



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
21.04.2021	30.04.2021

CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.861 of 2021
and
C.M.P. (MD) No.3839 of 2021

1.The Director of Elementary Education
College Road, Chennai-600 006

2.The District Elementary Educational Officer
Tuticorin, Tuticorin District

3.The Additional Assistant Elementary
Educational Officer
Vilathikulam Union
Tuticorin District

...Appellants/1to3 Respondents
-vs-

1.A.Celastin Mahimairaj

...1st Respondent/Writ Petitioner

2.The Correspondent
St.Peter's Middle School
Subramaniapuram
Vembar-628 906
Tuticorin District

...2nd Respondent/4th Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 20.03.2019, passed in W.P.(MD) No.3268 of 2017, on the file of this Court.

Prayer in WP(MD). 3268/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records to the impugned proceedings issued by the 2nd Respondent DEEO in Na.Ka.No.666/A/3/2012 dated 21.05.2012 and the subsequent proceedings issued by DEEO in O.Mu.No.1723/A3/2015 dated 27.07.2015 quash the same, and further Direct the 2nd respondent herein to approve the appointment of the petitioner as Secondary Grade Teacher



in the 4th respondent school from 14.09.2010 to 16.12.2012

For Appellants : Ms.S.Srimathy
Special Government Pleader

For Respondents : Mr.Ajith Geethayan for R1

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J U D G M E N T

This writ appeal by the Education Department is directed against the order, dated 20.03.2019, passed in W.P.(MD) No.3268 of 2017.

2. The first respondent was appointed as a Secondary Grade Teacher in the second respondent - School on 14.09.2010 in a vacancy, which arose on account of voluntary retirement of the existing incumbent on 31.08.2010. The Management forwarded the proposal to the appellant - Department for approval of the appointment of the first respondent. When the matter was pending approval, the State Government introduced Teachers Eligibility Test by G.O.(Ms) No.181, School Education (C2) Department, dated 15.11.2011 and the first respondent cleared the said Test during October, 2012 and became eligible for appointment as Teacher in Government School. Accordingly, the State Government appointed him as BT Assistant in Government High School, Irandampulikadu, by proceedings of the Joint Director of School Education, dated 10.12.2012. On account of his appointment in Government School, the first respondent resigned his services from the second respondent - School on 16.12.2012 and joined the Government High School as BT Assistant on 17.12.2012 and he was continuing to discharge his duties in the said post. The proposal which was sent by the second respondent - Management to approve the appointment of the first respondent made on 14.09.2010 was returned by the second appellant by proceedings dated 21.05.2012 on the ground that there are surplus teachers working in various other schools under the Management of R.C.Diocese of Tuticorin. After obtaining a copy of the proceedings from the Management, the first respondent submitted representations to the Department and sent a final reminder on 12.06.2015 requesting to reckon the services rendered by him in the second respondent - School from 14.09.2010 to 16.12.2012 and disburse salary and other attendant benefits. The said request was rejected by the second appellant by proceedings dated 27.07.2015 stating that the appointment of the first respondent was not approved. Challenging the proceedings of the second appellant, dated 21.05.2012 and 27.07.2015, the writ petition was filed. The first respondent contended that he had worked for a period of 2 years 3 months and 3 days in a sanctioned post assessed for grant-in-aid and there was no surplus teachers working in the second respondent - School during the said period and the post held by him was not a surplus post and rejection of the approval and refusal to pay salary is arbitrary.



3. The writ petition filed by the first respondent was heard along with other writ petitions and has been disposed of by a common order, dated 20.03.2019, by directing the appellants herein to grant approval of the appointment at the earliest. Aggrieved by such direction, the Department is before us by way of this appeal.

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4. We have elaborately heard Ms.S.Srimathy, learned Special Government Pleader appearing for the appellants and Mr.Ajith Geethayan, learned counsel appearing for the first respondent / writ petitioner.

