



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.04.2019

Delivered on : 24.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.[MD]No.3226 of 2019

and

W.M.P. (MD)No.2520 of 2019

The Correspondent,
Holy Family Girls Higher Secondary School,
Gnanaolivupuram,
Madurai-625 016.

: Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Madurai, Madurai District.

4.The District Educational Officer,
Madurai-625 002, Madurai District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the third and fourth respondents herein to approve forthwith the appointment of Thiru.S.Sekar as Junior Assistant in the petitioner's School w.e.f. the date of his appointment i.e. 26.11.2007 and to disburse all attendant benefits including the arrears of salary and allowance.

For Petitioner : M/s.A.Amala

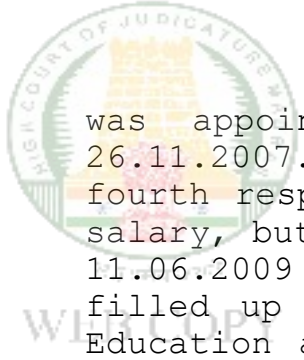
For Respondents : Mrs.S.Srimathy,

Special Government Pleader

ORDER

The prayer in the Writ Petition is to direct the third and fourth respondents herein to approve forthwith the appointment of Thiru.S.Sekar as Junior Assistant in the petitioner's School w.e.f. the date of his appointment i.e. 26.11.2007 and to disburse all attendant benefits including the arrears of salary and allowance.

2. The case of the petitioner is that the post of Junior Assistant in the petitioner's School fell vacant on 13.10.2007 due to voluntary retirement of previous incumbent, namely Thiru.I.Charles Durai on 12.10.2007 and in that vacancy, one S.Sekar

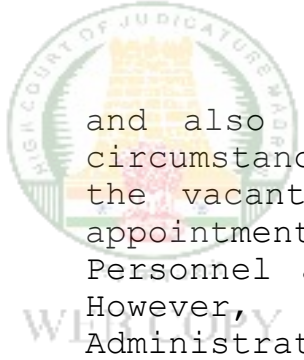


was appointed being a qualified candidate, with effect from 26.11.2007. The petitioner's School submitted a proposal to the fourth respondent on 06.04.2009 for disbursing grant-in-aid towards salary, but, the latter refused the proposal, vide proceedings dated 11.06.2009 stating that the post of Junior Assistant has to be filled up after obtaining permission from the Director of School Education and the appointment of S.Sekar is made without obtaining such permission. However, on considering the request made by the petitioner's School, the second respondent permitted the school to fill up the vacancy of Junior Assistant, vide proceedings dated 04.01.2010, but, the fourth respondent, vide proceedings dated 08.03.2010, approved the appointment of S.Sekar as Junior Assistant with effect from '11.01.2010' instead of '26.11.2007'. Seeking to approve the appointment of the said Sekar with effect from 26.11.2007, the petitioner made several representations. However, none of them was considered by the respondents so far, which necessitated the petitioner to file the present Writ Petition for the aforesaid relief.

3. With the above facts, the learned counsel appearing for the petitioner submitted that S.Sekar was appointed as Junior Assistant due to the vacancy arising out of voluntary retirement of one I.Charles Durai. The School, being the Minority Institution, to fill up a sanctioned post, such permission from the Director is not necessary. The fourth respondent, while approving the appointment of the incumbent, has not even applied his mind to the proceedings of the second respondent dated 04.01.2010. The act of the fourth respondent in approving the appointment of S.Sekar as Junior Assistant with effect from 11.01.2010, despite G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007, wherein, the Government permitted the Aided High School and Higher Secondary School to fill up the Junior Assistant, resulted in denial of salary to S.Sekar for the period from 26.11.2007 to 10.01.2010, during which he worked. Since the appointment is against the sanctioned vacancy, the District Educational Officer is bound to approve the same. This Court, on various occasions, held that there is no ban in making appointment of non-teaching staff in private schools. In spite of it, the fourth respondent has not taken any action so far. Therefore, the learned counsel for the petitioner prays for appropriate directions.

4. The learned counsel for the petitioner, to support her case, placed reliance on the judgment of this Court reported in 2016(3) LW 152 [Deva Asir v. The Secretary to Government, School Education Department and others].

