



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **21.03.2019**

Delivered on : **22.04.2019**

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.[MD]No.9073 of 2018

and

W.M.P. (MD) Nos.8445, 8446 of 2018, 13682 and 22773 of 2018

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S.Manimaran

: Petitioner

Vs.

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

2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus,
Chennai-6.

3.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Virudhunagar,
Virudhunagar District.

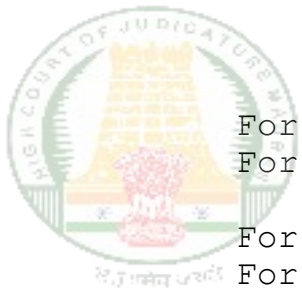
4.The District Educational Officer,
O/o. The District Educational Officer,
Aruppukkottai,
Virudhunagar District.

5.The Devangar Higher Secondary School,
Rep. By its Secretary,
Aruppukkottai-626 101,
Virudhunagar District.

6.Mrs.R.Amudha

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.4732/A4/2017, dated 01.08.2017 on the file of the fourth respondent and the consequential impugned order dated 18.04.2018 on the file of the respondent No.5 and quash the same as illegal and consequently, for a direction, directing the respondent No.4 to grant approval to the promotion granted to the petitioner in the post of PG Assistant in Economics with effect from 01.06.2015 within the time stipulated by this Court.



For Petitioner : Mr.T.Lajapathi Roy
For Respondents 1to4 : Mrs.S.Srimathy,
Special Government Pleader
For Respondent No.5 : Mr.A.Umapathi
For Respondent No.6 : Mr.K.Sudalaiyandi

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ORDER

This Writ Petition is directed against the order dated 01.08.2017 on the file of the fourth respondent and also the consequential order dated 18.04.2018 on the file of the fifth respondent. The petitioner also seeks a consequential direction to the fourth respondent to grant approval to his promotion in the post of PG Assistant in Economics with effect from 01.06.2015.

2. The brief facts of the petitioner's case are as follows:

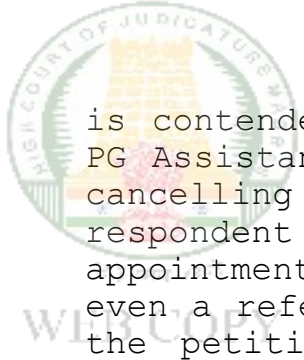
(i) The petitioner was appointed in the post of BT Assistant in the fifth respondent school on 04.04.2007. After serving for a period of eight years as B.T. Assistant, the erstwhile Secretary of the fifth respondent School has granted him promotion in the post of PG Assistant in Economics on 01.06.2015, based on the promotion, he is working as PG. Assistant in Economics till date.

(ii) While so, the fifth respondent forwarded the proposal seeking approval of the petitioner's promotion dated 01.06.2015 to the fourth respondent, who, in turn, refused to grant approval, by way of the impugned order dated 01.08.2017. Thereafter, to the shock and surprise of the petitioner, the fifth respondent, by another proceedings dated 18.04.2018, appointed the sixth respondent in the post of P.G.Assistant in Economics, which the petitioner now holds. Challenging those orders, the petitioner filed the present Writ Petition.

3. The learned counsel for the petitioner submits that the fourth respondent, vide impugned proceedings dated 01.08.2017, refused to grant approval to the petitioner's promotion. The reason for rejection is that since the fifth respondent School was under direct payment from 28.04.2015 to 01.08.2017, it is not possible for approving the promotion. The said reason is arbitrary and the impugned order suffers from non-application of mind, because, this Court, in categorical terms, has held that the Government Order granting minority status to the fifth respondent School insofar as restriction of minority status only for a period of five years was set aside and the said finding was upheld by this Court in W.A.(MD) Nos.230 and 231 of 2018, dated 08.02.2018. It is also pointed out that the tenure of the erstwhile Secretary viz., Ravikumar, who has promoted the petitioner in the post of P.G. Assistant, is valid upto 28.07.2015 and hence, the promotion made to the petitioner on 01.06.2015 is well within the tenure of the erstwhile Secretary and the same is valid in the eye of law.