5. We note from the impugned order i.e. the order passed in the writ petition, which is a common order in the other cases as well, that the case of the first respondent herein has not been explicitly noted. The learned Writ Court has recorded the submissions of the learned counsel for the writ petitioner that there is no surplus teacher in the School, where the first respondent is working and also recorded the submission that the same issue was dealt with in the case of the **Director of Elementary Education and others vs. The Correspondent [2018 (1) WLR 421]**.

6. Further, the learned Writ Court recorded the submission of the learned counsel for the writ petitioner that in terms of G.O. (Ms) No.525, School Education (D1) Department, dated 29.12.1997, it was for the Director of Elementary Education to redeploy the staff from one School to another and that the School cannot redeploy them on its own.

7. The Court recorded the submission of the learned Special Government Pleader that there are surplus teachers in the School and the same was not adhered to by the respective Management.

8. After recording the submissions, the learned Writ Court has issued direction to grant approval of the appointment of the first respondent. We find that the facts of the case have not been discussed, more particularly, the fact that the second respondent - School is under a Corporate Management established and administered by the R.C.Diocese of Tuticorin. The stand of the appellant - Department was that there are several surplus posts in the various Schools run by the Corporate Management, namely, R.C.Diocese of Tuticorin and unless and until of such surplus Teachers are accommodated, the question of granting approval to the first respondent's appointment does not arise.

9. Before we consider as to what would be the effect of such appointment and whether the first respondent would be entitled to approval of his appointment for the period in question, we need to first consider as to whether the writ petition filed by the first respondent in the year 2017 was maintainable. If on facts we are



convinced that it was maintainable and the first respondent was entitled to agitate the correctness of the order passed by the second appellant, then we may proceed to consider the legal issue.

10. The first respondent is now working in a Government School having been selected and appointed on 16.12.2012 and joined duty on 17.12.2012. For a brief period of 2 years 3 months and 3 days from 14.09.2010 to 16.12.2012, the first respondent was working in the second respondent - School, which is an Aided Minority Educational Institution. On account of the minority status, the educational agency, which is established and administering the second respondent - School is not required to obtain prior approval of the Government to fill up vacancy caused on account of resignation, retirement or death of the existing incumbent. Therefore, the Corporate Management, namely, Bishop of Tuticorin / Management of R.C.Schools, Tuticorin Diocese, had issued appointment order, dated 13.09.2010 and the first respondent was posted in the second respondent - School. The first respondent did not agitate his rights before submitting his resignation and getting relieved from the second respondent - School. Much after his retirement, the first respondent sought to wake up a closed issue by submitting his representation for the first time on 12.06.2015. In Paragraph No.4 of the affidavit filed in support of the writ petition, the first respondent would state that the representation dated 12.06.2015 was a reminder. However, the copies of the alleged earlier representations, dates of the alleged earlier representations have not been mentioned. Therefore, we can safely conclude that for the first time, the first respondent sent a representation on 12.06.2015 requesting the second appellant to reckon his services rendered by him in the second respondent - School for the period from 14.09.2010 to 16.12.2012 and disburse salary. This was rightly rejected by the second appellant by proceedings, dated 27.07.2015, on the ground that the first respondent's appointment was not approved by the Department. It is thereafter the first respondent filed the writ petition challenging the order dated 27.07.2015 as also the proceedings, dated 21.05.2012, by which the proposals sent by the Management for approval of appointment of the first respondent was returned. Thus, the facts will clearly demonstrate that the attempt of the first respondent is belated and cannot be entertained and it is barred by laches and no explanation has been set forth.

11. That apart, the present attempt of the first respondent is a clear afterthought. Furthermore, the proceedings, dated 27.07.2015, was challenged in the year 2017 by filing a writ petition. The delay has not been explained, which will clearly show that the first respondent has attempted to wake up a closed issue, which cannot be permitted. These are all sufficient reasons to throw out the writ petition in limine.

