



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.18114 of 2018

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A.Kingsly Belbin

... Petitioner

vs.

1.The Secretary to the Government,
Department of School Education,
St. George Fort,
Chennai.

2.The Director of School Education,
DPI Compound,
College Road,
Chennai.

3.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

4.The District Educational Officer,
Tirunelveli District,
Tirunelveli.

5.The Correspondent,
Cathedral Higher Secondary School,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the fourth respondent in Na.Ka.No.2419/A3/2017, dated 24.07.2018 and quash the same and consequently direct the respondents to pass appropriate orders permitting the conversion of the post of vocational Instructor (Agriculture) into Music Instructor with all other consequential service and monetary benefits with effect from 24.08.2017.

For Petitioner

: Mr.V.R.Shanmuganathan
for Mr.S.Chellapandian

For RR 1 to 4

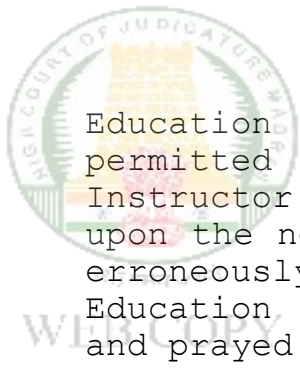
: Mr.P.Subbaraj
Government Advocate

**ORDER**

The petitioner has filed the present Writ Petition, to quash the impugned proceedings issued by the fourth respondent, dated 24.07.2018 and to direct the respondents to pass appropriate orders permitting the conversion of the post of vocational Instructor (Agriculture) into Music Instructor with all other consequential service and monetary benefits with effect from 24.08.2017.

2. According to the petitioner, he is being fully qualified to be appointed as Music Teacher on 01.06.2017. One post of pre-vocational Instructor (Agriculture) in the fifth respondent School, fell vacant due to the retirement of one Yesudasan Barnadas on 31.05.2017. Considering the request of the Parent Teachers Association and non-availability of water, the fifth respondent Management decided to convert the said post of pre-vocational Instructor (Agriculture) into that of pre-vocational Instructor (Music), as per the guidelines issued in G.O(Ms)No.39, Education (D1) Department, dated 21.03.2003 and made a request to the respondents 1 to 4 to convert the pre-vocational Instructor (Agriculture) into pre-vocational Instructor (Music). The said request was not considered by the respondents 1 to 3. The fifth respondent appointed the petitioner in the said post as Music Teacher on 24.08.2017 and sent a proposal on 24.08.2017, for approval of the appointment of the petitioner as pre-vocational Instructor (Music) to the fourth respondent. The fourth respondent returned the proposal by proceedings, dated 18.05.2018. The fifth respondent again re-submitted the proposal on 11.06.2018 with detailed explanation. Without considering the same, the fourth respondent rejected the proposal submitted by the fifth respondent, by proceedings, dated 24.07.2018. Challenging the same, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that when a vacancy arose in a sanctioned post, the School is entitled to fill up the said post as per the Rules and Regulations. The fourth respondent rejected the proposal submitted by the fifth respondent citing administrative instructions given in G.O(Ms)No.39, School Education (D1) Department, dated 21.03.2003. In support of his contention, the learned counsel appearing for the petitioner relied on the order of this Court in W.P(MD)No.11501 of 2008, dated 20.09.2010 (Management of RC School Vs. Director of Elementary Education and another) and the Judgment of the Division Bench of this Court in W.A(MD)Nos.22 and 23 of 2017, dated 20.02.2018 (The Secretary, School Education Department and others Vs. The Correspondent, R.C.Middle School, Nedunkulam, Tuticorin District) and the order of the Division Bench of this Court in W.P(MD)No.24071 of 2017, dated 20.02.2018 (The Secretary, Guruvappa Higher Secondary School, Niekarapatti Vs. The Secretary, Department of School



Education and others) and submitted that the Division Bench permitted the Management to convert the post of vocational Instructor of a particular subject into any other subject depending upon the need of the students and the School. The fourth respondent erroneously rejected the proposal citing G.O(Ms)No.39, School Education (D1) Department, dated 21.03.2003 and denied the approval and prayed for allowing the Writ Petition.

