



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.22563 of 2008
and M.P.Nos.1 and 2 of 2008

1.A.Gnana Suseela (Died)

2.Allen Jesudas
(P2 substituted as LR of died sole petitioner)

...Petitioners

Vs

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

2.The Director of School Education,
College Road, Nungambakkam,
Chennai -9.

3.The Chief Education Officer,
Nagercoil, Kanyakumari District.

4.The District Educational Officer,
Thakkalay, Kanyakumari District.

5.The L.M.S. Higher Secondary School,
Chirst Koil Palliyadi,
Kanyakumari District, Rep by its,
Correspondent.

... Respondents

PRAYER: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the order of the 2nd respondent in Na.Ka.No. 44016/V1/E3/2008 dated 24.06.2008 and quash the same and consequently direct the respondents 1 to 4 to approve the appointment of the petitioner as vocational instructor at the 5th respondent school with effect from the date of her appointment or atleast from 1992 and pay salary and other benefits.



WEB COPY

For Petitioner : Ms.P.Mahalakshmi

For Respondents: Mr.C.Selvaraj

Government Advocate R1 to R4

No Appearance for R5

O R D E R

The petitioner claims to have completed a Diploma Course in Nursing in the year 1984 and training course as a Midwife, in the year 1985. She also claims to have been appointed by the L.M.S Higher Secondary School at Chirst Koil, Palliyadi, Kanyakumari District/R5, a minority school administered by the Kanyakumari Diocese of the Church of South India in 1991. However, no order of appointment or even an order issued by the official respondents sanctioning the post for her appointment, have been placed on record.

2. According to the petitioner, she was appointed on 24.06.1991 as a Nursing Instructor and was working for 25 years even without drawing salary. The petitioner's appointment was not approved and according to her, she had filed a representation seeking approval of her appointment. On account of inaction on the part of the official respondents, the petitioner filed W.P.No.10502 of 2008 seeking a direction to the State as well as the Director of School Education/R1 and R2 to consider and pass orders on her representation and approve her appointment at R5 school. The aforesaid Writ Petition came to be disposed on 25.04.2008 directing R2 to consider and pass orders on the petitioner's representation within a period of eight weeks. A copy of the aforesaid order is also not available on record.

3. It is pursuant to the aforesaid direction that R2 has passed the present impugned order dated 24.06.2008 rejecting the petitioner's request for approval of her appointment. The reasons cited are that the petitioner does not possess adequate qualification as she holds only a Diploma in Nursing and not a Degree in Nursing, as required. This position is admitted, that the petitioner does not possess a B.Sc. in Nursing.

4. Learned counsel for the petitioner refers to the cases of several similarly placed employees who were also appointed in the absence of the requisite qualification whose appointments came to be ratified by the State subsequently. She refers to G.O.Ms.No.834 dated 23.09.1994 and G.O.Ms.No.680 dated 20.09.1996 as well as a Writ Petition filed by the Management of



R5 school in W.P.No.733 of 1998 seeking a mandamus directing the Chief Educational Officer (CEO), Kanyakumari District to sanction and pay salary to the petitioner, who was arrayed as a respondent in that Writ Petition.

WEB COPY

5. The very fact that the management of the school has approached this Court seeking a mandamus directing the State to sanction and pay salary to the petitioner would establish the position that the post in which the petitioner claims to have been appointed, was unsanctioned.

6. That apart, the Government orders (G.O.) referred to, to by the learned counsel for the petitioner do not support her case. G.O.Ms.No.834 dated 23.09.1994 has been passed subsequent to two orders passed by the Tamil Nadu Administrative Tribunal (TNAT) dated 18.06.1993 and 17.12.1993 disposing Original Applications filed by 1387 fully qualified vocational instructors.

7. Those instructors had been appointed as full-time instructors, and had been seeking regularisation of their services and fixation of a time scale of pay. The aforesaid demands had come to be examined by the Government and favourable orders passed, regularising their appointments. The aforesaid orders came to be set aside by the TNAT and pursuant thereto, the Government re-examined the entire issue, formulating a policy giving due regard to seniority of the vocational instructors. As a consequence, 1387 posts had been created on regular time scale of pay.

8. The aforesaid G.O. cited by the petitioner would relate only to those employees who had approached the TNAT and the petitioner cannot seek benefit of the same. That apart, the G.O. itself states that it applies only to those employees who held the requisite qualifications and the petitioner admittedly, does not.

9. Similarly, G.O.Ms.No.680 dated 20.09.1996 is specific to 346 appointees in the post of part-time vocational instructors, of which 235 were fully qualified and the remaining, less qualified. Admittedly, the petitioner is not part of the 346 appointees who constitute the subject matter of G.O.Ms.No.680. Thus, this Government Order is also of no assistance to the petitioner herein.

10. In order dated 03.09.2002 passed in W.P.No.733 of 1998, this Court has stated at paragraph 6 that it is unclear as to whether the post in which the petitioner (respondent therein) was appointed, was a sanctioned post. Thus the Court had not



been inclined to issue any direction in regard to the approval sought in regard to the petitioner's appointment.

11. Paragraph 6 is relevant and is extracted below:

WEB COPY

'6. This Court is not able to ascertain whether the posts are sanctioned or not in the absence of counter. As of today, this Court is unable to issue any direction as the date on which the Petitioner-Management submitted the applications seeking for approval of the appointments of two part time Instructors have not been set out and there is nothing to show that the request is pending with the third respondent or any other respondent. However, since it is asserted that the two part time Instructors have been working since 1992, this Court directs the third respondent to consider the representation, if any, submitted by the Corporation Management of C.S.I. Schools seeking for approval of the appointment of two Part time Vocational Instructors concerned and if the appointment is in order and if the person appointed are qualified to hold the posts, the third respondent may consider the request and pass orders without further delay. Mr.Paulvasanthakumar refers to G.O. Ms. Nos.1719 Education dated 14.09.1978 and G.O.Ms.No.834 Education dated 23.9.1994. Learned Additional Government Pleader refers to G.O. Ms. No.991 Educational dated 16.07.1990 which imposes a ban. The third respondent shall consider the request of the writ petitioner Corporate Manager of C.S.I Schools in the light of the said Government Orders and pass orders on the request of the petitioner Management with respect to the approval of appointments and pass consequential orders within a period of three months from the date of communication of this order.'

12. Though the petitioner would state that the CEO does not appear to have complied with the direction of the Court as above, that fact may not be material in the light of overwhelming evidence otherwise to establish that the petitioner is not entitled to the relief sought for in this Writ Petition.

13. The counter filed by the respondents in the aforesaid Writ Petition refers to a ban that had been imposed vide G.O.Ms.No.991 dated 16.07.1990 that was in force from 16.07.1990 till it was lifted vide G.O.Ms.No.1177 dated 01.12.1992 with



effect from the date of issue of that order. The petitioner claims to have joined duty on 24.06.1991 during the tenure of the ban and this is yet another reason cited by the State in support of its stand.

WEB COPY

14. For the reasons as stated above, I find no merit in this Writ Petition and the same is dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

sl

To

1.The Secretary to Government,
The Government of Tamil Nadu
Education Department, Fort St. George,
Chennai -9.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai -9.

3.The Chief Education Officer,
Nagercoil, Kanyakumari District.

4.The District Educational Officer,
Thakkalay, Kanyakumari District.

+1cc to M/s.P.Mahalakshmi, Advocate, S.R.No.48406
+1cc to the Government Pleader, S.R.No.49026

W.P. No.22563 of 2008
and M.P.Nos. 1 and 2 of 2008

RLD(CO)
CB(02/11/2021)