<https://hcservices.ecourts.gov.in/hcservices/>

4. With regard to the appointment of the sixth respondent, it



is contended that since the petitioner was promoted to the post of PG Assistant in Economics and is working in the said post, without cancelling the said promotion, the appointment made to the sixth respondent in the very same post is non-est in law. Further, in the appointment order issued to the sixth respondent on 18.04.2018, not even a reference was made with regard to the previous promotion of the petitioner. The said fact was substantiated by proceedings dated 16.04.2018, in which, the fourth respondent sought for details of the present status of the promotion granted to the petitioner from the fifth respondent. In such an event, the issuance of appointment order to the sixth respondent is not sustainable in the eye of law and as the said appointment is in violation of the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, the same needs to be interfered with.

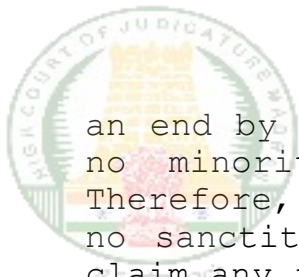
5. In support of the contention, the learned counsel for the petitioner placed reliance on the following judgments:

- (i) **State of Punjab v. Amar Singh Harika [AIR 1996 SC 1313];**
- (ii) **W.A.No.1601 of 2017, dated 28.11.2017 [The State of Tamil Nadu vs. The Secretary].**

6. The learned Special Government Pleader, relying upon the counter-affidavit filed by the fourth respondent, contended that the fifth respondent school was declared as a minority institution as per G.O.Ms.No.119, School Education Department, dated 28.04.2010 for a period of five years from 28.04.2010. Some guidelines in respect of minority status were issued by periodical Government orders. During the period from 28.04.2015 to 31.07.2017, the School did not avail the minority status and the school did not have any authenticated legal secretary or correspondent and the school was under direct payment under the control of the School Education Department. It is also contended that the then Secretary of the School promoted the petitioner as P.G. Assistant on 01.06.2015, at which point of time, he was not the Secretary of the School inasmuch as the Secretaryship was ordered on the basis of minority status of the school and the minority status was ended on 27.04.2015 itself. Thus, the promotion effected was illegal and hence, the impugned order dated 01.08.2017 needs no interference.

7. Meanwhile, the fifth respondent, without adhering to the rules, appointed the sixth respondent, that too, without cancelling the promotion made to the petitioner and therefore, the said appointment was also not approved, as the same lacks merit and is not in accordance with the Rules. Therefore, the learned Special Government Pleader prays for dismissal of the present Writ Petition.

8. The learned counsel for the fifth respondent, through the counter-affidavit filed by the fifth respondent, contended *inter alia* that the petitioner was appointed as BT Assistant in the fifth respondent school and he was also promoted as PG Assistant in Economics on 01.06.2015 by the then Secretary, whose tenure came to



an end by 27.04.2015. During the relevant period of time, there was no minority status and the school was under direct payment. Therefore, the so-called promotion given by the then Secretary has no sanctity in the eye of law and the petitioner has no right to claim any right on the basis of the said promotion.

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9. In respect of the contention relating to the appointment of the sixth respondent, it is submitted that the petitioner, though, was promoted as PG Assistant (Economics) on 01.06.2015, he was only drawing the salary of BT Assistant, since his promotion was not approved by the fourth respondent. In such an event, he has no right to seek for promotion and he cannot question the direct appointment made by the fifth respondent school. In this regard, the learned counsel relied upon the judgment of this Court reported in **2007(4) LW 617 [Eka Ratchagar Sabai Higher Secondary School & another v. K.Sumathi & another]**. Thus, the fifth respondent prays for dismissal of the Writ Petition.

10. Heard the learned counsel appearing for the sixth respondent, who supports the impugned order appointing the sixth respondent.

11. This Court paid its anxious consideration to the rival submissions and perused the materials available on record carefully.

12. Admittedly, the fifth respondent school is a Minority Institution, in which, the petitioner was originally appointed as BT Assistant and subsequently, got promotion as PG Assistant in Economics in the hands of the erstwhile Secretary. Following the same, the fifth respondent also forwarded a proposal for approval of the petitioner's promotion as PG Assistant in Economics to the fourth respondent, who, vide impugned order dated 01.08.2017, refused to accord approval.

13. The reason for refusal stated in the impugned order dated 01.08.2017 is that the fifth respondent School was declared as Minority Institution as per G.O.Ms.No.119, School Education Department, dated 28.04.2010 for a period of five years from 28.04.2010 and the tenure expired on 27.04.2015 and during the relevant point of time, the School was under direct payment under the control of the District Educational Officer.

