



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.1092 of 2020

and

WMP (MD) .No.883 of 2020

B.Joseph Andrews

... Petitioner

vs.

1.The Director of School Education
Chennai - 6

2.The Chief Educational Officer
Ramanathapuram District

3.The District Educational Officer
Ramanathapuram
Ramanathapuram District

4.The Correspondent
St.Joseph Higher Secondary School
Verkottu, Rameshwaram
Ramanathapuram District

... Respondents

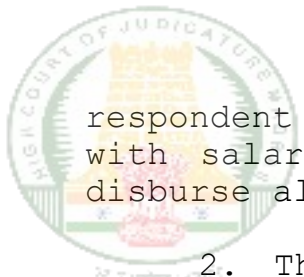
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the third respondent in his proceedings in O.Mu.No.395/A3/2018, dated 30.05.2018 and quash the same and direct the respondents to approve the appointment of the petitioner as Junior Assistant from the date of appointment ie. on 03.10.2006 with salary for the period from 03.10.2006 to 03.01.2010 and confer all other consequential benefits.

For Petitioner : Mr.V.Panneer Selvam

For R1 to R3 : Mr.M.Karuppasamy
Government Advocate

O R D E R

The prayer in the Writ Petition is to call for the records relating to the order passed by the third respondent dated 30.05.2018 and quash the same and direct the respondents to approve the appointment of the petitioner as Junior Assistant in the fourth



respondent School w.e.f. the date of his appointment i.e. 03.10.2006 with salary for the period from 03.10.2006 to 03.10.2010 and to disburse all other consequential benefits.

2. The case of the petitioner is that the post of Junior Assistant in the fourth respondent School fell vacant on 30.09.2006 due to retirement of previous incumbent, namely Thiru.A.Lourdu Michel Francies. In that vacancy, the petitioner was appointed as Junior Assistant, with effect from 03.10.2006. The Fourth respondent Management submitted a proposal for approval to the third respondent on 22.11.2006 for disbursing grant-in-aid towards salary, but, the later refused the proposal, vide proceedings dated 09.01.2007 stating that the proposal will be considered after lifting of the ban and also directed to enclose the photocopies of the certificates. After complying the quarries raised by the third respondent, the management resubmitted the proposal on 02.02.2007 to the third respondent. But, till date, the proposal was kept pending with the third respondent. While so, the first respondent passed an order on 04.01.2010 permitting to fill up the post of Junior Assistant. On the basis of the order of the first respondent, the third respondent approved the appointment of the petitioner with effect from 04.01.2010 instead of 03.10.2006. The grievance of the petitioner is that as per non teaching post is concerned, there is no provision in the Tamil Nadu Recognized Private Schools (Regulation) Act and Rules framed there to get prior permission to fill up the same. Hence, the petitioner made a detailed representation, dated 22.01.2018 to approve his appointment from the date of initial appointment. Without considering anything, the third respondent rejected the claim of the petitioner by an order dated 30.05.2018, stating that the approval will be granted only as per the date on which the permission was granted by the first respondent. Seeking to approve the appointment of the petitioner with effect from 03.10.2006, he 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 the petitioner was appointed as Junior Assistant due to the vacancy arising out of retirement of one A.Lourdu Michel Francies. The fourth respondent School, being the Minority Institution, to fill up a sanctioned post, such permission from the Director is not necessary. Denial of approval from the date of appointment by the third respondent is arbitrary. 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 third 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 his 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 Government Advocate appearing on behalf of the respondents 1 to 3, 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. 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 fourth respondent school to follow the revised instructions and norms of the Government. The 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. Hence, he prayed for dismissal of this Writ petition.

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

8. Perusal of record shows that the post of Junior Assistant fell vacant in the fourth respondent School due to retirement of A.Lourdu Michel Francies. Since the said post is a sanctioned post, the petitioner was appointed w.e.f. 03.10.2006 by the fourth respondent management and seeking approval for the same, proposal was also forwarded, but, it was though initially refused, subsequently approved, but, with effect from '04.01.2010' instead of '03.10.2006'.



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

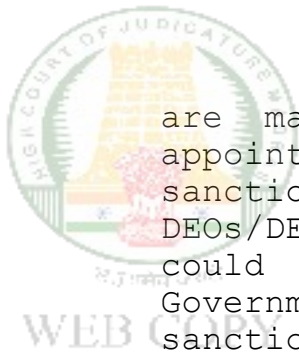
10. It is trite that no prior permission is required from the Director of School Education to fill up a sanctioned post, in a minority institution.

11. 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 <http://www.judis.nic.in> 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



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."

12. 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.

13. In the case at hand also, the fourth respondent 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 third respondent is liable to grant sanction to the appointee and thus, the approval granted to the petitioner with effect from 04.01.2010 cannot stand in the eye of law.

14. The issue involved in this case is squarely covered by the decision of this Court made in ***W.P.No.3226 of 2019 (The Correspondent, Holy Family Girls Higher Secondary School , Gnanaolivupuram, Madurai Vs. The State of Tamil Nadu, Department of School Education, Chennai and others)***. Accordingly, the order passed by the third respondent, dated 30.05.2018 is quashed and this Writ petition is allowed. The respondents are directed to approve the appointment of the petitioner as Junior Assistant in the fourth respondent School with effect from 03.10.2006 i.e., from the date of his initial appointment and confer all consequential and monetary benefits, which he is legally entitled to, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Director of School Education
Chennai - 6

2.The Chief Educational Officer
Ramanathapuram District

3.The District Educational Officer
Ramanathapuram
Ramanathapuram District

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-2301[F] dated
22/01/2020)

+1 CC to M/s.SPL.GP (SR-2564[F] dated 23/01/2020)

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and
WMP (MD) .No.883 of 2020
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