4.The respondents 1 to 4 have filed the counter-affidavit.

5.Mr.P.Subbaraj, learned Government Advocate appearing for the respondents 1 to 4 submitted that the fifth respondent School has sanctioned only vocational Instructor (Agriculture) post. No post of music teacher is sanctioned to the fifth respondent School. The fifth respondent School is bound by instructions issued in the Government Order from time to time. As per the provisions of the Tamil Nadu Private Schools and Regulation Act, the Management has to appoint a person, who is qualified to the post. The fifth respondent has no right to convert the post. Hence, the proposal sent by the fifth respondent School for approval of the appointment of the petitioner was rightly rejected by following the Government Order. The post of vocational Instructor (Agriculture) was abolished on the retirement of the incumbent of a particular person and appointment of the petitioner as vocational Instructor (Music) in non-existing post and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4 and perused the entire materials available on record.

7.In the facts referred to above, it revealed that the post of vocational Instructor (Agriculture) fell vacant in the fifth respondent School on 01.06.2017. According to the fifth respondent, there was no demand from the students and non-availability of water and request of the Parent Teachers Association, the said post was decided to convert into vocational Instructor (Music) and sent representation to the respondents 1 to 4 for such conversion. No order was passed on the said proposal. The fifth respondent converted the post as vocational Instructor (Music) and appointed the petitioner as vocational Instructor (Music). The proposal sent by the fifth respondent for approval of the appointment of the petitioner to the fourth respondent was rejected citing G.O(Ms) No.39, School Education (D1) Department, dated 21.03.2003. This issue was considered by this Court in the following Writ Petition and Writ Appeals:-

(i) W.P(MD)No.24071 of 2017, dated 20.02.2018 (The Secretary, Guruvappa Higher Secondary School Vs. The Secretary to Government, Department of School Education and others)

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(ii) W.A.Nos.22 and 23 of 2017, dated 20.02.2018 (The Secretary, School Education Department and others Vs. The Correspondent, R.C.Middle School, Nedungulam, Sattankulam, Tuticorin District).

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(iii) W.P(MD)No.11501 of 2008, dated 20.09.2010 (Management of RC School Vs. Director of Elementary Education and another).

8.Further, the Division Bench of this Court in W.A(MD)Nos.22 and 23 of 2017, vide Judgment dated 20.02.2018, considered the very same issue namely, for conversion of post of vocational Instructor between the branch of Sewing and Music and dismissed the Writ Appeals filed by the Government against the order of the learned Single Judge, dated 11.11.2014, allowing the Writ Petitions in W.P (MD)Nos.1764 of 2010 etc., batch. The reasons given in the order and Judgment referred to above are squarely applicable to the facts of the present case. The respondents 1 to 4 ought to have considered the proposal sent by the fifth respondent in approving the appointment of the petitioner as vocational Instructor (Music) in the light of the orders of this Court. The issue of conversion is no longer *res integra*, as this Court in the earlier proceedings approved the conversion and directed the authorities to approve the appointment and pay all the monetary benefits.

9.In view of the orders and Judgments referred to above, the impugned order is liable to be set aside and the same is set aside. The fifth respondent is directed to re-submit the proposal to the respondents 1 to 4 within a period of two weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents 1 to 4 are directed to approve the appointment of the petitioner taking into consideration the orders of this Court in the Writ Appeal and Writ Petitions and pay all monetary benefits to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

10.With the above direction, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS I)

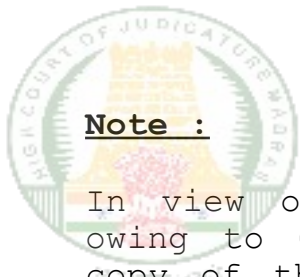
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Sub Assistant Registrar(CS)

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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 Secretary to the Government,
Department of School Education,
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- 5.The Correspondent,
Cathedral Higher Secondary School,
Palayamkottai,
Tirunelveli District.

+1 CC to M/s.S.CHELLA PANDIAN, Advocate (SR-19992[F] dated 23/06/2021)

+1 CC to M/s.SPL GP (SR-20019[F] dated 23/06/2021)

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