



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.24891 of 2016 and

W.M.P. (MD)Nos.17999 and 18000 of 2016

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The Correspondent,
L.M.S.Girls Higher Secondary School,
Marthandam, Kanyakumari District.

... Petitioner

vs.

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

2.The Chief Educational Officer,
Nagercoil - 629 001, Kanyakumari District.

3.The District Educational Officer,
Kuzhithurai, Kanyakumari District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent District Educational Officer in Na.Ka.No.2030/A4/E1/2016, dated 30.03.2016 and his consequential proceedings in O.Mu.No.2910/A4/E212016, dated 29.06.2016 and quash the same and further to direct the District Educational Officer to approve the appointment of C.Silvance as P.G.Assistant in Political Science w.e.f, 02.09.2014 in the petitioner's School, namely, L.M.S.Girls Higher Secondary School, Marthandam, Kanyakumari District and disburse the grant-in-aid towards his salary and allowances.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for Mr.T.Cibi Chakravarthy
For Respondents : Mr.M.Linga Durai
Government Advocate

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the third respondent, dated 30.03.2016 and 29.06.2016 and to direct the third respondent to approve the appointment of C.Silvance as P.G.Assistant in Political Science with effect from 02.09.2014 in



the petitioner School, namely, the L.M.S.Girls Higher Secondary School, Marthandam, Kanyakumari District and disburse the grant-in-aid towards his salary and allowances.

2.Heard Mr.Isaac Mohanlal, learned Senior Counsel for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the respondents.

3.The petitioner School is one among the Schools owned and administered by the Church of South India Diocese of Kanyakumari. It is to be noted that the Church of South India Diocese of Kanyakumari runs several educational institutions in the Kanyakumari District. Church of South India Diocese of Kanyakumari is a recognized Christian Religious Minority. It is stated that the Church of South India Diocese of Kanyakumari is the superior body to administer several Schools owned by it. The petitioner is one among the Schools administered as a single unit under corporate set up. It is stated that the Teachers and other staffs are appointed by the Diocese management and posted to the various Schools according to the needs and availability of posts.

4.The petitioner School was initially established as Primary School in the year 1882 and upgraded as High School in the year 1950 and later upgraded into a Higher Secondary School in the year 1978. The total strength of the students of the School is around 1200. It is sated that there are 44 teachers, comprising of 1 Headmaster, 16 P.G.Assistants, 7 B.T.Assistants, 7 Secondary Grade Teachers. There are other non-teaching staffs, namely, one Physical Director, 3 Vocational Instructor, 4 Tamil Pandits, 2 Physical Education Teachers, 1 Drawing Master, 1 Sewing Mistress, 1 Music Teacher.

5.It is the case of the petitioner that one post of P.G.Assistant in Political Science fell vacant on 01.06.2014 due to the retirement of then incumbent A.Latha. In the vacancy caused by the retirement of then incumbent, the petitioner appointed one C.Silvance, as P.G.Assistant in Political Science on 02.09.2014. It is admitted that the newly appointed Teacher possesses the qualification of B.A.(History) and M.A.(Political Science) and B.Ed. On 05.01.2015, the petitioner School submitted a proposal to the third respondent for granting approval to the appointment and to disburse the grant-in-aid towards his salary. The third respondent originally returned the proposal on 02.03.2015 by directing the petitioner School to re-submit the proposal along with necessary documents, like, staff fixation order for the academic year 2014-15, No Objection Certificate from the Chief Educational Officer for filling up the said post and the order permitting the petitioner School to appoint a male Teacher in a girls School. The petitioner School, thereafter, re-



submitted the proposal on 22.04.2015 before the third respondent. Since staff fixation for the academic year 2014-15 was yet to be done and No Objection Certificate from the Corporate Manager could be obtained only after the issuance of the staff fixation, the petitioner requested the third respondent to process the approval.

