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W.P.No. 4005 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4005 of 2016

and

W.M.P.Nos. 3339 & 3340 of 2016

The Correspondent
St. Josephs Higher Secondary School
Manjakuppam
Cuddalore – 607 001.

... Petitioner

Vs.

1. The State of Tamil Nadu
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.
3. The Joint Director of School Education,
(Vocational), College Road,
Chennai – 600 006.
4. The Chief Educational Officer,
Cuddalore District,
Pennaiyar Road,
Manjakuppam,
Cuddalore – 607 001.



5. The District Educational Officer,
Cuddalore Educational District,
Pennaiyar Road,
Manjakuppam,
Cuddalore – 607 001.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fifth respondent District Educational Officer in O.Mu.No.5362/AA5/01 dated 02.03.2004 and the fourth respondent Chief Educational Officer in A.Thi.Mu.No. 18722/AA2/04 dated 05.02.2005 (as signed) and the fifth respondent District Educational Officer in Na.Ka.No. 983/A3/2015 dated 09.12.2015 (as signed), quash the same and further direct the fifth respondent District Educational Officer herein to approve the appointment of Mr. J. Chinnapparaj as Vocational Instructor (Engineering – Electrical Motor Rewinding -EMR-full time) with effect from 06.06.2001 and release the salary and all other attendant benefits.

For Petitioner	: Mr. P. Godson Swaminath
For Respondents	: Mrs. S. Mythreye Chandru Special Government Pleader for R1 to R5

ORDER

The order of rejection, rejecting the claim of the writ petitioner school to approve the appointment of one J. Chinnappa Raj, as Vocational Teacher, in proceedings dated 02.03.2004, is under challenge in the present writ petition.



2. The writ petition is a school and the petitioner states that the institution was established and administered by the Archdiocese of Pondicherry and Cuddalore. It is a minority institution and receiving grant in aid from the Government. The sole post of vocational instructor (Electrical Motor Rewinding) fell vacant on 01.06.2001, on account of the retirement of the previous incumbent Mr. R. Srinivasan, on 31.05.2021. Subsequent to the retirement of the incumbent Mr. R. Srinivasan, the petitioner school appointed one Mr. J. Chinnappa Raj, with effect from 06.06.2001.

3. The learned counsel for the petitioner states that the said J. Chinnappa Raj possessed requisite qualification of Diploma in Electrical and Electronics Engineering and one year practical experience for appointment to the post of vocational instructor. Subsequently, the petitioner school submitted a proposal on 21.06.2001 for approval of the appointment of the said Mr. Chinnappa Raj to the fifth respondent. The fifth respondent returned the proposal stating that, as per the staff fixation order of the Chief Educational Officer for the year 2001 -2002 in proceedings dated 23.11.2001, the post of vocational instructor was not fixed.

4. The learned counsel for the petitioner mainly contended that the previous incumbent Mr. R. Srinivasan, was worked as a permanent employee



and the post of vocational instructor was a sanctioned post on permanent basis since students strength were available in the school during the relevant point of time.

5. In view of the fact that the post of vocational instructor was permanent in the petitioner school, the petitioner seek appointment of Mr. J. Chinnappa Raj. Thus there is not irregularity in appointing the said J. Chinnappa Raj and the returning of proposal by the competent authority is not in accordance with the Government policy.

6. The learned counsel for the petitioner further made a submission that once a post became permanently sanctioned and the incumbent retired on attaining the age of superannuation, the school being a minority institution is empowered to appoint the candidate of their choice and thus the appointment of J. Chinnappa Raj, as vocational instructor is in accordance with the provisions of law and thus the rejection of approval of appointment is not in order.

7. The learned Special Government Pleader objected the said contention by stating that the writ petition was filed by the School seeking



approval of appointment of one J. Chinnappa Raj in the post of vocational instructor. One Mr. Srinivasan, vocational instructor admittedly retired from service on 31.05.2001. Therefore, as per G.O.Ms. No. 991 Education Department, dated 16.07.1990, the vacancy of vocational instructor cannot be filled as the post seized to exist. The Government took a policy decision not to grant sanction to the post of vocational instructor in the schools across the State of Tamil nadu and accordingly issued G.O.Ms. No. 991 dated 16.07.1990.

8. Paragraph 3 of the Government Order states that the schools cannot make any fresh appointment of part time teachers (vocational) without obtaining prior permission of the Director of School Education.