5. Per contra, the learned Special Government Pleader appearing on behalf of the respondents, through the counter-affidavit filed by the fourth respondent, contended that the Government have completely banned for filling up the vacant posts except teachers, doctors and police constables in G.O.Ms.No.212, Personnel and Administrative Reforms Department, dated 29.11.2001



and also issued certain clarifications in that regard. In such circumstances, the School should not have appointed any person in the vacant post of non-teaching staff. However, the ban on the appointment of non-teaching staff was lifted as per G.O.Ms.No.14, Personnel and Administrative Reforms Department, dated 07.02.2006. However, in the interregnum, G.O.Ms.No.49, Personnel and Administrative Reforms Department, dated 14.05.2002 was passed to the effect that all Group D categories like sweeper, gardener, cleaner and scavenger shall be progressively outsourced and entrusted on contract basis. It is submitted that in Letter No.11462/d2/06-1, dated 25.05.2006, the Government was contemplating to issue revised norms in fixing the non-teaching posts in aided schools and till the revised norms are issued, there is no need to lift the ban imposed for filling up the non-teaching posts.

6. The learned Special Government Pleader also submitted that the Government prescribed certain norms to fill up the non-teaching post in Government High and Higher Secondary Schools in G.O.Ms.No.37, School Education Department, dated 08.02.2007 and subsequently, the Government, in G.O.Ms.No.115, School Education Department, dated 30.05.2007, extended the same norms for filling up the posts of non-teaching staff.

7. It is contended that the Government is the funding authority to the aided schools. The Government has the right to prescribe the norms for filling up the posts. In the modified instructions as above, it is the duty of the petitioner's school to follow the revised instructions and norms of the Government. The petitioner's school has to submit the details for getting orders of the Government including the details of similar schools. It is only for placing the particulars to the screening committee for its orders. Until the orders are received from the Government, the petitioner's school has to wait. It has been clearly stated that the posts of any non-teaching staff can be filled up, after getting orders from the Government. Accordingly, the request of the petitioner's School to fill up the post of Junior Assistant was submitted for orders. The Director of School Education, Chennai, accorded to fill up the post of one Junior Assistant vide order in Na.Ka.No.98589/D1/E4/07, dated 04.01.2010. Based on the permission given by the Director of School Education, Chennai, the District Educational Officer, Madurai, approved the appointment of the Junior Assistant with effect from 11.01.2010, as the permission was granted and the order was received on that date. It is pertinent to submit that the petitioner's School should have appointed the Junior Assistant only after getting the orders of permission from the Director of School Education, Chennai. Against this norm, the management appointed the Junior Assistant on 26.11.2007 and as such it is illegal and against the rules prescribed by the Government. Hence, she prayed for dismissal of the Writ Petition.

8. I have considered the rival contentions made on either side and perused the materials available on record.



9. Admittedly, the petitioner's School viz., Holy Family Girls Higher Secondary School, Gnanaolivupuram is one among the several recognized private educational institutions established and administered by the St. Joseph Society of Madurai, consisting of Roman Catholic Religious nuns, which is a registered Society and a recognized religious minority. The School was originally started as a Middle School in 1953 and upgraded and bifurcated as High School in the year 1984. Again, it was upgraded as Higher Secondary School in 2001. The School is offering education from standards VI to XII. The School is recognized and receives aid from the Government of Tamil Nadu for Standard VI to X. Standards XI to XII are self-financed by the management.

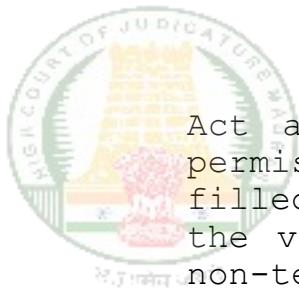
10. While so, the post of Junior Assistant fell vacant in the petitioner's School due to voluntary retirement of I.Charles Durai. Since the said post is a sanctioned post, S.Sekar was appointed w.e.f. 26.11.2007 by the petitioner's School and seeking approval for the same, proposal was also forwarded, but, it was though initially refused, subsequently approved, but, with effect from '11.01.2010' instead of '26.11.2007'.

