



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.17631 of 2017

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Evangeline Christinal

... Petitioner

vs.

1.The Government of Tamilnadu,
represented by the Principal Secretary,
School Education Department,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,
D.P.I.Campus, College Road,
Nungambakkam, Chennai - 600 006.

3.The Chief Educational Officer,
Trichy.

4.The District Educational Officer,
Trichy,

5.Bishop Heuman Memorial High School,
represented by its Correspondent,
Tharangaivasam, Trichy - 620 001.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the fourth respondent in Aa.Thi.Mu.No.3712/A4/17, dated 25.07.2017 and to quash the same and consequently to direct the respondents to approve the appointment of the petitioner as Junior Assistant in the 5th respondent School with effect from 03.01.2014 with all attendant and monetary benefits.

For Petitioner : Mr.M.Saravanan

For R-1 to R-4 : 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 fourth respondent, dated 25.07.2017 and to direct the respondents to approve the appointment of the petitioner as Junior Assistant in the 5th respondent School with effect from 03.01.2014 with all attendant and monetary benefits.



2.Heard Mr.M.Saravanan, learned Counsel for the petitioner and Mr.M.Linga Durai, learned Government Advocate for R1 to R4.

3.Brief facts that are set out in the affidavit filed in support of this Writ Petition are as follows:

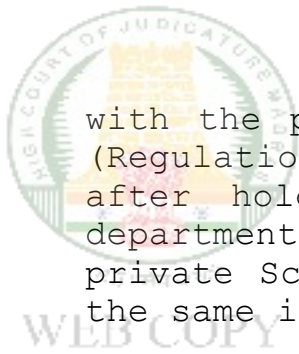
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3.1.The 5th respondent School is a Minority Aided School run by "Tamil Evangelical Lutheran Church", Tiruchirappalli. It is stated by the petitioner that the post of Junior Assistant is a sanctioned post in the 5th respondent School. The petitioner's mother, Manjula, who was working as Junior Assistant in the same School, died on 29.11.2013. It is stated by the petitioner that the petitioner was appointed on 02.01.2014 and joined in the post of Junior Assistant in the 5th respondent School. When the 5th respondent School sent proposal for approving the appointment of the petitioner, the same was returned by the 4th respondent on the ground that permission to fill up the post has to be obtained from the Government or Director of School Education. It is also informed to the petitioner that in view of G.O.Ms.No.115, School Education (D2), dated 30.05.2007, the 4th respondent was not in a position to approve the appointment of the petitioner.

3.2.Citing several precedents of this Court quashing G.O.Ms.No.115, School Education (D2), dated 30.05.2007, it appears that the proposal was re-submitted by the 5th respondent School on the ground that the Government Orders are not in consonance with the Tamil Nadu Recognised Private Schools (Regulation) Act, 1977 and the Rules framed thereunder. However, the 4th respondent returned the proposal on the same ground for which the proposal was returned earlier. Challenging the order returning the proposal submitted by the 5th respondent, the above Writ Petition is filed.

4.The learned Counsel for the petitioner submitted that this Court in several cases has held that G.O.Ms.No.115, School Education (D2), dated 30.05.2007, is without jurisdiction and violative of Tamil Nadu Recognised Private Schools (Regulation) Act, 1977. Since the Tamil Nadu Recognised Private Schools (Regulation) Act, 1977, does not contemplate prior permission from the authorities before making appointment against the sanctioned post, this Court has quashed G.O.Ms.No.115, School Education (D2), dated 30.05.2007, and other Government Orders which are not in conformity with the provisions of the Act and Rules.

5.The learned Counsel for the petitioner relied upon the judgment of a learned Single Judge of this Court in the case of **Deva Asir Vs Secretary to Government, School Education Department**, reported in **2016-3-L.W-152**, wherein it is held that G.O.Ms.No.115, School Education (D2), dated 30.05.2007, is not in consonance



with the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1977. The said Government Order was quashed after holding that no prior permission is required from the department before appointing a non teaching staff in a recognized private School. Paragraph 32.8 of the said order is relevant and the same is extracted below for convenience:

"32.8. In my view, G.O.Ms.No.115, dated 30.05.2017, G.O.Ms.No.203, dated 23.07.2010 and the Government Letter dated 09.07.2012 are without jurisdiction and violative of the very scheme of the Act and nowhere the Act contemplates that the Private Aided Schools should take prior permission before making appointment against sanctioned posts, whenever vacancies arose against those sanctioned posts."

6.The learned Counsel for the petitioner also submitted that the position indicated by the learned Single Judge of this Court is followed in several judgments of this Court and that therefore, the position is now covered by catena of judgments holding that G.O.Ms.No.115, School Education (D2), dated 30.05.2007, cannot be cited as a reason to reject or return the proposal submitted by the respective Schools for approval of appointment to the post of non teaching staffs, which are sanctioned.

7.In the counter affidavit, it is submitted that the 5th respondent is not entitled to fill up the vacancy without prior permission of the 4th respondent, because, the Management of the School is not entitled to fill up the vacant post of non teaching staff as per the proceedings of the Director of School Education, dated 28.08.2017.

8.When G.O.Ms.No.115, School Education (D2), dated 30.05.2007, is quashed by this Court, the official respondents cannot rely on the same to return the proposal submitted by the 5th respondent School. In view of the catena of judgements of this Court, which are similar to this case, this Court is inclined to allow this Writ Petition.

9.This Writ Petition is allowed accordingly and the impugned order, dated 25.07.2017 passed by the fourth respondent, is hereby quashed. The 5th respondent School is directed to re-submit the proposal seeking approval for the appointment of the petitioner in the 5th respondent School. Upon such proposal being submitted, the 4th respondent is directed to approve the appointment of the petitioner as Junior Assistant in the 5th respondent School with effect from 03.01.2014 with all attendant and monetary benefits to the petitioner. The order shall be passed by the 4th respondent within a period of three weeks from the date, on which the 5th



respondent School submits the proposal for approval. No costs.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar (CS)

cmr

To

- 1.The Principal Secretary,
The Government of Tamilnadu,
School Education Department,
Fort St.George, Chennai - 600 009.
- 2.The Director of School Education,
D.P.I.Campus, College Road,
Nungambakkam, Chennai - 600 006.
- 3.The Chief Educational Officer,
Trichy.
- 4.The District Educational Officer,
Trichy,

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16.08.2021

KS (CO)
SB(27.08.2021) 4P 7C