

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.1783 of 2020
and
W.M.P.No.2064 of 2020

P. Peter Paul

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Education Department, Chennai - 9.

2.The Director of School Education,
D.P.I. Buildings, College Road,
Chennai - 6.

3.The Chief Educational Officer,
Vellore.

4.The District Educational Officer,
Vellore.

5.The Correspondent,
Voorhees Higher Secondary School,
Vellore - 632 001,
Vellore District.

6.The Correspondent,
Devolis Higher Secondary School,
Kasam, Katpadi,
Vellore - 632 007.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the entire records connected with the impugned order of the fourth respondent vide A.thi.Mu.1933/A4/2006 dated Nil.03.2006 and signed on 31.03.2006 and Na.Ka.No.2212/Aa.1/2019, dated 21.11.2019, and order in and quash the same and consequently direct the respondents to approve the appointment of the petitioner as Office Assistant in the fifth respondent school from 27.03.2002 to 31.07.2007 with all consequential monetary benefits including the benefit of old pension scheme.

For Petitioner : Mr. S.N. Ravichandran

For Respondents: Mr. S. Suresh Kumar, for R1 to R4
Government Advocate

O R D E R

This writ petition has been filed challenging the proceedings of the fourth respondent rejecting the approval of the appointment of the petitioner for the period from 2002-2007 and for a consequential direction to the respondents to approve the appointment of the petitioner in the post of Office Assistant in the fifth respondent School during the above period.

2. The case of the petitioner is that the fifth respondent which is a minority school has a sanctioned post of Assistant. A vacancy arose due to the promotion of the incumbent. The fifth respondent selected and appointed the petitioner as an Office Assistant on 27.03.2002. The fifth respondent had thereafter sent the proposal for approval of the appointment. The proposal was returned by the fourth respondent on the ground that there was a ban on recruitment during the relevant period and therefore, no approval can be granted.

3. Thereafter, a vacancy arose in a sanctioned post in the sixth respondent school. It is to be mentioned here that the fifth respondent and sixth respondent school fall under the same management. The petitioner was selected and appointed to the post of Drawing Master in the sixth respondent school. His appointment was also approved by the fourth respondent with effect from 2007.

4. The petitioner had sent representation to the fourth respondent seeking for sanction of the appointment during the period 2002-07 since according to the petitioner, this period will have to be counted in his total service which will ultimately enure to the benefit of the petitioner in claiming pension. This request made by the petitioner through the fifth respondent school was rejected by the impugned proceedings of the fourth respondent dated 21.11.2019. Aggrieved by the same, the present writ petition has been filed before this Court.

5. The learned counsel for the petitioner submitted that the post of Office Assistant in the fifth respondent school is a sanctioned post. In order to satisfy the same, the petitioner has placed the proceedings of the Chief Educational Officer, Vellore wherein the petitioner pointed out that the fifth respondent school was sanctioned two posts of Office Assistant. The learned counsel further submitted that the issue that is involved in the present writ petition is covered by the judgment of this Court in W.P. (MD) No.11481/2008 etc., batch 2016-III.LLJ-49 (Deva Asir Vs. Secretary to Government). The relevant portions in the judgment is extracted hereunder:-

"37.1. The ban on recruitment imposed by the Government in G.O.Ms.No.212 and subsequent lifting of ban in G.O.Ms.No.14 and various judgments of this Court approving the appointments made during the ban period were considered by me and I held that consideration of those matters are of no use and the approval of appointment made during that period by this Court attained finality and it is only an academic exercise to discuss about the same.

37.2. Therefore, the submission made by the learned Special Government Pleader both orally and in written submissions that various judgment of this Court on this point were not correctly decided has also no merit and I need not go into the issue at this stage, as the present issue relates to the validity of G.O.Ms.No.115 and G.O.Ms.No.203 and the Government Letter dated 09.07.2012."

6. The learned counsel for the petitioner also relied upon the judgment of this Court in W.P.No.38090 of 2005 dated 25.01.2018 (St.Sebastian's High School Vs. The Government of Tamil Nadu). The learned counsel by pointing to the above two judgments submitted that this Court has consistently held that the appointment of non teaching staff in private aided school during the ban period must also be approved by the authority since the appointment was only towards sanctioned post. The learned counsel therefore submitted that the impugned proceedings of the fourth respondent requires interference.

7. The respondents have filed a counter in this case. The respondents have taken a specific stand that the approval for the appointment of the petitioner was granted with effect from 2007 when he was appointed in the sixth respondent school. Insofar as the earlier period is concerned, the respondents have taken a specific stand that there are absolutely no materials to show that the petitioner was appointed in a sanctioned post. That apart it is also stated in the counter affidavit that the petitioner is now attempting to get retrospective regularisation from the year 2002 only to make him eligible to get the pension under the old scheme. The learned Government Advocate appearing on behalf of the respondents apart from reiterating the stand taken in the counter affidavit, submitted that the judgments cited by the learned counsel for the petitioner will only apply in a case where the appointment was made in a sanctioned post. The learned counsel further submitted that if the appointment has been made in a non sanctioned post, then no approval can be granted by the authorities and consequently period between 2002-07 cannot be regularised.

