



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A(MD)No.1101 of 2020

and

C.M.P(MD)No.6003 of 2020

1.The District Elementary Educational Officer,
Tuticorin District.

2.The Assistant Elementary Educational Officer,
Karungulam, Tuticorin District.

... Appellants / 1 and 2 Respondents

Vs.

1.M.Jesu Rathinam

...1st Respondent/writ petitioner

2.The Correspondent,
St. Lucia R.C.Middle School,
Seydunganallur, Tuticorin District.

... 2nd Respondent/3rd Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 21.03.2019 in W.P(MD)No.6271 of 2012.

Prayer in WP(MD). 6271/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI MANDAMUS calling for the records pertaining to the orders passed by the 1st respondent in his proceedings Mu.Mu.No.729/A1/2011 dated 3.3.2011 in so far as the condition No.3 and the order in O.MU.No.2036/A1/2011 dated 12.12.2011 and quash the same, and direct the respondents to approve the appointment of the petitioner from the date of appointment i.e., 16.7.2009 and confer all the consequential benefits .

For Appellants : Mr.P.Subbaraj,
Special Government Pleader

For R-1 : Mr.M.S.Suresh Kumar

For R-2 : No Appearance



JUDGMENT

(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)

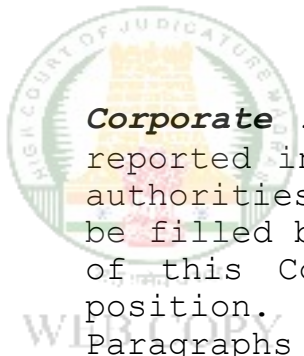
This writ appeal has been filed challenging the order passed in W.P(MD)No.6271 of 2012, dated 21.03.2019.

2. The brief facts of the case are that in the second respondent School, a Post of B.T. Assistant became vacant on 30.06.2009 due to the transfer of one Mrs.Jessi, a Secondary Grade Teacher. The said post was upgraded as B.T. Assistant as per the amendment. Therefore, one Mrs.Jasmine J.Kenned, who was a Secondary Grade Teacher was given promotion as B.T. Assistant on 16.07.2009. Therefore, the said post became vacant from 16.07.2009. The second respondent being a minority Institution, selected and appointed the writ petitioner as B.T. Assistant in the place of Jasmine J.Kenned. When the papers were sent to the first appellant for approval, the same was returned stating that since the promotion of Jasmine J.Kenned has not been approved, only after the approval of her promotion, the proposal of the writ petitioner will be recommended for approval.

3. On 03.03.2011, the promotion of Jasmine J.Kenned was approved by the first appellant with the condition that the vacancy that arose due to promotion given to Jasmine J.Kenned, should not be filled up. Therefore, when the proposal for approval of the writ petitioner was sent to the first appellant, it was rejected firstly, on the ground that at the time of appointment of the writ petitioner, one Mr.Peer Mohammed was a History Teacher. Therefore, the post became vacant only on 03.12.2010. Secondly, at the time of approving the promotion of Jasmine J.Kenned, the vacancy should not be filled up. There were surplus teachers in the Secondary Grade Post. The said order passed on 12.12.2011 was impugned in the writ petition. The writ Court had allowed the writ petition rejecting the objections raised by the appellants herein. Aggrieved by the said order, the above writ appeal is preferred.

4. Heard Mr.P.Subbaraj, learned Special Government Pleader appearing for the appellants, Mr.S.Suresh Kumar, learned counsel appearing for the first respondent and perused the materials available on record.

5. The first objection was that when the writ petitioner was appointed as a B.T. Assistant in the history subject, there was already a Teacher named Peer Mohammed, who was a B.T. Assistant in the same subject in the school and he retired only on 03.12.2010. It is to be noted that the writ petitioner/first respondent was appointed in the vacancy caused by the promotion of one Jasmine J.Kenned. Even otherwise, as early as in 2006, in the case of



Corporate Manager, CSI Corporate Schools vs. State of Tamil Nadu reported in **(2006 (5) CTC 504)**, it was categorically held that the authorities cannot insist that vacancies in middle schools ought to be filled by subject roster. Following the same, the Division Bench of this Court in W.A(MD)No.716 of 2014, had confirmed the said position. It would be appropriate to advert to the relevant Paragraphs of the said decision:

"3. Similar issue was considered by this Court in the decision reported in 2006(5) CTC 504 - The Corporate Management, CSI Corporate Schools, CSI Diocese of Kanyakumari, Nagarcoil vs. The State of Tamil Nadu, rep by its Secretary, Chennai and others and this Court quashed the Circular, dated 26.10.2004 issued, restricting the number of teachers having degrees in the same subject in a school.

