



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.01.2022

Pronounced on : 05.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.728 of 2013

WEB COPY

St. Joseph High School,
Kovilpatti, Tuticorin District,
represented by the Correspondent,
S.A.Annasamy

... Petitioner

vs.

The District Educational Officer,
Kovilpatti, Tuticorin District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the respondent made in A.Thi.Mu.2808/A1/2012, dated 31.08.2012 and to quash the same and consequently to direct the respondent to approve the appointment of Sewing Teacher in the petitioner School.

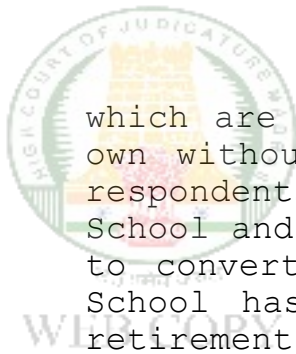
For Petitioner : M/s.M.Maria Vinola

For Respondent : M/s.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in A.Thi.Mu.2808/A1/2012, dated 31.08.2012 and consequently to direct the respondent to approve the appointment of Sewing Teacher in the petitioner School.

2. The brief facts of the case are that the petitioner is a School functioning for more than three decades. The petitioner School was sanctioned a post of Weaving Teacher and it was continuing for several years. One Selvi. C. Devi was originally appointed as Weaving Teacher in the petitioner School and retired on 30.03.2012. In the said vacancy, the School is entitled to appoint any Teacher. Since the students are not interested in Weaving and the School has taken a decision to convert the post as Sewing Teachers, since there are girl students who are interested in learning sewing. The Government issued G.O.Ms.No.39, School Education Department, dated 21.03.2003, thereby, clarified the appointment of Special Teachers in Government and Aided Schools. that after 12.07.2002, only the post of Music and Sewing Teachers are eligible to be appointed in the vacant post and in paragraph 8 of the said G.O., it has been clarified that minority institutions,



which are having sanctioned post, can fill up the vacancy on their own without any prior permission or concurrence from the official respondents. The petitioner claims that since it is a minority School and having a sanction of Special Teacher post, it is entitled to convert the Special Teacher post from Weaving to Sewing. The School has appointed one Josephin Mary as Sewing Teacher in the retirement vacancy of Weaving Teacher, namely Selvi. C. Devi on 30.03.2012. The newly appointed Josephin Mary is also having required qualification of Technical Teacher Certificate in Needle Work, Dressing and Embroidery and therefore, the said Josephin Mary was appointed on 07.06.2012. The School submitted the proposal to the respondents on 04.07.2012. The respondents returned the same on 17.08.2012 with an endorsement that the Sewing Teacher in the post of Weaving Teacher is not a proper one. The respondents have also stated that along with the proposal, staff fixation order was not enclosed. In a similar situation, this Court has allowed the Writ Petition and gave positive direction to approve the Sewing Teacher post in the post of Agriculture Teacher in W.P.(MD)No.11501 of 2008, vide order, dated 20.09.2010. The petitioner School along with a similar order has submitted a representation, dated 20.10.2012, to reconsider the rejection order. Since it was not considered, the petitioner has challenged the rejection order in this Writ Petition.

4.The respondent has filed a counter affidavit stating that the petitioner School appointed the said Josephin Mary, which is against the Government orders passed in G.O.Ms.No.104, School Education, dated 12.07.2002 and G.O. Ms. No. 39 School Education Department, dated 21.03.2003. The petitioner School is entitled to receive grant to Teachers employed in the sanctioned post with the required qualification fixed for those posts. Since the Government is granting aid for the sanctioned post specifying subjects of the posts, the petitioner is not entitled to convert the subject of the post and make the appointment and thereafter, seek grant. The minority management could fill up the sanctioned post without prior permission of the Department only as per qualifications fixed for the post and the minority management has no right to change the subject of the post and appoint a Teacher in the post. In Rule 6 of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, it is specifically stated as follows:

"(i) Minority Schools may be paid grants subject to the orders and instructions issued by the Government from time to time.