8. This Court has carefully considered the submissions made on either side and perused the materials available on record.

9. The only issue that requires consideration in this writ petition is as to whether the appointment of the petitioner as an Office Assistant in the fifth respondent school during the period 2002-07 has to be granted approval by the fourth respondent. The case of the petitioner is that he was appointed in a sanctioned post in the fifth respondent school and the earlier proposal that was forwarded by the fifth respondent school was returned only on the ground that there was a ban in recruitment. Insofar as appointment made during the period of ban, this Court has consistently held that approval should be granted even for such appointment if it has been made towards the sanctioned post. It is clear from the judgments that have been cited by the learned counsel for the petitioner. The only contention that has been raised on the side of the respondent is that the petitioner was appointed in a non sanctioned post. In reply to the said contention, the petitioner has produced the proceedings of the DEO, Vellore wherein, it is found that there are two posts of Office Assistant that have been sanctioned in the fifth respondent school. This has to be necessarily taken into consideration by the fourth respondent.

10. In view of the above discussions, the impugned proceedings of the fourth respondent dated 31.03.2006 is hereby quashed. The matter is again remanded to the fourth respondent. The fifth respondent is directed to resubmit the proposal to the fourth respondent within a period of two weeks from the date of receipt of copy of this order. The fourth respondent is directed to again go through the records and satisfy himself as to whether the petitioner was appointed in a sanctioned post in the fifth respondent school during the period from 2002-07. If it is found that he was appointed in a sanctioned post, then necessarily approval has to be granted by the fourth respondent in view of the above said judgments. A decision shall be taken in this regard within a period of six weeks from the date of receipt of the proposal from the fifth respondent school and appropriate orders shall be passed by the fourth respondent. The petitioner is directed to make a fresh representation to the fourth respondent along with a copy of this order, through the 5th respondent school.

11. In the result, this writ petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Education Department, Chennai - 9.

2.The Director of School Education,
D.P.I. Buildings, College Road, Chennai - 6.

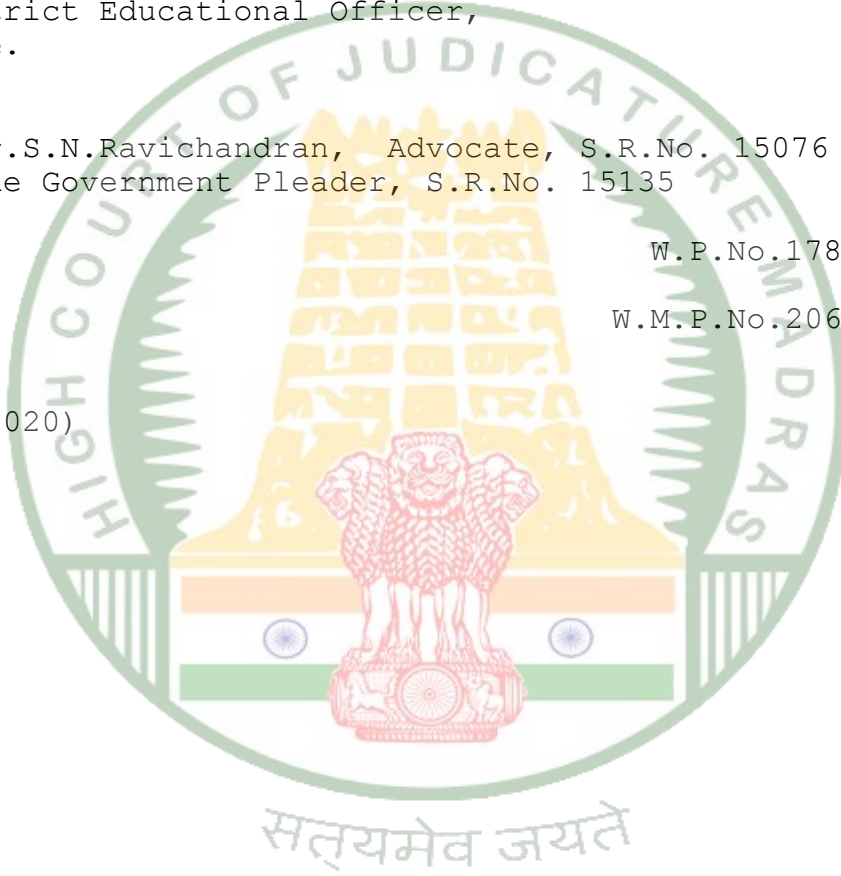
3.The Chief Educational Officer,
Vellore.

4.The District Educational Officer,
Vellore.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No. 15076
+1cc to the Government Pleader, S.R.No. 15135

W.P.No.1783 of 2020
and
W.M.P.No.2064 of 2020

MR (CO)
GN (26/05/2020)



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