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6. On 11.03.2016, the Chief Educational Officer, issued staff fixation for the academic years 2014-15 and 2015-16. Thereafter, the petitioner School re-submitted the proposal to the third respondent on 11.03.2016 along with the copies of staff fixation for the academic year 2015-16 and the No Objection Certificate of the Chief Educational Officer for the years 2014-15 and 2015-16. However, by the impugned order, dated 30.03.2016, the third respondent once again returned the proposal for the reason that the appointee, by name, C.Silvance, has not studied the same subject (History) in both UG and PG level and that the order permitting the appointment of male Teacher in a girls School has not been enclosed. The proposal was once again re-submitted to the third respondent by the petitioner on 10.05.2016 along with a judgment of this Court in W.P.(MD)No.7778 of 2014, wherein, it was held that the PG degree in the relevant subject would alone be the qualification for the post of P.G.Assistant in private aided School. It is also clarified by the petitioner that no qualified female candidate had applied for the said post and that therefore, the petitioner was constrained to appoint a male Teacher, by name, C.Silvance. However, by the impugned order, dated 29.06.2016, the third respondent returned the proposal. Aggrieved by the same, the present Writ Petition is filed.

7. The learned Senior Counsel for the petitioner submitted that the impugned orders of the third respondent is contrary to the provisions of Statute as well as the several judgments of this Court to the effect that a PG degree in the relevant subject in the required qualification for the post of P.G.Assistant in private aided School and that the respondents cannot insist a qualification, which is not prescribed by the Statute. The learned Senior Counsel for the petitioner then submitted that the Government though issued orders to the effect that preference should be given to male Teachers in boys School and to woman Teachers in girls School, it is not mandatory and that the Government Schools are also permitted to appoint a male Teacher in a girls School, in case, the recruitment agency does not find a suitable person. The learned Senior Counsel for the petitioner submitted that the Government Orders relied upon by the respondents are not applicable to recognised private Schools.

8. The learned Senior Counsel for the petitioner referred to Annexure-5 of the Tamil Nadu Recognised Private Schools (Regulation) Rules 1974. In Annexure-5, the qualification for



appointment as Teacher in Higher Secondary School is given in Clause-IV. In the table, the qualification for the post of P.G.Assistant in academic subjects is given as follows:

"(1) A Master's Degree or its equivalent standard in the subject in respect of which appointment is made:

Provided that persons holding the certificate in Science and Humanities for Graduate Teachers in High Schools shall be considered for appointment as teachers in the subject relating to Science and Humanities:

Provided further that, other things being equal, preference shall be given to those who have studied the same subject in which he has obtained the Post-Graduate degree as main subject under Part III in degree level.

Provided also that for appointment to certain subjects in which Master's degree are not awarded, persons possessing Master's degree in other subjects shall be considered:

Provided also that a Master's degree in Statistics or its equivalent standard in Statistics shall be an alternative qualification for appointment as subject teachers in Maths by promotion; and (ii) B.T. Or B.Ed degree or its equivalent."

9. The learned Senior Counsel for the petitioner submitted that specific qualification prescribed under the Act for the post of P.G.Assistant is a Master degree or its equivalent standard in the subject in respect of which appointment is made and that the second proviso would strengthen his further argument that it is not mandatory for the person to be appointed in the post of P.G.Assistant to possess the UG Degree and P.G. Degree in the same subject.

10. The learned Senior Counsel for the petitioner relied upon the judgment of the Honourable Division Bench of this Court in the case of **Director of Education vs Geldon Wilfred Viola and another**, reported in **2009 (2) TLNJ 101 (Civil)**, wherein, the Honourable Division Bench of this Court considered the issue, whether an appointment to the post of Junior Grade Post Graduate Assistant in History could be rejected on the ground that the appointee did not possess the basic degree in the subject (Under Graduation) in terms of the G.O.Ms.No.720, Education Department, dated 28.04.1991 and G.O.Ms.No.361, Education Department, dated 31.12.1999. The relevant portion of the said judgment is extracted below:

"5. Mr. S. Rajasekar, learned Additional Government Pleader would however submit that inasmuch as G.O.Ms.No.720, Education Department, dated 28.04.1981 and G.O.Ms.No.361 Education Department, dated 31.12.1999 prescribe a minimum qualification for the said post viz., Bachelor's Degree as well as Post Graduate Degree in the



subject, the teacher is not eligible, as she does not possess a Bachelor's Degree in History. In our opinion, the said submission of course is made on the basis of the impugned order in the writ petition which is indicate that the qualifications prescribed thereunder are primarily intended for the appointment of teachers in the Government Schools. Nevertheless Government Order contemplates that the said qualifications are also applicable in respect of aided schools as well pending amendment to the relevant rules. It is well settled in law that the provisions of the Tamil Nadu Recognised Private Schools (Regulation), 1973 and rules made thereunder are alone made applicable to the second respondent-School and the qualifications are prescribed under the rules framed in exercise of the powers conferred under Section 56 of the Act. Any prescription of the qualification by way of the Government Order without amendment to the rules cannot be given effect to bind the private schools and the appointments, conditions of service, qualification are all governed by the provisions of the Act and the rules made thereunder. The Government Order G.O.Ms.No.361 Education Department dated 31.12.1999 which is questioned though has been issued in exercise of the power under Article 309 of the Constitution of India, in our opinion, that would be made applicable only to the Government Servants viz., the teachers who are employed in the Government Schools and not to the teachers in private schools, as those teachers are governed only by the provisions of the Act and rules made thereunder. In the given case, as the provisions of the Act contemplate only a Master's Degree in the subject for appointment of a Junior Grade Post Graduate Assistant and does not madnate a Bachelor's Degree as well in the same subject. A teacher who has secured a Master's degree in the subject would be entitled and is eligible for appointment to the post. The rejection of the request for approval to the said post is therefore erroneous, as it was done by following the Government Order G.O.Ms.361 Education Department, dated 31.12.2009.

6.In view of above, we are of the considered view that the impugned order in the writ petition is unsustainable and accordingly the same is liable to be set side as has been in the writ petition."

11.The judgment of the Honourable Division Bench of this Court above referred to was also followed by another Division Bench of this Court in a judgment dated 19.02.2018 in W.P.(MD) No.1418 of 2014, in the case of **Chief Educational Officer, Virudhunagar and another vs Sasikala and another**. The relevant

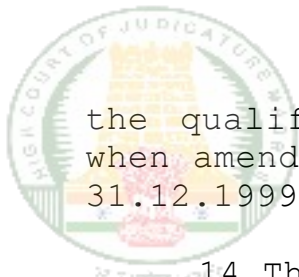


portion of the said judgment is extracted below:

"3.The only issue whether the petitioner, who holds a cross major degree, i.e., who is a B.Sc.(Physics) candidate, holds a Master Degree in English with B.Ed, qualification, is entitled to be appointed as P.G.Assistant in English. Two conditions are advanced before us. The first one is that in terms of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and in particular, under Annexure-V of the Rules in Chapter IV(4), the preference is to be given to those persons, who have studied the same subject in degree and Master's degree level. This Rule was considered by the Writ Court and was rightly held that there is no bar, for considering a candidate for appointment, as the Rule provides for grant of preference. Thus, there is no illegality in considering a person with cross major degree. Further, the Writ Court, took consideration in the decision of the Hon'ble Division of this Court in Director of School Education, Chennai -6 and others vs Geldon Wilfred Viole and another reported in 2009 (2) TLNJ 101 (Civil) and allowed the writ petition."

12.A detailed counter affidavit has been filed by the third respondent. It is to be noted that the main contention raised by the third respondent in the counter affidavit is by relying upon G.O.Ms.No.361, School Education, dated 31.12.1999, wherein, it is stated that the qualification for direct recruitment to the post of P.G.Assistant in academic subjects should be a Bachelor's Degree and a Master's Degree in subject in respect of which recruitment is made. Stating that the Government of Tamil Nadu have issued amendment by prescribing qualification for direct recruitment to the post of P.G.Assistant in academic subjects, the petitioner cannot seek approval for a person, who has not obtained a Master's Degree and Bachelor's Degree in a same subject or it is equivalent in respect of which recruitment is made.