11. It is not in dispute that the appointment was made against the sanctioned post.

12. It is trite that no prior permission is required from the Director of School Education to fill up a sanctioned post, in a minority institution.

13. At this juncture, it is more profitable to refer to the relevant paragraphs of the judgment in Deva Asir v. The Secretary to Government, School Education Department and others [2016(3) LW 152], which are as under:

"8. Teaching and non-teaching staff of the Non-minority Private Aided Schools are appointed by the School Committee by following the Act and the Rules. In the case of Minority Private Aided Schools, the Educational Agency is the appointing authority and though various provisions of the Act and the Rules are not applicable to the Minority Educational Institutions, Section 19 of the Act and Rule 15 of the Rules are applicable to those Institutions also. Admittedly, all the Private Schools - Minority and Non-Minority - concerned in these writ petitions are in receipt of Aid From the Tamil Nadu Government for the posts sanctioned by the Director of School Education, as per Rule 15(1) of the Rules and the DEOs/DEEOs are the grant sanctioning authorities to those sanctioned posts under Rule 11(2) of the Rules. Whenever vacancies arise in those sanctioned posts due to death/retirement/resignation, etc. these Private Aided Schools could fill those vacancies as per the provisions of the Act and the Rules for filling up those posts, the



Act and the Rules do not contemplate seeking of prior permission from any authority. The vacancies shall be filled immediately. If there is any delay in filling up the vacancies in respect of the teaching as well as the non-teaching posts, it would result in serious prejudice and damage to the educational interest of the downtrodden people, who only enter the portals of these Aided Schools.

32.2. Emphasis is made to "such payment of grants shall be subject to Government Orders and instructions issued from time to time" that appears in the later portion of Rule 11. I am not in agreement with the submission made by the learned Special Government Pleader that the Government has unfettered power to issue directions and instructions in relation to the grant of aid to the Private Schools, that are governed by the Act and the Rules. The directions and instructions that could be issued by the Government should be under the Act and the Rules and the same cannot be outside the Act and the Rules.

33. ...It is the submission of the learned Special Government Pleader that the Government has unfettered discretion to decide about the sanction of grant even when the appointments are made to the sanctioned posts. In my view, if an appointment is made to the sanctioned posts that are sanctioned by the Director under Rule 15(1), then the DEOs/DEEOs are bound to sanction grant and the DEOs/DEEOs could not ask the school to seek permission from the Government before appointing a non-teaching staff in the sanctioned post, whenever vacancies arise in the sanctioned posts due to death/retirement/resignation, etc.,. Hence, this submission has no merit and whatever reasons given for rejecting submission (i) of the learned Special Government Pleader would equally apply to reject submission (ii) also."

14. The issue relating to permission from the Government before appointing a non-teaching staff in a Minority Educational Institution, that too, in a sanctioned vacancy, is not necessary and it is the bounden duty of the authorities concerned to sanction grant, had been dealt with in detail in the case referred to supra.

15. In the case at hand also, the School is the Minority Educational Institution and the appointment was made in the sanctioned post. In such an event, permission from the Director of School Education before making such appointment has no relevance and the fourth respondent is liable to grant sanction to the appointee and thus, the approval granted to S.Sekar with effect from 11.01.2010 cannot stand in the eye of law.

10. In such view of the matter, a Writ in the nature of a Writ of Mandamus is issued, directing the third and fourth



respondents to approve the appointment of Thiru.S.Sekar as Junior Assistant in the petitioner's School with effect from 26.11.2007, i.e., from the date of his appointment, forthwith and disburse all attendant benefits including the arrears of salary and allowance, etc., which he is legally entitled to, within a period of eight weeks from the date of receipt of a copy of this order.

17. The Writ Petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar(CS)

To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Madurai, Madurai District.
- 4.The District Educational Officer,
Madurai-625 002, Madurai District.

+1 CC to M/s.A.AMALA, Advocate (SR-62512[F] dated 25/04/2019)

+1 CC to M/s.SPL GP (SR-62978[F] dated 26/04/2019)

Order made in
W.P.[MD]No.3226 of 2019
Delivered on:
24.04.2019

CS (KM) :08/05/2019/6P/7C