

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2020

PRONOUNCED ON: 28.10.2020

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.31033 of 2019

N.Niji

..Petitioner

Vs.

1.The State of Tamilnadu,  
rep. by its Secretary to Government,  
School Education Department,  
Fort St. George, Chennai-600 009

2.The Director of School Education,  
College Road, Chennai-6

3.The District Educational Officer,  
Sathyamangalam, Erode, Erode District.

4.The Correspondent,  
R.C. Aided Primary School,  
Door No.12/201, Doddagajanur Village,  
Thalavadi, Sathyamangalam Taluk,  
Erode District-638 461

..Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the third respondent's order made in Na.Ka.No.2437/A3/2018 dated 05.12.2018 to quash the same and to consequently direct the respondents 1 to 3 to grant and approve the appointment of the petitioner as Secondary Grade Teacher in the fourth respondent School with effect from 01.06.2017 with all consequential monetary benefits.

For Petitioner .. Mr.L.Chandrakumar  
For Respondents.. Mr.P.Raja, GA

ORDER

This matter is taken through Web hearing.

2. This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the third respondent's order made in

Na.Ka.No.2437/A3/2018 dated 05.12.2018, to quash the same and to consequently direct the respondents 1 to 3 to grant and approve the appointment of the petitioner as Secondary Grade Teacher in the fourth respondent School with effect from 01.06.2017 with all consequential monetary benefits.

3.The brief facts which gave rise to the filing of the Writ Petition are stated hereunder:

The petitioner was appointed as Secondary Grade Teacher on 31.05.2017 against the sanctioned vacancy caused due to promotion of the incumbent on 01.06.2017 in the fourth respondent school. The fourth respondent school is a Religious Minority Aided Institution governed by the Tamil Nadu Private Schools (Regulations) Act, 1973. As a consequence of her appointment, the petitioner joined duty on 01.06.2017. Since the fourth respondent school is a minority institution, no prior permission was required to fill up the sanctioned vacancy.

3.2. Thereafter, the fourth respondent school submitted a proposal to the third respondent seeking approval of the petitioner's appointment as a Secondary Grade Teacher. However, on 13.10.2017, the third respondent returned the proposal seeking certain rectifications and compliance. Later the proposal was re-submitted after due compliance on 14.12.2017 to the third respondent.

3.3. Since the petitioner has not been paid salary, in the absence of grant of approval to her appointment, she has approached this Court in WP.No.10349 of 2018 seeking consideration of her claim for approval of her appointment with consequential benefits. This Court, by order dated 21.08.2018 has disposed of the Writ Petition by a direction as contained in paragraph no.4, which is extracted hereunder:

''4. Considering the aforesaid facts and submissions, especially taking into consideration of the prayer made by the petitioner in this writ petition and also the submission of the learned counsel for the respondent, this Court dispose of this writ petition with a direction to the third respondent to take an informed and considered decision on the approval of the petitioner's appointment based on the proposal submitted by the fourth respondent on its own merit and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. However, it is made clear that this Cort has not expressed any opinion on the merit of such proposal in any particular manner. No costs. Consequently, the connected miscellaneous petition is also closed."

3.4. In pursuance of the above direction of this Court, the third respondent passed an order on 05.12.2018 rejecting the approval of appointment of the petitioner on the ground that there were surplus teachers available in the diocese and hence, her appointment was not in order. The third respondent, in turn, communicated the rejection order vide their letter dated 05.12.2018 to the Regional Education authority and a copy was also marked to the petitioner. The rejection order was in turn communicated to fourth respondent school by the Regional Education authority vide communication dated 22.01.2019. Both these communications are the subject matter of challenge in this Writ Petition.

4. Mr.L.Chandra Kumar, learned counsel appearing for the petitioner would submit that the impugned rejection is illegal on the face of it as the same suffers from non-application of mind for the reason that it has been repeatedly held by this Court including the Full Bench of this Court that if the School has adequate strength in accommodating Secondary Grade Teacher in the sanctioned post, the authority cannot deny approval on the ground of the teacher becoming surplus in the Dioceses. In this case, the appointment of the petitioner was admittedly against the sanctioned post, the question of she becoming surplus did not arise at all. Particularly, in minority institution, such directive by the Education Authority would have no application as held by Courts.

5. Mr.P.Raja, learned Government Advocate entered appearance for the official respondents and a detailed counter affidavit has also been filed.

6. As per the counter affidavit, it is stated that there are many surplus teachers available, as the fourth respondent School is under the management of Roman Catholic Diocese of Ooty and three schools are functioning under the same Management. It is further stated that if vacancy arose in one of the schools functioning under the same Management, the surplus posts in the schools coming under the same Management will have to be filled up by deployment only and no new appointment shall be made. On this ground, the authority has rightly rejected the application of the petitioner.

7. At this, the learned counsel for the petitioner, Mr.L.Chandra Kumar would submit that the issue whether the deployment is mandatory in respect of minority schools is no more res integra since this Court has repeatedly held that such mandate shall not be applied to the minority institutions. In fact, he would refer to a recent decision of this Court rendered on 02.06.2020 in a batch of Writ Petitions in W.P.Nos.31117, 31125, 31130 of 2018 etc.

