



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2020

CORAM:

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)NO.6807 of 2014

S.Nicholas Prabu

:Petitioner

.vs.

1.The District Educational Officer,
Tiruchirappalli District.

3.The President,
The Congregation of the Brothers of
the Sacred Heart of Jesus,
Palayamkkottai,
Tirunelveli District.

3.The Provincial Supervisor,
Br.Edward Francis SHJ,
17, Khadi Board Colony,
Trichy - 620 021.

4.Rev.Bro.Correspondent,
Lawrence High School,
Mullipatti,Mathur Post,
Tiruchirappalli- 622 515

5.The Headmaster,
St.Joseph Higher Secondary School,
Muthupettai,
Ramanathapuram.

6.Mr.Bro Kevin,
Present Headmaster,
Lawrence Higher Secondary School,
Mullipatti, Mathur Post,
Trichirappalli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents 1 to 4 to reinstate the Petitioner as Headmaster in the fourth respondent school with full back-wages,continuity of service and all other attendant benefits within the period stipulated by this Hon'ble Court.



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For Petitioner

:Mr.Haja Mohideen

For Respondent-1

:Mrs.S.Srimathy
Special Govt.Pleader

For Respondents
2 to 5

:Mr.V.Meenakshisundaram
for Mr.D.Nallathambi

For Respondent-6

:No appearance

O R D E R

This Writ Petition is filed seeking issuance of a Writ of Mandamus directing the respondents 1 to 4 to reinstate the Petitioner as Headmaster in the fourth respondent school with full back-wages, continuity of service and all other attendant benefits.

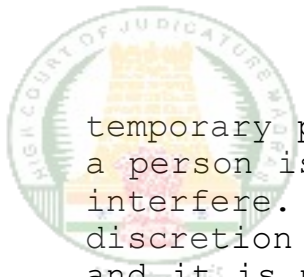
2.The case of the Petitioner is that the respondents 2 to 4 have called for appointment to the post of P.G.Assistant in Commerce and the interview held on 30.5.2005 and the Petitioner was selected and appointed to the said post on 16.6.2005 and thereafter, he was promoted as Headmaster in the year 2009. While so the strength of the pupils of the fourth respondent school got diminished and degraded as High School. At that point of time the Petitioner is working as Headmaster of that school. Since the Petitioner's major subject of Commerce has not been needed to the students, on 5.6.2013 the Petitioner was de-promoted as Teacher and posted in the 5th respondent institution. On 27.6.2013, the Petitioner reported for duty in the fifth respondent institution and he was asked to take different subjects for different classes and also the Petitioner was not allowed to teach the students. Hence the Petitioner has approached the respondents 2 and 3 to reinstate him in the fourth respondent school but the sixth respondent was appointed in the place of the Petitioner in the fourth respondent school. Though the Petitioner has approached the Labour Court in this regard, his claim was negatived and hence the Petitioner has come forward with this Writ Petition for the relief stated supra.

3.The first respondent/The District Educational Officer has filed a detailed counter affidavit denying the averments made in the Writ affidavit and would submit that the fourth respondent school is a minority institution and the appointing authority of the teaching and non teaching staffs is always with the Secretary of the concerned School. Hence the education authorities could not issue any orders regarding the said appointment or promotion in the said school and prays for dismissal of the Writ Petition.



4.The second respondent has filed a counter affidavit denying the averments made in th Writ Petition stating that Petitioner's Writ Petition is not maintainable on the ground of maintainability and in respect of minority institutions, the right of appointment of teachers is their choice inbuilt under Article 30 of the Indian Constitution and the writ Petition has to be dismissed on the above said grounds and prayed for dismissal of the Writ Petition.

