



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17594 of 2015

G.Munusamy
Office Assistant,
St. Peters Higher Secondary School,
Royapuram, Chennai - 13.

...Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600009.

2. The Director of School Education,
DPI Campus,
College Road, Chennai - 600006.

3. The Chief Educational Officer,
Saidapet, Chennai - 600015.

4. The District Educational Officer,
Chennai East, Chennai - 600094.

5. The Correspondent,
St.Peters Higher Secondary School,
Royapuram, Chennai - 13.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the fourth respondent dated 03.12.2014 in O.Mu.No.4451/A2/2014, by improperly and illegally placing reliance on the communication of the first respondent to the second respondent in letter No.1402/D2/06-1, dated 26.05.2006 and thereby rejecting the petitioners entitlement for approval from the date of his appointment as Office Assistant and quash the same as illegal and direct the respondents to grant approval to the appointment of the petitioner as Office Assistant w.e.f. 03.01.2005 with all attendant benefits.

For Petitioner : Mr.R.Govindaraj

For Respondents : Mr.P.Ganesan, [R1 to R4]
Government Advocate
Mr.S.Wilson [R5]



ORDER

The petitioner was appointed in a sanctioned post as an Office Assistant on 03.01.2005. The fifth respondent/School is a Minority Aided Educational Institution. The petitioner's appointment was approved by the fourth respondent herein on 24.12.2010, with effect from 01.06.2009. The petitioner's request for granting approval from the date of his initial appointment i.e. from 03.01.2005, has been rejected through the impugned order dated 03.12.2014, by referring to a Government Letter dated 26.05.2006, which makes a reference to the Government Orders banning appointment to the post of non-teaching staff.

2. The issue involved in the present Writ Petition is no more res-integra. The Hon'ble Division Bench of Madurai in the order dated 04.08.2008 passed in WA.(MD).No.308 of 2008, had approved such an appointment from the date of initial appointment. Following such decision, the learned Single Judge of this Court in the case of 'Thiruvalluvar Higher Secondary School Vs. The Government of India, Department of Education and others' reported in '2008 (5) CTC 648', had taken a similar view that after lifting of the ban, approval of appointment to a non-teaching post in an aided school, requires to be made from the date of his initial appointment. The relevant portion of the order reads as follows:-

"....4. Similar issue as to whether after lifting of the ban, approval of appointment of a person appointed in a non-teaching post in an aided school can be kept pending and whether the said person is entitled to get salary at least from the date on which the ban order was lifted, was considered by me in W.P (MD)No.484 of 2007 by order dated 30.10.2007 and I have allowed the writ petition and in paragraphs 19 and 20, held as follows:

"19. Similar ban order issued by the Department on the ground that new norms are contemplated and pending the same no appointment in aided schools are to be made was set aside by this Court in W.P.No.10237 of 1994 by order dated 16.08.1999. Since the petitioner was appointed from 5.6.2002 and he is continuously working in the sanctioned post, the respondents may be justified in not approving the appointment of the petitioner from 05.06.2002 to 06.02.2006. The petitioner has got a right to get his appointment approved, once the ban order is lifted. Admittedly, the ban order imposed, not to fill up the posts, was lifted on 07.02.2006. Hence, the petitioner has got every right to get his post approved with salary and other benefits



with effect from 07.02.2006. Once the ban order is lifted, the provisions contained in Rule 15(1) and (3) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, comes into operation and the petitioner is deemed to be appointed on regular basis, as he was appointed within the sanctioned post in the fourth respondent school.

20. For all the reasons stated above, the impugned orders are set aside with a direction to the respondents to approve the appointment of the petitioner as Lab Assistant with effect from 07.02.2006. The third respondent is directed to pass orders approving the appointment of the petitioner with effect from 07.02.2006 and pay arrears of salary from 07.02.2006 within a period of four weeks from the date of receipt of a copy of this order."

5. The learned counsel for the petitioner submits that the above order was challenged by the respondent Education Department in W.A(MD)No.308 of 2008 and the said writ appeal was dismissed by a Division Bench of Madurai Bench on 4.8.2008. The Division Bench dismissed the writ appeal by observing as follows:

"4. After considering the rival submissions made on either side, following the judgment of the Supreme Court and order of this Court, the learned single Judge set aside the orders of the appellants with a direction to approve the appointment of the respondent/petitioner as Lab Assistant with effect from 7.2.2006 and the third appellant was directed to pass orders approving the appointment of the first respondent with effect from 7.2.2006 within a period of four weeks from the date of receipt of copy of the order.

5. We find no infirmity or illegality in the order of the learned Judge dated 30.10.2007 passed in W.P.(MD)No.484 of 2007. Therefore, the Writ Appeal fails and the same is dismissed."

The learned counsel for the petitioner further submitted that the first respondent in W.A.(MD)No.308 of 2008 filed separate appeal in W.A.(MD)No.456 of 2008 and challenged the order not giving direction to approve the appointment from the date of appointment till the date of lifting of the ban and the said writ appeal was also allowed by the Madurai Bench of this Court on 4.8.2008 by observing as follows:



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"2. Heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents 1 to 3.

3. The learned counsel for the appellant submits that the appointment of the appellant from the date of appointment should have been approved by the learned single Judge instead of restricting the prayer.

4. It has been brought to our notice that in similar circumstances the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date of his initial appointment. Therefore, the orders of the learned single Judge need to be modified to this extent. Accordingly, the writ appeal is allowed modifying the order of the learned single Judge dated 30.10.2007 made in W.P.(MD) No.484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment."

6. In the light of the above referred judgments of the Division Bench, the impugned order dated 06.03.2003 is set aside with a direction to the fourth respondent to approve the appointment of S.K.Rajasekar working in the petitioner School as Junior Assistant, with effect from 01.07.2002 with all monetary benefits. Necessary orders to that effect is directed to be passed by the fourth respondent within a period of two weeks from the date of receipt of copy of this order and the arrears of salary payable to the said S.K.Rajasekar is directed to be paid within four weeks therefrom."

3. The aforesaid extract is self-explanatory. As such, the reason assigned by the respondents in rejecting the petitioner's request for approval of appointment from the date of his initial appointment, is unsustainable.

4. In the light of the above, the impugned order dated 03.12.2014 passed by the fourth respondent, is quashed and the respondents 3 and 4 are directed to pass orders, granting approval to the petitioner's request for approval of appointment from 03.01.2005, which is the date of his initial appointment. The respondents 3 and 4 shall pass such order, within a period of six (6) weeks from the date of receipt of a copy of this order.



5. With the above directions, this Writ Petition stands allowed. No costs.

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Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai - 600009.
2. The Director of School Education,
DPI Campus,
College Road, Chennai - 600006.
3. The Chief Educational Officer,
Saidapet, Chennai - 600015.
4. The District Educational Officer,
Chennai East, Chennai - 600094.
5. The Correspondent,
St.Peters Higher Secondary School,
Royapuram, Chennai - 13.

+1cc to Mr.R.Govindarajan, Advocate SR. No. 26212

+1cc to Government Pleader SR. No. 26361

+1cc to Mr.S.Wilson, Advocate SR. No. 26673

W.P.No.17594 of 2015

SJ (CO)

PR (04/05/2022)