



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.5793 of 2010

and

M.P. (MD) .Nos.1 of 2011 and 2 of 2010

WEB COPY

J.Arokia Babian Babu

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Thanjavur District.

2.The Correspondent,
St.Sebastian's R.C.Middle School,
Papanasam, Thanjavur District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent pursuant to the proceedings in Na.Ka.No.7009/B2/2008 dated 01.07.2008 and the consequential order passed by the second respondent dated 20.04.2010 and quash the same and further to restrain the respondents from recovering any amount from the petitioner.

For Petitioner : Mr.A.K.Manickam

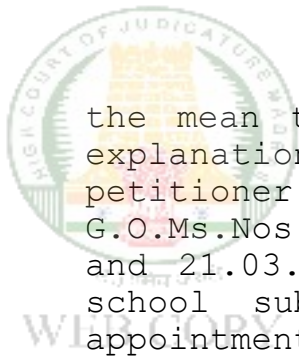
For Respondent No.1 : Mrs.S.Srimathy
Special Government Pleader

For Respondent No.2 : Mr.Mohamed Imran
for M/s.Ajmal Associates

O R D E R

Challenging the order of the first respondent dated 01.07.2008 and the consequential order passed by the second respondent dated 20.04.2010, the present writ petition has been filed by the petitioner.

2. The case of the petitioner is that the petitioner acquired 10th standard in the year 1992 and passed Technical Examinations Higher Grade in the year 1993. While he was awaiting for appointment, a post of Junior Grade Pre-Vocational Teacher became vacant in the second respondent school due to the retirement of the incumbent by name Amalraj and in the said vacancy, he was appointed by the second respondent on 01.09.2006 as Craft Teacher. As usual, papers were forwarded for approval of the petitioner's appointment by the second respondent and his appointment was approved by the first respondent on 16.11.2006. While he was working as Vocational Teacher in the said school to the utmost satisfaction of the management and the departmental authorities without any remarks. In



the mean time, on 11.06.2008, the first respondent called for an explanation from the second respondent by stating that the petitioner's appointment was approved against the norms affirmed in G.O.Ms.Nos.104 and 39, School Education Department, dated 12.07.2002 and 21.03.2003 respectively. In compliance, the second respondent school submit its explanation on 19.06.2008 stating that the appointment was made without any violation and the approval given by the first respondent is valid one. Further, the second respondent also offered his explanation through an advocate on 28.06.2008. However, the first respondent in a communication proceeding observed that the approval of the petitioner's appointment was in order on facts and in law by his proceedings dated 10.02.2009. That being the position, the first respondent, after two years of submitting the explanation now concluded that the explanation submitted by the second respondent was not satisfactory and had cancelled the approval of the petitioner's appointment and first respondent directed the second respondent to repay the teaching grant which was totally contra to the earlier proceedings dated 10.02.2009. The present impugned order was passed on 12.04.2010. Challenging the impugned order, the present writ petition is filed.

3. The learned counsel for the petitioner would submit that the Pre-Vocational Teacher including carpenter/woodcraft, agriculture, weaving, music and tailoring and there is no support post is available in clause 6 to 8 the person who possess the higher qualification in agriculture they can termed as pre-vocational teacher. Hence, Pre-Vocational Teacher are held vacant in the Secondary School and in the said vacancy post, the petitioner was appointed. He further submitted that as per Rule 19 of Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the Junior Grade Pre-Vocation Teachers must have a pass in SSLC and a certificate in Higher Grade of the relevant subject. Hence, the appointment of the petitioner, which was approved by the first respondent is perfectly in order. Hence, cancelling the appointment subsequently is non-est in law. Accordingly, prayed for allowing the writ petition. In support of his contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Division Bench of this Court, wherein in paragraph Nos.4 and 7, it has been held as follows:

"4. In our considered view, on a reading of G.O.Ms.No.39, one gets an impression that there is an absolute ban, however the object of the Government Order for restricting the conversion between two posts is not very clear. In any event, if the Government Order is read as a whole, it appears that the intention of the Government is to consider as to whether there is a need for conversion of the post in a particular institution. But, it has not been stipulated explicitly as the preamble of the Government Order says that conversion can be made



only between Sewing and Music.