14. The core issue that arose for consideration relates to minority status of the fifth respondent School.

15. The question of minority status of the fifth respondent School came up for consideration before this Court at the instance of the Secretary, Aruppukottai Devangar Mahajana Sabha in W.P.(MD) No.20350 of 2014 and this Court, by order dated **24.02.2015** in **W.P. (MD) Nos.4878 of 2013, 20350 of 2014 and 2136 of 2015 [The Secretary, Rajapalayam Raju's College vs. The State of Tamil Nadu]**, at Paragraph Nos.3 and 4, observed as under:



3. It is not in dispute that the petitioners are belonging to the linguistic minorities and accordingly they were granted minority status by the Government by passing the respective impugned orders, however, limiting such minority status only for a period of five years. The issue as to whether the minority status can be conferred only for a limited period was taken up for consideration by this Court earlier in very many cases and it has been held therein that no such restriction can be imposed, while granting the minority status. In fact, the Honourable Division Bench of this Court in a decision in *The Secretary, Jeyaraj Annapackiam College for Women (Autonomous) Vs. State of Tamil Nadu* rep. by its Secretary and others reported in (2013) Vol 8 MLJ 509, held at paragraph Nos.4, 5 and 6 as follows:-

"4. The issue as to whether the appellant/Society which was already declared by this Court as minority Society / Institution, which was granted minority declaration by the Government for a minimum period, has to be directed to approach the Government for continuing the minority status was considered by this Court by one of us (N.Paul Vasanthakumar, J.), in W.P.No.24606 of 2012 reported in 2012 (2) CWC 728 (*The Secretary, Loyala College v. The State of Tamil Nadu*). In the said judgment, a Division Bench judgment of this Court reported in (2001) 3 M.L.J. 433 (*Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamingal, Medical, Educational and Charitable Trust, Salem v. State of Tamil Nadu*), was followed. Paragraph-5 of the said judgment reported in (2001) 3 M.L.J. 433 runs thus:

"... the Government while considering the Application made by the Appellant, duly took into account the fact that, (i) all the Trustees belong to Ariya Vaisya Telugu speaking Chettiar only from the year 1981 till date; (ii) the Trust has not included any new member in the Trust so far; (iii) the Trust has also stated that the Management is a registered Charitable Trust and the Board of Management belong to Ariya Vaisya Telugu speaking Chettiar; (iv) the additional deed executed by the Trust reflects the main objective of subserving the interests of the said minority community; (v) the Founders- Trustees, namely, (a) Thiru. A.Shanmugasundram (b) Tmt.S.Annapoorani and (c) Thiru.Saravanan who became a major at that time, belong to Telugu speaking Ariya Vaisya Chettiar Community and their mother-tongue is Telugu. By the aforesaid order dated 27.10.1997, the Government after verification of the documents produced, issued orders in the name of the Governor declaring the Medical College run by the Appellant as a linguistic minority institution for the purpose of



Article 30(1) of the Constitution of India. In the face of the uncontroverted facts and circumstances brought on record, we are of the considered opinion that this is a fit case where the Appellant-Trust is entitled to its rights declared by the Government as a linguistic minority institution, as per G.O.Ms.No.532, dated 27.10.1997 and the Appellant will be eligible to continue to exercise its constitutional rights as recognised by the Government and the same is not liable to be effaced by the subsequent letter of the Government which is impugned in the Writ Petition out of which the present Writ Appeal arises. In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30 (1) of the Constitution of India, unless there is fundamental change of circumstances of suppression of facts, the Government has no power to take away that cherished Constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice."

5.The said judgment was also followed by the subsequent decisions of this Court in 2004 WLR 202 and again in the decision reported in (2009) 6 CTC 579.

