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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.12.2021
Pronounced on	08.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.16977 of 2018

Mrs.Immaculate Arputha Mary Usha

...Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Chennai - 600 002.
 2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
 3. The Chief Educational Officer,
Gobichettipalayam,
Erode District.
 4. The District Educational Officer,
Gobichettipalayam,
Erode District.
 5. The District Educational Officer,
Bhavani,
Erode District.
 6. The Bishop and the General Manager,
The Diocese of Ooty.
 7. St.Michael High School,
Rep. by its Correspondent,
Michael Palayam P.O.,
Anthiyur Via, Erode District - 638 501.
- ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus calling for the records of the respondents 3 & 4



relating to the impugned order dated 23.05.2018 in Na.Ka.No.833/A2/2017 and to quash the same as illegal, arbitrary and devoid of merit and consequentially direct the respondents 3 & 5 to accord approval to the appointment of the petitioner in the 6th respondent school as B.T. Assistant (Science) with effect from the date of appointment viz., 01.11.2010 with all service and monetary benefits within a stipulated time.

For Petitioner : Mr.Ralph V.Manohar

For Respondent : Ms.P.Rajarajeswari
Nos. 1 to 5 Government Advocate

For Respondent : Sr.A.Arulmary
Nos. 6 & 7 for M/s.Father Xavier Associates

O R D E R

Heard the learned counsel for the parties.

2. The seventh respondent is a Minority School, in which, a vacancy arose owing to the resignation of a Secondary Grade Teacher (Science), who was holding an approved post.

3. The petitioner herein was appointed on 01.11.2010 as a B.T. Assistant (Science) by the seventh respondent-School and when the Management had sought for approval of the said appointment, the same came to be rejected by the Educational Authorities through the impugned order dated 23.05.2018, predominantly stating that the School-Management had not taken prior approval from them for such an appointment and also that the post of B.T. Assistant (Science) was not a sanctioned post.

4. While the learned counsel for the petitioner would submit that such prior approval for appointment of a teacher in Minority Institution is not mandatory in view of various decisions of this Court, including the decision of the Hon'ble Division Bench in the case of The Government of Tamil Nadu rep. by Secretary to Government, Department of School Education, Madras and Others V. J.Remila and Others reported in 2018 (1) Writ LR 410, which submission was adopted by the seventh respondent-School, the learned Government Advocate appearing for the respondents 1 to 5 would place reliance on the counter affidavit filed by the Government Educational Authorities and submit that the petitioner was appointed without permission not only from the Competent Authority, but also not for a sanctioned post for B.T. Assistant (Science). According to the learned Government Advocate, the Management-School had filled up the post of B.T. Assistant (Science), when there were already three B.T. Assistant posts for Tamil, Maths and Science and the



Management had no prior approval, which is contrary to G.O.(Ms) No.144, School Education Department, dated 04.07.2008.

5. I have given careful consideration to the submissions made by the respective counsels.

6. The issue of requirement of a prior permission for the appointment in a permanent vacancy arising in the Minority Institution is no more res-integra in view of various decisions of this Court rendered in similar cases. So also the claim of the respondents that once the post is sanctioned, it cannot be reconverted in future, has been negated by this Court.

7. In the case of J.Remila (supra), the facts involved in that case was when the School appointed a B.T. Assistant Teacher in the vacancy of a Secondary Grade Teacher, the proposals for approval was rejected by the Educational Authorities. The stand taken by the Educational Department was that a prior permission for conversion of a post is required for making appointments even in a Minority Institution. Various Government Orders were referred to, in support of their claim including G.O.Ms.No.144, dated 04.07.2008. The Hon'ble Division Bench of this Court, had held that these Government Orders are not applicable to the Government Aided Schools and the rejection of the proposal for approval would amount to interfering with the administration of a Minority Institution. The relevant portion of the orders are as follows:-

"17. The Learned counsel for the First Respondent, then drew our attention to the observations recorded by the Learned Single Judge in W.P.(MD)No.18044 of 2011, filed by the Second Respondent, wherein the Government Orders namely, G.O. (Ms).Nos.244, 125 and 144, which the Appellants have relied upon in this Appeal have been duly considered in the impugned judgment, which is the subject matter of challenge in this Appeal. The Learned Single Judge, has held that G.O.(Ms).No.244 and G.O. (Ms).No.144 are not applicable to the Government Aided Schools for want of jurisdiction of the Government to issue any such instructions.

...

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



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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."

8. Likewise, in the case of R.C. Susai Higher Secondary School rep. by its Correspondence Kazhugumalai Tuticorin District Vs. Government of Tamil Nadu rep. by its Secretary to Government, School Education Department and Others passed in W.P.No.18044 of 2011, dated 21.03.2012, the applicability of G.O.Ms.No.144, dated 04.07.2008 was negated as follows:-

"94. However, the second part of the order stipulating that once the post is converted, under no circumstances, it can be re-converted in future is certainly contrary to the object sought to be achieved. In case of necessity of the teacher is of the particular subject depending on the strength of the school and students, there can be no bar to re-convert the post. (There is no necessity to go into this point), as the G.O.Ms.No.144 dated 04.07.2008 has no application to the case of the petitioner, as it is not published in the Government Gazette, nor the rules have been framed as per the procedure laid down under Section 56 of the Act. Unless the amended rules are published in the Government Gazette, it can have no force of law and, cannot apply to privately managed aided schools."

The aforesaid extracts are self-explanatory. In the background of the aforesaid decisions cited above, the rejection of the proposal for approval of the petitioner's post is illegal.



9. Accordingly, the impugned order dated 23.05.2018 passed by the respondents 3 & 4 in Na.Ka.No.No.833/A2/2017, is quashed. Consequently, there shall be a direction to the respondents 3 & 5 to approve the appointment of the petitioner in the seventh respondent School as B.T. Assistant with effect from 01.11.2010, which is the date of her appointment, with all consequential service and monetary benefits, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. There shall be no orders as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Secretary,
Government of Tamil Nadu,
Education Department,
Chennai - 600 002.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Gobichettipalayam,
Erode District.
4. The District Educational Officer,
Gobichettipalayam,
Erode District.
5. The District Educational Officer,
Bhavani,
Erode District.

+2ccs to M/s.Father Xavier Associates, SR. No.8287
+2ccs to M/s.Ralph V.Manohar, Advocate SR. No.8227
+1cc to Government Pleader SR. No.8308

W.P.No.16977 of 2018

PL (CO)

PR (17/02/2022)