



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.25044 of 2018

and

W.M.P(MD) No.22707 of 2018

S.Immanuvel

...Petitioner

Vs.

1.The Joint Director of Elementary
Education (Aided School),
College Road, Chennai - 600 006.

2.The District Educational Officer,
Aruppukottai, Virudhunagar District.

3.The Block Educational Officer,
Aruppukottai, Virudhunagar District.

4.C.S.I. Boarding Middle School,
Rep. by its Correspondent,
Aruppukottai, Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 3rd respondent in Na.Ka.No.927/A1/2018, dated 30.10.2018, quash the same and further direct the respondents 1 and 2 herein to approve forthwith the appointment of petitioner as B.T. Assistant (Tamil) in the 4th respondent-school from 17.09.2018 onwards with salary and other attendant benefits by converting the subject from Maths to Tamil.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.N.Shanmugaselvam for R1 to R3
Additional Government Pleader
No Appearance for R4

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 3.

2.The petitioner herein is working in the fourth respondent school as B.T. Assistant (Tamil). The post of B.T. Assistant (Maths) in the fourth respondent school is a sanctioned post, which fell vacant on 14.09.2018. The case of the respondent authority is



that the fourth respondent School, being a Minority Educational Institution, had appointed the petitioner as a B.T. Assistant (Tamil) instead of B.T. Assistant (Maths) and such conversion is impermissible. On this ground, the fourth respondent's request for disbursement of grant-in-aid was returned.

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3. Admittedly, the fourth respondent's school is a minority school. The issue as to whether the prior permission for conversion of a post was required or not came up for consideration before this Court on various occasions and in a series of orders, it was held that prior permission for such conversion was not required, insofar as the minority schools are concerned. In one such case, by the Hon'ble Division Bench of this Court, in the case of Government of Tamil Nadu, Department of School Education and others Vs. J. Remila, it was held as follows:

"22. Admittedly, the Second Respondent Institution is a Recognized Minority Institution and therefore, Article 30 of the Constitution of India applies and they have a right to establish and administer Educational Institutions of their choice. The Appellants have also not disputed the eligibility of the First Respondent to hold the B.T. Assistant (Social Science) post in the Second Respondent Institution. The only bone of contention raised by the Appellants is that without prior permission for conversion of post from the Appellants, the Second Respondent Institution cannot make appointment of the First Respondent as B.T. Assistant (Social Science) in the Second Respondent Institution.

.....
29. After considering the various decisions, the Hon'ble Supreme Court in paragraph 15 of the judgment cited supra has held as follows:

?15. The above decisions clearly show that autonomy of a minority institution does not dispense with the requirement to act fairly and in a transparent manner and the High Court in exercise of its power of judicial review is entitled to examine fairness of selection process. Grievance of a citizen that he was treated unfairly cannot be ignored on the ground that a minority institution has autonomy or right of choice. Exercise of right of choice has to be fair, non-discriminatory and rational.?

30. In the case on hand, it is not the case of the Appellants that the appointment procedure as regards the First Respondent was not fair, discriminatory and irrational. Therefore, applying the ratio held in the judgment reported in (2017) 3 SCC 619, cited supra, it is held by this Court that the grounds

raised by the Appellants for sustaining the impugned



proceedings dated 19.05.2014 and 21.09.2015, does not deserve any merit.

31. This Court opines that even though the State has the power to regulate Minority Educational Institutions in the interest of 'Efficiency', 'Discipline', 'Health', 'Sanitation', 'Morality', 'Public Order', the impugned proceedings dated 19.05.2014 in O.Mu.No.1143/83/2014, on the file of the Third Appellant and the consequential proceedings dated 21.09.2015 in O.Mu.No.4309/AA1/2015, on the file of the Fourth Appellant, do not come within those parameters and therefore, the said impugned proceedings interferes with an overall administrative control of the Second Respondent Minority Institution over its staff and abridges/dilutes their right to establish and administer their Educational Institution."

4. The aforesaid order is self explanatory. Accordingly, the action of the authorities in refusing to approve the petitioner's appointment as a B.T. Assistant in fourth respondent school cannot be sustained.

5. Consequently, the impugned order issued by the 3rd respondent in Na.Ka.No.927/A1/2018, dated 30.10.2018, is hereby quashed. The second respondent is directed to approve the appointment of the petitioner as a B.T. Assistant (Tamil), if she is not otherwise dis-entitled to, in the fourth respondent's school w.e.f. 17.09.2018 onwards together with all attendant monetary benefits. The second respondent herein shall endeavour to pass such approval orders atleast within a period of eight weeks from the date of receipt of a copy of this order.

6. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM



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 Joint Director of Elementary Education (Aided School),
College Road, Chennai - 600 006.
- 2.The District Educational Officer,
Aruppukottai, Virudhunagar District.
- 3.The Block Educational Officer,
Aruppukottai, Virudhunagar District.

+1 CC to M/s.SPL GP (SR-6724[F] dated 23/02/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate SR-6764[F] dated 23/02/2021

W.P.(MD) No.25044 of 2018
22.02.2021

ES (CO)
TR(09.03.2021) 4P 6C