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7. Therefore, we are of the firm view that the conditions stipulated in G.O.Ms.No.39, dated 21.03.2003 should be read down to mean that the predominant aspect which has been considered is the need for the particular branch of vocational instruction and this need should be decided by the Institution considering the demand of the students/parents etc. Thus, the stand taken in the impugned communication dated 30.07.2014 is not tenable."

4. Per contra, the learned Additional Government Pleader would submit that the appointment of Pre-Vocational Instructor, particularly to the post of carpenter, woodcraft, agriculture, weaving, music and tailoring were banned from 1992. Though the said ban was revoked vide G.O.Ms.No.132, School Education(M1) Department, dated 27.04.1998 only for the post of music and tailoring. However, ban was continued for the other posts, viz., carpenter, woodcraft, agriculture and weaving. Hence, appointment made by the second respondent is contrary to the ban order is unsustainable one. When the post is not sanctioned and the said post is banned from 1992 onwards, banned post was filled by the second respondent, which was approved by the first respondent is non-est in law and hence, suitable directions were issued to cancel the appointment is perfectly valid. Accordingly, he prays for dismissal of this writ petition.

5. Heard the learned counsel appearing on both side and perused the materials available on record carefully.

6. Considering the facts and circumstances, the issue in the present case is not disputed and admittedly, the petitioner was qualified himself by having passed in the Technical Examinations Higher Grade in Agriculture in the year 1993 and he was appointed on 01.09.2006 as craft teacher. Though his qualification is a pass in Higher Grade in Agriculture, he was appointed as Junior Grade Pre-Vocational Teacher. The core issue arises for consideration in the present writ petition is whether the second respondent have justification for appointment of the petitioner in the banned subject as per G.O.Ms.No.132, School Education(M1) Department, dated 27.04.1998 in which it is stated that on a review on 16.12.1992, it was decided to ban the appointment of all kinds of Craft Teachers in future. However, on consideration of plea from various sections to fill up Craft teacher posts and as per the request of the Director of School Education, Chennai, the Government in G.O.Ms.No.132, School Education, dated 27.04.1998 has permitted to fill up Craft teachers posts in Tailoring and Music only in the Government Schools



and fixed minimum of 250 girls strength in the school to fill up the said Craft teacher posts. It is stated that the Committee constituted in respect of to study about the Craft teacher post has recommended the extension of ban for filling up of the Craft teacher post except that of Tailoring and Music in all schools. Hence, the Government in G.O.Ms.No.104, School Education Department, dated 12.07.2002 clarified to the effect that only Tailoring and Music Craft teachers posts should be filled up and the norms fixed in G.O.Ms.No.132, School Education Department, dated 27.04.1998 in respect of craft teachers post is to be applicable to aided schools with effect from 12.07.2002 and the vacancies of craft teacher posts, other than Tailoring and Music shall not be filled up from 12.07.2002 and certain clarifications in respect of G.O.Ms.No.104, School Education Department, dated 12.07.2002 came to be clarified in the impugned G.O.Ms.No.39, School Education Department, dated 21.03.2003. That from 12.07.2002 vacancy of Tailoring and Music craft teachers posts only shall be filled up and the vacancies of other craft teachers should not be filled up and also the other craft teachers posts shall not be converted to that of Tailoring and Music and the other principles remain unchanged. At this juncture, this Court is of the view that unless and until, the ban order and revoking order is challenged in the manner known to law, the appointment of the petitioner to the post of Junior Grade Pre-Vocational Teacher is non-est in law. Hence, the impugned order cannot be interfered with.

7. In the result, this writ petition stands dismissed and accordingly, the proceedings in Na.Ka.No.7009/B2/2008 dated 01.07.2008 passed by the first respondent is confirmed. No Costs. Consequently, connected miscellaneous petitions are closed. However, the salary was paid to the petitioner only after getting the approval from the competent authority, hence, the salary, which was paid to the petitioner cannot be recovered and there is no misrepresentation on the side of the petitioner. Hence, the consequential order passed by the second respondent dated 20.04.2010 is hereby set aside.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To
The District Elementary Educational Officer,
Thanjavur District.

+1 CC to M/s.H.MOHAMMED IMRAN, Advocate (SR-4550[F] dated
11/02/2021)

+1 CC to M/s.A.K.MANICKAM, Advocate (SR-4492[F] dated 11/02/2021)

W.P. (MD) .No.5793 of 2010
10.02.2021

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KK(26.02.2021) 5P 4C