4. The said decision was considered by a Division Bench of the Principal Seat in the Judgment dated 20.09.2007 made in W.A.No.1198 of 2007 wherein it is held thus:

"3. In fact the legal implication of the said proceedings dated 26.10.2004, was considered by this Court in the light of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (in short T.W. Act 29 of 1974) in the Correspondent, Britannia Higher Secondary School, Chennai vs. State of Tamil Nadu, rep. by its Secretary, Department of School Education, Chennai and others (2007 (2) MLJ 760) and held that the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate teachers. That was also the decision taken earlier by the Madurai Bench of Madras High Court in the corporate Manager, CSI Corporate Schools Vs. State of Tamil Nadu (2006 (5) CTC 504). It was also considered in the above said cases that the executive instruction cannot supersede the statutory provision, by relying upon the decision of the Supreme Court in B.N. Nagarajan Vs. State of Karnataka (1979 II LLJ 209 (SC), which was subsequently reiterated by the Supreme Court in V.Sreenivasa Reddy Vs. Government of A.P. (AIR 1995 SC 586). Therefore, by virtue of the above said judgments, it is the categorical decision of this Court that the proceedings of the second



appellant dated 26.10.2004 by imposing subject roster in making appointment is not Valid and is in violation of the provisions of the Act 29/74. In view of the same, there is absolutely no reason to interfere with the order of the learned Single Judge. Consequently, the writ appeal fails and the same is dismissed with direction to the appellants to approve the appointment of V.J. Titus Prabhakar (Mathematics) with effect from the date of his appointment with salary and other benefits within a period of four weeks from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed".

6. In view of the above, the objection that the condition imposing subject roster while making appointment is not valid and it is in violation of the provisions of the Tamil Nadu Act 29, 1974.

7. The second ground that vacancy that arose on account of promotion of Jasmine J.Kenned, should not be filled up, is found to be a unreasonable condition by the writ Court. It is not the case of the appellant that the School did not have necessary students strength and have sanctioned post. When the vacancy arises in the sanctioned post on account of promotion or retirement, the management is entitled to fill up. Therefore, the argument that the appointment of Jasmine J.Kenned was approved on condition that the vacancy arisen on account of her promotion should not be filled up, is arbitrary, especially when the management happens to be a minority Institution. Therefore, the second objection also fails.

8. The third objection raised by the learned Special Government Pleader that there was already surplus teacher in the second respondent R.C. Middle School and therefore, appointment cannot be made also, is only a faint argument as the appointment of the writ petitioner is well within the sanctioned strength. The argument of the learned Special Government Pleader that the School without deploying the surplus teacher and without following the instructions of the Government has appointed the Teachers on their own, which is against law, cannot be accepted as the writ petitioner was appointed in the vacancy that arose due to the promotion of Jasmine J.Kenned. In view of the above, the said objection is also ruled out.

9. In the light of the above discussion, the writ appeal is dismissed and the order of the learned Single Judge, is confirmed. It appears that there has been an order of interim stay granted by the Division Bench of this Court at the time of admission and the same stands vacated and the appellants are directed to approve the appointment of the writ petitioner within a reasonable time. No



Costs. Consequently, connected Miscellaneous Petition is closed.
Sd/-

Assistant Registrar (AS)

// True Copy //

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/ /2022

Sub Assistant Registrar(CS)

pm

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:

1.The District Elementary Educational Officer,
Tuticorin District.

2.The Assistant Elementary Educational Officer,
Karungulam, Tuticorin District.

+1 CC to M/s.SPL GP (SR-37219[F] dated 03/12/2021)

+1 CC to M/s.FATHER XAVIER ASSOCIATES, Advocate (SR-37429[F] dated 06/12/2021)

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