13.It is also stated in the counter affidavit that the rules prescribing educational qualification are not different for aided School Teachers. The third respondent blamed the petitioner School for misconstruing the letter and spirit of the Government Order in prescribing educational qualification. It was contended by the learned Government Advocate that the educational qualification prescribed by the Government for Government Schools should be made applicable to all private Schools. It is also suggested in the counter affidavit that the provisions in Tamil Nadu Recognised Private Schools (Regulation), Act, 1973, should be treated as amended when the educational qualification is prescribed by the Government for Government Schools. It is also submitted by the third respondent in the counter affidavit that



the qualification cannot be differed for private aided Schools, when amendment has been issued to a Special Rules with effect from 31.12.1999.

14.The learned Government Advocate placed reliance on a few judgments, wherein, it is held that the person to be appointed as Teacher in the P.G.Assistant should have possessed UG and PG degree in the same subject. However, it is to be noted that the judgments relied upon by the learned Government Advocate are in respect of Government Schools. This Court has insisted the special requirement for appointment in Government Schools after placing reliance on G.O.Ms.No.361, Education Department, dated 31.12.2009, which is applicable to all Government Schools.

15.As held by the Honourable Division Bench in the independent case, this Court has no hesitation to hold that G.O.Ms.No.361, Education Department, dated 31.12.1999 prescribing the qualification different from the statute has no application to the private Schools, which are governed by the provisions of Tamil Nadu Recognized Private Schools (Regulation), Act, and the rules made thereunder. It has been repeatedly held by the Honourable Supreme Court as well as this Court, the Government cannot pass executive orders contrary to statute. The qualification of the Teacher in the present case as per the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is not in dispute. Since the respondents cannot prescribe qualification for Teachers in the private aided School by executive orders contrary to the statute, the impugned order citing G.O.Ms.No.361, Education, dated 31.12.1999 is invalid.

16.The learned Government Advocate submitted that the Teacher appointed by the petitioner School is a male and that the appointment of a male candidate in the girls School is against the policy of Government. The learned Government Advocate also relied upon a few executive orders of Government insofar as the Government Schools are concerned. As pointed out earlier, there is no specific statutory prohibition or legal bar to appoint a male Teacher in a girls School and viz versa. In such event, the petitioner cannot be faulted for appointing a male Teacher in the girls School, in case, the petitioner is unable to find a suitable female candidate. In view of the specific stand taken by the petitioner that the petitioner was unable to find a suitable female Teacher for the post, this Court has no hesitation to hold that the appointment made by the petitioner in the School is proper.

17.Since the impugned order is in defiance of earlier orders of this Court and the provisions of the Tamil Nadu Reconised Private Schools (Regulation) Act, 1973, this Court is unable to



accept the reasons given by the respondents in the impugned order. As pointed out earlier, the Government cannot issue or pass executive orders quiet contrary to the qualification prescribed under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and the rules framed thereunder. Hence, this Court is unable to sustain the impugned order returning the proposal submitted by the petitioner for approval of appointment of C.Silvance.

18. Accordingly, this Writ Petition is allowed and the impugned orders passed by the third respondent, dated 30.03.2016 and 29.06.2016 are quashed. At this juncture, the learned Counsel for the petitioner submitted that the approval of the Teacher has to be considered now by the second respondent and that therefore, the relief in the Writ Petition should be suitably moulded to give a direction to the second respondent instead of third respondent. Hence, the second respondent is directed to approve the appointment of C.Silvance, as P.G.Assistant in Political Science with effect from 02.09.2014 in the petitioner School and disburse the grant-in-aid. The entire exercise shall be undertaken by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)

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To

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

2.The Chief Educational Officer,
Nagercoil - 629 001, Kanyakumari District.

3.The District Educational Officer,
Kuzhithurai, Kanyakumari District.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-27142[F] dated 25/08/2021)

+1 CC to M/s.SPL GP (SR-27182[F] dated 25/08/2021)

W.P.(MD) No.24891 of 2016

24.08.2021