6.The reason given by the learned single Judge for distinguishing the said judgment is that the matter is pending before the Hon'ble Supreme Court regarding the issue of grant of minority status to linguistic minorities. It is relevant to note herein that the appellant College is a religious minority institution, viz. Christian religion. It may be noted that Christians are minorities not only throughout India but also in the State of Tamil Nadu. The same is also made clear in the Government Order issued in G.O.Ms.No.270, Higher Education (J1) Department, dated 17.06.1998. In paragraph 8(vi), it is stated that to decide whether an applicant is a minority or not based on religion or language, the total population of that minority in the State of Tamil Nadu shall be taken into consideration and not the population of that minority in any particular region where the educational institution is situated. Therefore, it is evident that the impugned order restricting minority status which was upheld by the learned single Judge is without noticing the said guidelines issued by the Government itself in G.O.Ms.No.270, Higher Education (J1) Department, dated 17.06.1998. It is also to be noted that the said Government Order, nowhere states that minority status can be given to a limited period. The Government is also not doubting the claim of minority status of the appellant-College. Hence the order restricting the period is without any rhyme or reason."



4. Following the said decision of the Honourable Division Bench, this Court also allowed similar writ petition in W.P.(MD)No.9453 of 2014 dated 04.02.2015 and set aside the order impugned therein only insofar as the same restricting the period of minority status for a period of five years only."

16. The said order was under challenge in W.A.(MD)Nos.230 and 231 of 2018, in and by which, a Division Bench of this Court, by judgment dated 08.02.2018, while upholding the order of the learned Single Judge, at paragraph Nos.4 and 7, held thus:

"4. Per contra, Mr.M.Thirunavukkarasu, learned counsel appearing for the respondent/writ petitioner would submit that the matter-in-issue is no longer *res integra* in the light of the Judgment reported in (2013) Vol 8 MLJ 509 [The Secretary, Jeyaraj Annapackiam College for Women (Autonomous) v. State of Tamil Nadu, rep. by its Secretary and others] which in turn, follows the decision of the Hon'ble Supreme Court of India and the said decision has also been subsequently followed in W.P. (MD)No.9453 of 2014, vide order dated 04.02.2015 and would further add that during pendency after allowing the writ petitions, the first appellant herein, has passed G.O.Ms.No.182, School Education [Tho.Ka.2(1)] Department, dated 04.08.2017 and G.O.Ms.No.171, School Education [Pa.Ka.6(2)] Department, dated 17.07.2017 regarding the religious minority status, subject to the result of the writ appeals preferred against the said orders and prays for dismissal of these writ appeals.

7. This Court, on an independent application of mind to the entire materials, is of the considered view that there are no errors apparent or infirmity in the reasons assigned by the learned Single Judge for allowing the writ petitions and finds no merit in these writ appeals and therefore, both writ appeals are dismissed, confirming the orders dated 24.02.2015, made in W.P.(MD) Nos.2136 of 2015 and 20350 of 2014, by the learned Single Judge."

17. A Division Bench of this Court in W.A.No.1601 of 2017, dated 28.11.2017 [The State of Tamil Nadu v. The Secretary, Komarappa Sengunthar Higher Secondary School], at Paragraph Nos.30 and 31, held as follows:

"30. Thus, it is trite law that no prior permission is required from the Director of Social Education/Elementary Education, as the case may be, to fill up a sanctioned post, in a minority institution. When Laboratory Assistant post is sanctioned to Komarappa Sengunthar Higher Secondary School, Erode, management of Komarappa Sengunthar Higher Secondary School, Erode, is entitled to fill up the post and approval of appointment



is granted only to satisfy as to whether the incumbent, who has been appointed to the post is qualified or not.

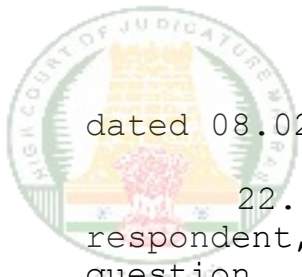
31. Therefore, holding that G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007, as inapplicable to the case on hand and rejecting the contention of Mr.P.S.Shiva Shanmuga Sundaram, learned Special Government Pleader that prior permission is required from the Directorate to fill up a sanctioned post and finding no merit, instant writ appeal is dismissed."

18. Now, turning to the facts of the case at hand, after promoting the petitioner to the post of PG Assistant in Economics from 01.06.2015, the fifth respondent has forwarded a proposal seeking approval of the same to the fourth respondent, who, in turn, has refused to grant approval by way of impugned order dated 01.08.2017, in which, it is stated that from 28.04.2015 to 01.08.2017, the fifth respondent School was under direct payment and, therefore, it is not possible for granting approval to the promotions during that point of time.

