



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.04.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD) No.16096 of 2016

and

WMP(MD)Nos.11757 & 11758 of 2016

D.Albin

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

3.The District Educational Officer,
Thuckalay,
Kanyakumari District.

4.The Correspondent,
St.Bernadette's Higher Secondary School,
Mangalakuntu - 629 178,
Kanyakumari District.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent pertaining to its order bearing Aa.thi.Mu.No.3295/A2/2016 dated 01.06.2016 and to quash the same and consequently direct the 3rd respondent to approve the petitioner's appointment as P.G.Assistant in Political Science with effect from 01.04.2014 in the 4th respondent school and disburse the grant in aid towards the salary and allowances.

For Petitioner :Mr.S.C.Herold Singh

For R1 to R3 :Mrs.S.Srimathy
Special Government Pleader

For R4
<https://hcservices.ecourts.gov.in/hcservices/>

:Mr.K.Ragatheesh Kumar
for M/s.Isaac Chamber

**ORDER**

This writ petition has been filed challenging the order passed by the third respondent dated 01.06.2016 and consequently direct the third respondent to approve the appointment of the petitioner as P.G.Assistant in Political Science with effect from 01.04.2014 in the 4th respondent school and disburse the grant-in-aid towards the salary and allowances.

2.Heard the learned counsel for the petitioner; the learned Special Government Pleader for the respondents 1 to 3 and the learned counsel for the fourth respondent.

3.The case of the petitioner is that he was appointed as P.G.Assistant in Political Science in the fourth respondent school on 01.04.2014. The fourth respondent sent a proposal to the third respondent for approval of appointment of the petitioner, which was returned by the third respondent vide impugned order dated 01.06.2016 stating that the subjects underwent by the petitioner in under graduate and post graduate are different. Challenging the same, this writ petition has been filed.

4.The learned counsel appearing for the petitioner submitted that in an identical issue, a Division Bench of this Court in the case of The Director of School Education, College Road, Chennai - 600 006 and others Vs. Geldon Wifred Viola and another, reported in 2009 (2) TLNJ 101 (Civil), has held as follows:

"3.However, the controversy is with regard to the fact that whether she possessed a Bachelor's Degree in History in terms of G.O.Ms.NO.361 Education Department, dated 31.12.1999 or whether she would be qualified and eligible in terms of the Rules in the event she had obtained a Master's Degree in the subject when she had not obtained a Bachelor's Degree in the same subject in terms of the Rules.

4.The question is whether the conditions of service could be made applicable to the second respondent School which is a minority institution: Even though the school in question is a minority institution, it cannot appoint a person to the post of teacher who is not possessing the required qualifications under the rules. Inasmuch as the teacher in question has obtained her Post Graduate Degree in History, the School is competent to appoint her as Junior Grade Post Graduate Assistant (History) by placing reliance on the rules made under Annexure V-A.

5.MR.S.Rajasekar, learned Additional Government Pleader would however submit that inasmuch as G.O.Ms.No,720 Education Department, dated 28.04.1981 and G.O.Ms.No,361 Education Department, dated 31.12.1999 prescribe a minimum qualification for the said post viz.,



Bachelor's Degree as well as Post Graduate Degree in the subject, the teacher is not eligible, as she does not possess a Bachelor's Degree in History. In our opinion, the said submission of course is made on the basis of the impugned order in the writ petition which is totally a misconception. A careful reading of those Government Orders would indicate that the qualifications prescribed there under are primarily intended for the appointment of teachers in the Government Schools. Nevertheless Government Order contemplates that the said qualifications are also applicable in respect of aided schools as well pending amendment to the relevant rules. It is well settled in law that the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and rules made there under are alone made applicable to the second respondent-School and the qualifications are prescribed under the rules framed in exercise of the powers conferred under Section 56 of the Act. Any prescription of the qualification by way of the Government Order without amendment to the rules cannot be given effect to bind the private schools and the appointments, conditions of service, qualification are all governed by the provisions of the Act and the rules made there under. The Government Order G.O.Ms.361 Education Department dated 31.12.1999 which is questioned though has been issued in exercise of the power under Article 309 of the Constitution of India, in our opinion, that would be made applicable only to the Government Servants viz., the teachers who are employed in the Government Schools and not to the teachers in private schools, as those teachers are governed only by the provisions of the Act and the rules made there under. In the given case, as the rules contemplate only a Master's Degree in the subject for appointment of a Junior Grade Post Graduate Assistant and does not mandate a Bachelor's Degree as well in the same subject. A teacher who has secured a Master's Degree in the subject would be entitled and is eligible for appointment to the post. The rejection of the request for approval to the said post is therefore erroneous, as it was done by following the Government Order G.O.Ms.361 Education Department, dated 31.12.2009.

6. In view of the above, we are of the considered view that the impugned order in the writ petition is unsustainable and accordingly the same is liable to be set aside as has been done in the writ petition.

7. In the result, the writ appeal is dismissed. The Director of the School Education is directed to accord approval of the appointment of the first respondent - teacher - Ms. Geldon Wilfred Viola from the date of her appointment and provide all the benefits attached to the said post. No costs.



5.Hence, the learned counsel prayed that the case of the petitioner has to be considered in the light of the aforesaid decision.

6.No counter affidavit has been filed on the side of the respondents. The learned Special Government Pleader as well as the learned counsel for the fourth respondent have not disputed the aforesaid decision relied on the side of the petitioner.

7.Considering the facts and circumstances of the case and having regard to the submissions made on either side and also following the above said decision, this writ petition is allowed. The impugned order passed by the third respondent dated 01.06.2016 is set aside and the third respondent is directed to accord approval of the appointment of the petitioner from the date of his appointment and provide all the benefits attached to the said post. No costs. Consequently, WMP(MD)Nos.11757 & 11758 of 2016 are closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

To

1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

3.The District Educational Officer,
Thuckalay,
Kanyakumari District.

+1 CC to M/s.S.C.HEROLD SINGH,Advocate(SR-62846[F] dated 26/04/2019)

+1 CC to M/s.ISAAC CHAMBERS,Advocate(SR-63080[F] dated 26/04/2019)

W.P(MD) No.16096 of 2016
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