9. The learned Special Government Pleader clarified by stating that Government order though states it is for the part time vocational instructor, the single part-time vocational instructor cannot be converted as double part time vocational instructor and in this regard, policy decision was taken by the Government. The respondents state that one J. Chinnappa Raj was appointed on 06.06.2001 in the place of Srinivasan, who retired on 31.05.2001. The said appointment is made against the policy decision of the Government



issued in G.O.Ms. No. 991 Education Department dated 16.07.1990. Since the post of vocational instructor seized to exist on account of policy decision of the Government as on the date of appointment of the said J. Chinnappa Raj, no sanctioned post was in existence in the petitioner school. The Government in its order in G.O.Ms. No. 991 dated 16.07.1990 have directed that the post of vocational instructor filled by absorption staff of erstwhile bifurcated posts on its abolition, would automatically lapse as and when the incumbent cease to exist. Accordingly, the post of vocational instructor filled by Srinivasan of the erstwhile bifurcated post by absorption cease to exist on his retirement. If at all the school wants to appoint a new person, then the prior approval is to be obtained with reference to the conditions stipulated in paragraph 3 of the G.O.Ms. No. 991 dated 16.07.1990. However, no such prior permission was obtained and therefore the post which is seized to exist cannot be filled by a new incumbent by the petitioner school. At the outset, it is contended that the post of vocational instructor seized to exist in the petitioner school on account of the policy decision of the Government and thus the appointment of Mr. J. Chinnappa Raj in the non existing post cannot be approved by the competent authorities. In this regard, the learned Special Government Pleader relied upon the decision of the Hon'ble Division Bench of this court dated 27.04.2021 passed in W.A. No. 730 of 2019, etc. and the



Hon'ble Division Bench elaborately considered the issues in the following paragraphs:

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"14. It is to be stated that in the State of Tamil Nadu, from the year 1978, Vocational Instruction stream of education is imparted in Higher Secondary level. While so, the Government of Tamil Nadu issued GO Ms. No.991, Education Department in and by which 2956 Vocational Teachers, who were appointed prior to 16.07.1990, were brought into regular time scale of pay and regularised in service. By the very same Government Order, the Government prohibited the appointment of the individuals as Vocational Teachers stating that the employees working in Government Aided School should alone be appointed as part time Vocational Teachers, since none of the employees working in the Government and aided institution had come forward to work as part-time Vocational Teachers, individuals were appointed. On 20.09.1996, the Government issued G.O.680, from Education Department, bringing 235 fully qualified Vocational Instructors into regular time scale of pay as part time teachers and they were regularised in service by relaxing the condition stipulated in GO Ms. No.991, Education Department, dated 16.07.1990. On 13.06.2002, the Government of Tamil Nadu issued GO Ms.No.74, Education (Vocational) Department bringing those 235 regular part time vocational teachers and other 126 part time teachers into regular time scale of pay and regularised in the existing vacancy as Vocational Teachers Grade II in time scale of pay applicable to the post of Secondary Grade Teachers. However, on 09.02.2007, the Government issued GO.Ms.No.35, School Education (Vocational) Department, in and by which, 201 vocational instructors, Grade- II were directed to be filled up among the vocational teachers based on seniority. The names of the first respondent (writ petitioners) in these appeals find place in the list of 201 vocational teachers, however, except 34 vocational teachers, all are appointed in the regular time scale of pay. The reason assigned to deny such benefit of regular time scale of pay for those 34 teachers, including the first respondent/writ petitioner in these appeals, is that the post



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was created after 01.04.1992 and as per *Section 14-A* of *Tamil Nadu Recognised Private Schools (Regulation) Act*, the 34 teachers cannot be regularised in service, since there is no grant for those posts

15. In view of the above submission, it is worthwhile to extract *Section 14-A* of the *Tamil Nadu Recognised Private Schools (Regulation) Act, 1973* which reads as follows:-

"Section 14-A: Grant not payable to new private schools and new class and course of instructions:- Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, no grant shall be paid to:-

(a) any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992

(b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement

(c) any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(d) any class or course of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement
Explanation : - for the purpose of this section, private school includes a minority school."

