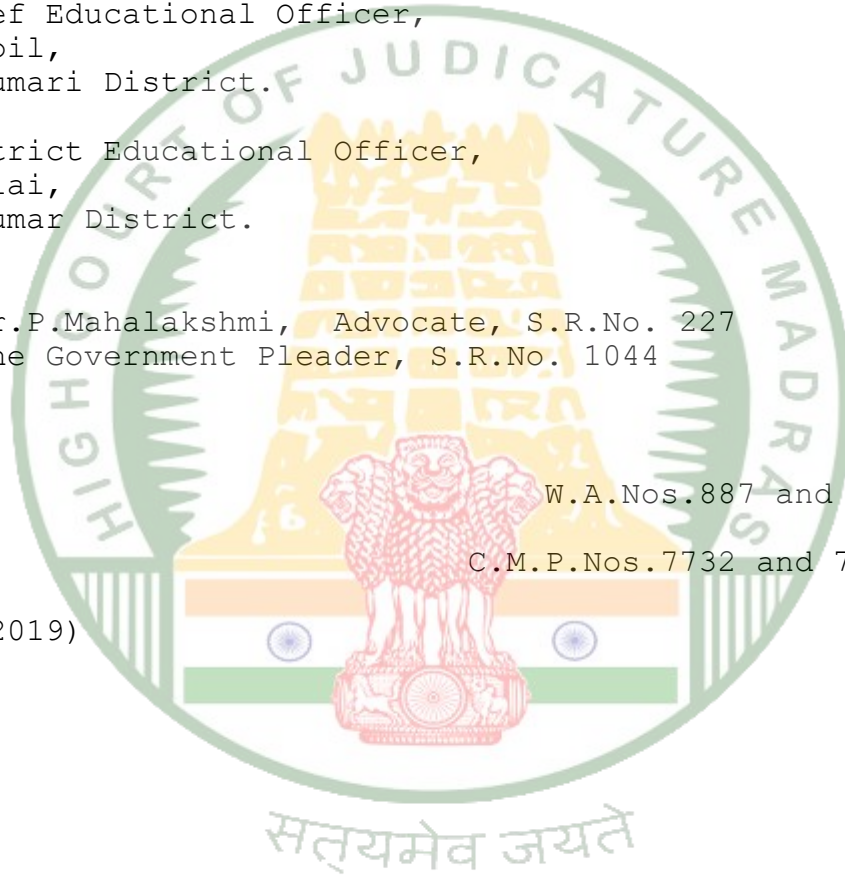
TO

- 1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
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(Higher Secondary School),
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Kanyakumar District.

+2cc to Mr.P.Mahalakshmi, Advocate, S.R.No. 227
+1cc to the Government Pleader, S.R.No. 1044

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NRI (CO)
GN(05/02/2019)



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