8. According to the learned counsel, the above decision has referred to several other orders of this Court, wherein, this Court has ultimately directed the Education authorities to grant approval to such appointments made against the sanctioned posts. Therefore, the learned counsel would submit that the same principle may be followed in this case.

9. This Court, has considered the submissions of the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and also perused the order passed by this Court in the above said batch of Writ Petitions.

10. Although, this Court has earlier referred the issue as to whether the power to insist upon obtaining 'No Objection Certificate' from the competent authority in case of filling up of the sanctioned surplus posts available in schools coming under the same Management, to ensure there is an optimal effective utilization of the Grant-in-Aid to be provided by the Government to the Aided Minority Institutions before a larger Bench to be constituted for an authoritative pronouncement yet, in those cases, pending reference and final decision, this Court had granted the relief by directing the authority to grant approval as the issue on hand has been settled by the Division Bench as on date in favour of the minority institutions. In order to appreciate as to the decision taken by this Court on the subject matter in the earlier batch of Writ Petitions, viz., W.P.Nos.31117, 31125, 31130 of 2018 etc., wherein, the submissions and reliance placed on two Division Benches of this Court have been referred to as found in paragraph nos.3 to 5 and also the basis of Court's decision to refer the issue to a larger Bench as found in paragraph no. 12, are extracted as under:

"3.The learned counsel appearing for the petitioner Schools Mr.Mary Sowmi Rexi would submit that the issue as to whether ?No Objection Certificate? is required before filling up the sanctioned posts in the aided minority schools or not is no more res integra, since, two Division Benches of this Court have held in categorical terms that such insistence for obtaining ?No Objection Certificate? in regard to Minority Institutions amounted to impinging their rights guaranteed under Article 30 of the Constitution of India. The Division Benches of this Court, according to the learned counsel, have followed the legal principle laid down by the Honourable Supreme Court of India in regard to the status and rights of the Minority Institutions.

"4. In support of her contention, the learned counsel would draw the attention of this court to a decision of the Division Bench of this Court rendered in 1. The Director of Elementary Education, College Road, Chennai-600 006 and two others vs. The Correspondent, St. Joseph's RC Primary School, Palakurichy [W.A. (MD). Nos. 1292 and 461 of 2014, dated 29.11.2017]. Before the Division Bench, the issue on hand came up for consideration as to whether it is open to the Management to fill up the posts, notwithstanding surplus posts available in other schools under the Corporate Management, without obtaining 'No Objection Certificate' from the authority concerned or not. After referring to several judgments of the Hon'ble Supreme Court of India and also this Court and also referring to various Regulations and Government Orders issued in this regard, ultimately, the Division Bench in its judgment held imposition of such condition, viz., obtaining 'No Objection Certificate' from the education authority is contrary to law laid down by the Hon'ble Supreme Court of India, in T.M.A. Pai Foundation vs. State of Karnataka [(2002) 8 SCC 481] and also the decision rendered in Secretary, Malankara Syrian Catholic College vs. T. Jose and Others [2007(1) SCC 386].

"5. Following the above Division Bench judgment, another Division Bench of this Court in 1. The State of Tamil Nadu, represented by its Secretary, Department of Sch3. The learned counsel appearing for the petitioner Schools Mr. Mary Sowmi Rexi would submit that the issue as to whether 'No Objection Certificate' is required before filling up the sanctioned posts in the aided minority schools or not is no more res integra, since, two Division Benches of this Court have held in categorical terms that such insistence for obtaining 'No Objection Certificate' in regard to Minority Institutions amounted to impinging their rights guaranteed under Article 30 of the Constitution. Education, Fort St. George, Chennai and four others vs. 1. M. Anbalagan and another [W.A. (MD). No. 872 of 2018, dated 29.06.2018], has confirmed the order passed by the learned single Judge holding that the authority cannot insist on 'No Objection Certificate' in such cases. Therefore, the learned counsel would submit that the impugned action of the respondent is patently illegal and contrary to the settled legal position and the same is liable to be interfered with."

"6. to 11. ....

12. The above summation inter alia of the Hon'ble Supreme Court of India has in fact recognized the power of the Government to regulate the working of the Schools in terms of appointments vis-a-vis the utilisation of the aid granted by the Government. In that view of the matter, the insistence of 'No Objection Certificate', in case of sanctioned surplus posts in body Corporate Schools, may legally be plausible, more so when another Hon'ble Division Bench of this Court in a batch of Writ Appeals in W.A.(MD).Nos.76, 225, 341 of 2019 etc., batch, has directed the Government not to approve any appointment made by private Aided Schools, including minority institutions, wherever the surplus posts are available in those schools. Therefore, the stand of the Government cannot be brushed aside as completely out of tune with the legal principle laid down by the Hon'ble Supreme Court of India and also the Constitutional guarantee given to the minority institutions under Articles 29 and 30 of the Constitution of India. With due respects to the Division Benches' decisions of this Court, referred to supra, in the considered view of this Court, a comprehensive and an authoritative pronouncement on the subject matter is a judicial imperative at this juncture, in order to avoid any flexible or varied decisions of this Court, in dealing with similar matters."