5.It is seen that the Petitioner was appointed as P.G.Assistant in Commerce on 16.6.2005 at the fourth respondent school. At that point of time, strength of the pupils of the fourth respondent school got diminished and the Higher secondary school has been degraded as High School. Since the school has been degraded as High School, the fourth respondent school has surplus teachers and on 5.6.2012, the Petitioner was transferred to the 5th respondent school and the Petitioner had joined the said school but he was asked to take different subjects to different classes, since the teacher for commerce subject has already been filled up in that school and therefore, the Petitioner was not allowed to teach subjects to the students. The fourth respondent submitted that the teachers working in the schools under his domain can be transferred to any schools within his domain stating that they are running nearly 8 aided Higher Secondary Schools, 8 aided High Schools, 15 Aided Primary and Middle Schools, 20 unaided Matriculation schools, 5 Arts and Science Colleges, one nursing college, 1 Teacher Training institute and one Bed college under their control. As it is Sacred Heart of Jesus holding the minority institutions to impart education to general public and would further submit that Rule 15 (4) of the Tamil Nadu Private School (Regulation) Rules, 1974 is not applicable to minority institutions and right of appointment of teachers is their choice and the same is an in-built protection given under Article 30 of the Constitution of India. It is also seen that the Petitioner was transferred from the fourth respondent school at Mullipatti, Mathur Post, Tiruchirappalli to the fifth respondent school /St.Joseph Higher Secondary School, Muthupettai, Ramanathapuram . The Petitioner has joined the said school and simply state that he has not been allowed to work in the said school. Further it is seen that the interview to the post of P..G.Assistant Commerce was held on 23.5.2005 and the appointment order was given on 11.6.2006. The appointment order clearly states that the Petitioner is appointed temporarily as PG. Assistant in Commerce in the non sanctioned post in the fourth respondent school at Mullipatti. The said order takes effect retrospectively from 2.1.2006. The Petitioner will be paid a consolidated pay fixed by the correspondent. The appointment is purely temporary and is liable to be terminated at any time without any reason being assigned. This order does not confer on the candidate any right for appointment in regular vacancies that may arise in future. Therefore, from the above it is seen that the Petitioner's appointment is purely a



temporary post being appointed in a non sanctioned post. Only if a person is appointed in a sanctioned post, then only the Court can interfere. It is a non sanctioned post which is purely at the discretion of the said school, which is the appointing authority and it is made clear that the Petitioner cannot approach this Court seeking interference with the said order as it is made clear that the said school is run by a private institution which has got many number of schools and that the teacher from one school can be transferred to any other school if vacancy arises. As the Petitioner has been working in a non sanctioned post, this Court is not able to interfere with the same. Further this Court raises question regarding the maintainability of the writ Petition

''(a) The 2 to 6 respondents are minority institutions and as such the issues regarding services conditions of staffs (teaching and non teaching) are not amenable to special original jurisdiction of this Honourable Court.

b) In view of Article 30(1) of the Constitution of India, the first respondent is having limited supervisory power only to prescribe qualifications for the teachers to be appointed in minority institutions and hence no case is made out as against first respondent hence present Writ Petition is not maintainable.

c) As the grievance of the Petitioner can be represented even before various level of authorities within our institution as provided by our own by laws to ventilate the grievance of the employees and even not satisfied with the same, the Writ Petitioner can approach competent civil Court and not by way of this Writ Petition.

d) Even by reading the Writ Affidavit, it is evident that 2 to 6 respondents, our institution cannot be brought under the definition of Article 12 of the Constitution of India and the first respondent educational authority is having no jurisdiction in the issue raised by the writ Petitioner in view of the Article 30 of the Constitution of India.''

6. Even though in some cases, it is held that Writ Petition is maintainable, in case wherein the post in which the person appointed is a sanctioned post and the same can be ratified by the Education Department, and the same is questioned by raising objection. But in the case on hand, the Petitioner was appointed in a non sanctioned and hence the Petitioner cannot claim right on par with others, who are posted in the sanctioned post. At this juncture, the Petitioner seeks for liberty to approach the concerned school authorities to reinstate him, and the same cannot be considered. If the Petitioner



and it is upto the management to consider the same if they desire to do so.

7. In view of the above facts and circumstances, the Writ Petition stands dismissed. No costs.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vsn

To

The District Educational Officer,
Tiruchirappalli District.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-12105[F] dated
17/03/2020)

+1 CC to M/s.A.HAJAMOHIDEEN, Advocate (SR-12161[F] dated 17/03/2020)

ORDER MADE IN
W.P(MD)NO.6807 of 2014

16.03.2020

NR(11.06.2020) 5P 4C