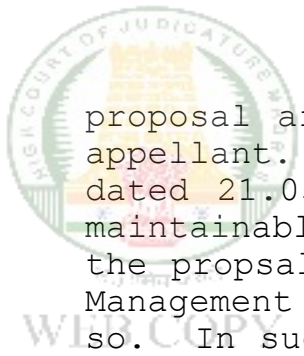


12. With regard to the legal issue, we are guided by Judgment of the Honourable Division Bench in the **Secretary to Government, School Education Department and others vs. Iruthaya Amali and another**, dated 31.03.2021, in W.A.(MD) Nos.76 of 2019 etc. batch, wherein in Paragraph No.95(v), it has been held as follows:

"(v) Like that insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength."

13. In terms of the above direction, in respect of Minority Institutions administered by Corporate Management, even though vacancy arises within the sanctioned strength of such school or schools under Corporate Management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength.

14. Admittedly, the appointment given to the first respondent is by a Corporate Management, namely, R.C.Diocese of Tuticorin. As could be seen from the appointment order, dated 13.09.2010, it was sent by the Manager, R.C.Diocese of Tuticorin. The proposal for approval of the first respondent's appointment was returned on 21.05.2012, on the ground that there are several surplus teachers in the various schools under the same Corporate Management and the full details in this regard is required to be submitted. The proposal, which was forwarded by the Management, has been returned to the Management and the Corporate Management has not challenged the proceedings of the Department nor resubmitted the



proposal after complying with the details called for by the second appellant. In such circumstances, the challenge to the proceedings, dated 21.05.2012, at the instance of the first respondent, is not maintainable, since the said proceedings is not an order rejecting the proposal, but returning the proposal and directing the Corporate Management to submit certain details, which they have failed to do so. In such circumstances, the challenge to the proceedings, dated 21.05.2012, has to necessarily fail.

15. The learned counsel appearing for the first respondent submitted that against the common impugned order, dated 20.03.2019, the Department filed appeal against the direction issued in W.P.(MD) No.13292 of 2015 in the case of one T.Kingsly Nirmala and the Honourable Division Bench in W.A.(MD) No.648 of 2020, dated 31.08.2020, dismissed the appeal filed by the Department. In the said Judgment, the Court noted that the counter affidavit filed by the Department merely stated that there are many surplus teachers in the schools run by R.C.Diocese of Tuticorin and the counter affidavit also did not mention as to what action was undertaken by the Department in terms of G.O.(Ms) No.525, dated 29.12.1997 and therefore, found that there is no infirmity in the order passed by the learned Writ Court.

16. In our considered view, the said Judgment in the case of T.Kingsly Nirmala cannot be applied to the case of the first respondent herein as we have pointed out distinguishing factors, which have emanated in the case of the first respondent. That apart, one of the proceedings, which was impugned in the writ petition, is dated 21.05.2012 and the second appellant returning the proposal for approval of the appointment of the first respondent, wherein a direction has been given to the Corporation Management to submit all details in full form after accommodating all the surplus teachers in the schools under their control. Therefore, the Judgment in W.A.No.648 of 2020 cannot be applied to the facts and circumstances of the case on hand.

17. For the above reasons, the writ appeal is allowed and the order, dated 20.03.2019, passed in W.P.(MD) No.3268 of 2017, is set aside. Consequently, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)



Note :

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

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To

1.The Director of Elementary Education
College Road, Chennai-600 006

2.The District Elementary Educational Officer
Tuticorin, Tuticorin District

3.The Additional Assistant Elementary
Educational Officer
Vilathikulam Union
Tuticorin District

+1 CC to M/s.A.AJITH GEETHAN, Advocate (SR-18134[F] dated
30/04/2021)

+1 CC to M/s.Special Government Pleader (SR-18351[F] dated
03/05/2021)

JUDGMENT

IN

W.A. (MD) No.861 of 2021

and

C.M.P. (MD) No.3839 of 2021

30.04.2021

CN(20.05.2021) 7P 6C