11. In any event, this Court ultimately in paragraph 13, which is extracted hereunder, has granted the relief to those teachers, who were the petitioners therein.

"13. Be that as it may, as far as the present cases on hand are concerned, since the subject appointments and the issue of approval as on date is governed by the law laid down by the Division Benches of this Court, as stated supra, these cases need not be deferred any further, as a single Bench of this Court is bound by the Judgment of the Hon'ble Division Benches. In that view of the matter, this Court has no hesitation in allowing all the Writ Petitions and the impugned orders passed by the 2nd respondent/District Elementary Education Officer in O.Mu.No.4772/A4/2016, dated 15.03.2017, O.Mu.No.4774/A4/2016, dated 15.03.2017, and O.Mu.No.4773/A4/2016, dated 15.03.2017, respectively, are hereby set aside and the Writ Petitions are allowed. The competent authority in all the writ petitions are directed to grant approval to the

respective appointments of the teachers by the petitioner schools without insisting for ?No Objection Certificate?, in case, the appointed teachers concerned fulfill all other criteria for regular appointment as Secondary Grade Teachers."

12. This Court finds that as on date, the decisions of the Division Benches hold the field and unless it is varied or overturned by a larger Bench to be constituted by the Hon'ble Chief Justice, the legal principle as enunciated by the Division Bench need to be applied across the Board.

13. In view of the settled position as explained above, the impugned order is liable to be set aside. Accordingly, the impugned order in Na.Ka.No.2437/A3/2018 dated 05.12.2018, of the third respondent is hereby set aside. The third respondent is directed to process the proposal for approval of the appointment of the petitioner as Secondary Grade Teacher if her appointment is otherwise in order and grant necessary approval from the date of her appointment without reference to the grounds of earlier rejection and pass appropriate orders accordingly, within a period of four weeks from the date of receipt of a copy of this order.

14. The Writ Petition is allowed on the above terms. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,  
The State of Tamilnadu,  
School Education Department,  
Fort St. George, Chennai-600 009

2.The Director of School Education,  
College Road, Chennai-6

3.The District Educational Officer,  
Sathyamangalam, Erode, Erode District.

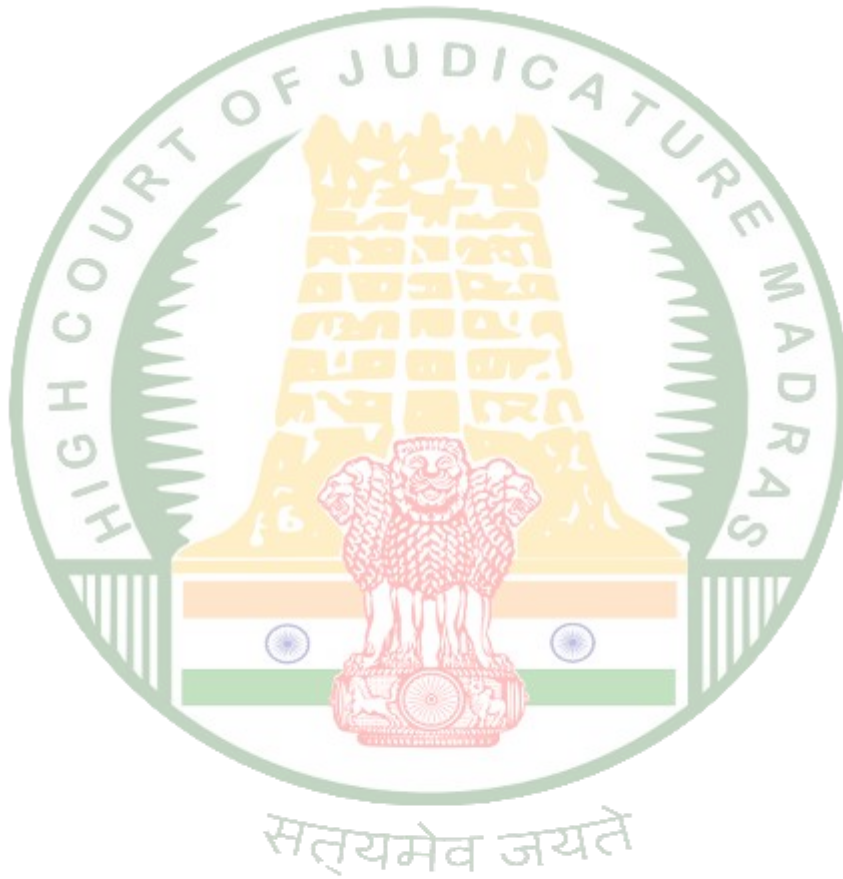
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.34928

+1cc to Mr.Father Xavier Associates, Advocate, S.R.No.34940

+1cc to the Government Pleader, S.R.No.35035

Pre-Delivery order in  
W.P.No.31033 of 2019

SAI (CO)  
RV (07/12/2020)



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