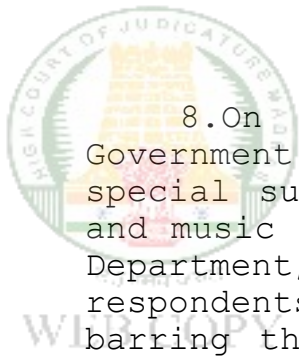
(ii) The payment of minority staff grants shall be made in respect of qualified and admissible teachers, actually employed in minority schools whose appointments have been approved by the concerned authorities according to the number of posts sanctioned to the institutions concerned. "



5.The counter affidavit also states that in G.O.Ms.No.39, School Education Department, dated 21.03.2003, in para 7 of para 1, it is specifically instructed to not allow to convert the subject of a Craft Teacher post from 12.07.2002 onwards and only sewing post can be converted as music post and vice versa and not any other subjects. In the said G.O. in paragraph 8, the Government has not allowed the minority management to appoint Teachers in the vacant post of Craft Teachers and has allowed to appoint only Sewing and Music subjects. Hence, the petitioner is barred to make appointment in any vacancy of Craft Teacher post in weaving which occurred on 31.03.2012. Therefore, the School is not entitled to convert the post from weaving to sewing or any other subject.

6.Heard M/s.M.Maria Vinola, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondent and perused the materials placed on record.

7. Admittedly, this issue of appointment of pre vocational is pending before the Supreme Court in Special Leave Petition (Civil No.30266 of 2019) and there is an interim order, dated 11.09.2019. The petitioner School is relying on the order of Writ Petition 11501 of 2008, dated 20.09.2010. The contention of the respondents that the said writ petition cannot be taken as a precedent, since the entire issue is pending before the Supreme Court is acceptable. The respondents relied on the dismissal order of the Supreme Court in another Special Leave Petition, in case of **Secretary Guruappa Higher Secondary School**. However, it is seen from the records that after the dismissal of the **Guruappa case**, which was brought to the knowledge of the Honourable Supreme Court, the Supreme Court has taken up the entire issue and has passed an interim order and also directed all the petitions filed in this issue shall be packed along with the **Joy Jabamalar case** and placed before the Three Member Bench. Therefore, the plea of the petitioner that the issue is decided cannot be accepted. The respondents contended that the petitioner School is bound by G.O.s and notifications issued by the Government. The Rule 6 of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, specifically states that minority schools may be paid grant, subject to the orders and circulars issued by the Government from time to time and it also states that grants will be in respect of qualified and admissible actual employee in minority Schools, **whose appointments have been approved by the concerned parties according to the number of posts sanctioned to the institutions concerned**. Admittedly, in this case, the official respondent has not approved the payment. Therefore, as per Rule 6, this School is not entitled to claim any salary under the grant in aid. The Government after carefully considering through a committee has passed G.O.Ms.No.104, School Education, dated 12.07.2002 and followed by another G.O.Ms.No.39, School Education Department, dated 21.03.2003.



8.On perusal of the said G.O., it is evident that the Government has taken a policy decision not to allow any other special subjects at all. Based on the representation only sewing and music has been allowed under the G.O.Ms.No.39, School Education Department, dated 21.03.2003. As rightly pointed out by the respondents, in paragraph 7 the said G.O., it is specifically barring the institution from converting one post to another post. Here, the petitioner School has converted the Weaving post as Sewing post, which is against the said G.O.

9.Therefore, this Court is of the considered opinion that the petitioner School is not entitled to claim any grant and consequently, it has no right to claim approval of the said appointment. Since the entire issue is pending before the Supreme Court, after the disposal of the petition before the Supreme Court, if any right is conferred by the Supreme Court, in the said S.L.P, then, the petitioner School is at liberty to resubmit the application after disposal of the SLP.

10.Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The District Educational Officer,
Kovilpatti, Tuticorin District.

+1 CC to M/s.K. GOVINDARAJAN, Advocate (SR-16575[F] dated 05/04/2022)

+1 CC to M/s.SPL.GP (SR-16870[F] dated 06/04/2022)

W.P.(MD)No.728 of 2013

05.04.2022

RD(18.04.2022) 4P 4C