16. As per *Section 14-A* of the *Tamil Nadu Recognised Private Schools (Regulation) Act*, no further grant can be allowed to any post for new course from the



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academic year 1991-1992. All the first respondent (writ petitioners) in these appeals were appointed subsequent to the year 1992. In fact, the validity of Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, was challenged by the private schools Management before this Court in the case of Maria Grace Rural Middle School, Venkatarayapuram, Nanguneri Taluk, Tirunelveli, by its Correspondent Rev.Fr.A. Antony Raj vs. The Government of Tamil Nadu, rep. by its Secretary, Education, Science and Technology Department, Fort St. George, Chennai and others, reported in 2006 (5) CTC 193, where the Constitutional validity of [Section 14-A](#) was upheld. But it is the submission of the learned counsel appearing for the first respondent in these Writ Appeals/writ petitioners that, unlike other academic subjects, vocational subjects are distinct, since it is sponsored by the Central Government. Therefore, [Section 14-A](#) of the said Act is not applicable to the case on hand.

17. It is pertinent to note that, though it is claimed by the first respondent that, since the vocational subjects are sponsored by the Central Government, the aid was granted only by the State Government. When the aid was granted by the State Government, it cannot be said that [Section 14-A](#) of the said Act will not be applicable to the case on hand. Moreover, the appellants/State had not chosen to add the Central Government as a party-respondent in these appeals. Further, from a reading of the above said decision of the Division Bench of this Court, it is seen that the "grant" is not a "fundamental right". When that be so, this Court cannot issue a Mandamus when the first respondent in these appeals were appointed contrary to [Section 14-A](#) of the said Act. The Private Schools cannot appoint the first respondent in these appeals (writ petitioners) as against [Section 14-A](#) according to their whims and fancies and thereafter, ask the state Government to grant aid.

18. It is the submission of the learned counsel appearing for the respective first respondent/writ petitioners that the first respondent's name was included in G.O.Ms.No.35 along with 201 teachers and except the 34 teachers all others were appointed and their service was regularised. But it is the reply of the learned Additional Advocate General that the first respondent/writ petitioners' name was wrongly included in the Government Order



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along with those who have already been appointed prior to 01.04.1992, and therefore, the Government refused to grant the benefit. The wrong inclusion of the name of first respondent was subsequently rectified by Government issuing Government Letter No.245/School Education Department dated 08.12.2008.

19. On a perusal of the records, we find that the persons, whom the first respondent compared as having been regularised in service, were accommodated in the superannuated post in the Government School, whereas, the first respondent in these appeals were appointed by the private school without the approval of the competent authorities as per their whims and fancies and thereafter, the Private Schools are compelling the Government to grant aid. Therefore, the wrong inclusion of their name will not give any right to them to seek regularisation. In fact, by a Government letter dated 08.12.2008, the wrong inclusion of the name of the first respondent/writ petitioner(s) was rectified by the Government. Further, the first respondent (writ petitioner(s)) herein did not challenge the Government letter, dated 08.12.2008 excluding their names from the list of persons.

20. The learned Additional Advocate General appearing for the appellants placed reliance on the decision of the Supreme Court in the case of *State of Rajasthan and others vs. Daya Lal and others* reported in (2011) 2 Supreme Court Cases 429, wherein it was held as follows:-

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under *Article 226* of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in *Articles 14 and 16* should be



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scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the batch process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption,



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regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

21. Thus, it is evident that a Mandamus cannot be normally issued to regularise the service of an employee or to absorb an employee or to continue the service of an employee. A refusal to issue such a relief of Mandamus will not offend the constitutional guarantee contained under Articles 14 and 16 of The Constitution of India. In the present case, the appellants herein have rightly refused to regularise the service of the first respondent in these appeals. While so, we are inclined to interfere with the order passed by the learned single Judge in the writ petitions filed by the first respondent in these writ appeals.

22. In the light of the above, the Order dated 17.04.2018 passed by the learned Single Judge in Writ Petition Nos. 31021 to 31027 of 2015 etc., is hereby set aside. The writ appeals are allowed. No costs."

10. The learned counsel for the petitioner made a submission that the post of vocational instructor in the petitioner school was sanctioned prior to the year 1992 and therefore the said post is to be allowed to continue.

11. This Court is of the considered opinion that the Government took a policy decision not to continue the post of vocational instructor beyond the



period of services of the incumbent holding the said post and therefore further appointment to the post of vocational instructor cannot be made without the prior permission of the Department. If at all the school requires any sanction of additional post or otherwise based on the students strength, the petitioner school is at liberty to submit an appropriate application before the competent authority for sanction of post or otherwise.

12. With this liberty, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

12.10.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order

To

1. The Secretary,
The State of Tamil Nadu
Department of School Education,
Fort St. George, Chennai – 600 009.



2. The Director of School Education,
College Road, Chennai – 600 006.

3. The Joint Director of School Education,
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