19. The impugned order refusing to grant approval for promotion suffers from non-application of mind and on that sole ground, the same is liable to be set aside, for the reason, the direct payment is the expiry of the minority status. The said restriction of minority status of the fifth respondent School, viz., Devangar Higher Secondary School, only for a period of five years was quashed by this Court at the instance of the Secretary, Aruppukottai Devangar Mahajana Sabha, in **W.P.(MD)No.20350 of 2014, dated 24.02.2015** (cited *supra*) and the findings rendered therein were also affirmed by the Division Bench in W.A.(MD)Nos.230 and 231 of 2018 [referred *supra*] and, therefore, as a consequence, the direct payment will also be vitiated and void.

20. It is pertinent to be pointed out that the tenure of the erstwhile Secretary namely Thiru.P.M.Ravikumar, who has promoted the petitioner to the post of P.G.Assistant, is valid upto 28.07.2015. Even, in the approval granted by the District Educational Officer, vide his proceedings in Na.Ka.No.1273/A3/2014, dated 09.04.2014, for the secretaryship of the said P.M.Ravikumar, it is admitted that his post of Secretary is valid till 28.07.2015, within which period the petitioner was promoted. As such, promotion effected was well within the tenure of the erstwhile Secretary, which, in my considered view, is valid in the eye of law.

21. However, the only condition stated in the approval is that the minority status was valid only upto 27.04.2015 and his Secretaryship from 28.04.2015 to 28.07.2015 is subject to extension of the minority status by the Government. The said condition was fulfilled, in view of the order of this Court in W.P.(MD)No.20350 of 2014 dated 24.02.2015, in and by which, this Court, in categorical terms, has held that the Government Order granting minority status to the fifth respondent School insofar as the portion restricting the minority status only for a period of five years was set aside. The said judgment was also upheld by the Division Bench, by judgment



dated 08.02.2018 in W.A.(MD)Nos.230 and 231 of 2018.

22. With regard to the appointment made to the sixth respondent, originally the petitioner was promoted to the post in question, in such an event, without cancelling the said promotion, consequential action of appointing the sixth respondent on 18.04.2018 in the post of P.G.Assistant in Economics, is non-est in the eye of law and the same would not stand in the scrutiny of law and *ab initio void*. It is to be noted that in the impugned order of appointment dated 18.04.2018, there is not even a reference made to the previous promotion of the petitioner. Thus, the said appointment was made in violation of the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, and also against the principles of natural justice.

23. It is to be noted that even for cancelling the appointment of the petitioner, the fifth respondent has to follow the principles of natural justice. Admittedly, the fifth respondent School has not even cancelled the promotion of the petitioner till date and in his place, appointed the sixth respondent which, in my view, is *ab initio void*.

24. The fifth respondent School, in one hand, has taken a stand that the fifth respondent School is a Minority School and, therefore, it has the power to appoint anyone *dehors* the seniority and Rule 15(4) will not be applicable, but, on the other hand, took a stand that the promotion of the petitioner was made during the direct payment period due to expiry of minority status. That being the position, the fifth respondent School, being a Minority Institution, has already promoted the petitioner in the post of PG Assistant and without cancelling the same, appointed another person, which is *per se* illegal. Thus, the contentions raised by the petitioner, as discussed above, stand hold good and the impugned orders at the hands of the fourth and fifth respondents respectively need to be interfered with.

25. In view of the foregoing reasons, the impugned orders dated 01.08.2017 and 18.04.2018 stand set aside. The fourth respondent is directed to grant approval to the promotion granted to the petitioner in the post of PG Assistant in Economics with effect from 01.06.2015, within a period of eight weeks from the date of receipt of a copy of this order.

26. The Writ Petition stands allowed as indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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To

1. The Principal Secretary to the Government,
State of Tamil Nadu,
Department of School Education,
Fort St. George,
Chennai-600 009.

2. The Director of School Education,
O/o. The Director of School Education,
DPI Campus,
Chennai-6.

3. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Virudhunagar,
Virudhunagar District.

4. The District Educational Officer,
O/o. The District Educational Officer,
Aruppukkottai,
Virudhunagar District.

1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-61467[F] dated 22/04/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-61699[F] dated 23/04/2019)

+1 CC to M/s.SPL GP (SR-61762[F] dated 23/04/2019)

Order made in
W.P. [MD] No. 9073 of 2018

Delivered on:
22.04.2019

DS/ /SAR- (26.04.2019) 10P 8C