



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.03.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.4112 of 2019

and

W.M.P (MD)Nos.3216 and 3217 of 2019

WEB COPY

N.Manikandan

... Petitioner

Vs.

1.The Government of Tamil Nadu

Rep. by the Secretary
School Education Department,
Fort St. George, Chennai.

2.The Director of School Education,

DPI Compound,
Nungambakkam, College Road Chennai 600 009.

3.The Joint Director of School Education,
(Vocational)

DPI Compound,
Nungambakkam, College Road Chennai 600 009.

4.The Chief Education Officer,
Tuticorin, Tuticorin District.

5.Nadar Higher Secondary School

Rep. by its Secretary
Pandavarmangalam
Kovilpatti Taluk
Tuticorin District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 2nd respondent in Na.Ka.No.99236/V1/E1/2013 dated 09.07.2015 and quash the same and thereby direct the respondent to pass order regularizing the service of the petitioner as Vocational Teacher as provided under G.O.Ms.No.35 dated 09.02.2007 and grant all attendant benefits viz., seniority and other monetary benefits.

For Petitioner : Mr.B.Rajesh Saravanan
For Respondents : Mr.G.V.Vairam Santhosh
for R1 to R4

ORDER

The order of rejection dated 09.07.2015 rejecting the claim of the writ petitioner for approval of appointment for the post of Vocational Instructor is under challenge in the present writ petition.



2. The petitioner completed Diploma in Electrical and Electronics Engineering and working as a Teacher for the vocational course for the 12th standard. Vocational course instructors were appointed and brought under regular time scale of pay, who were appointed prior to 01.04.1992. Their services were also regularized.

3. The learned counsel for the petitioner reiterated that the petitioner is also a similarly placed person and he was working in the 5th respondent school from 08.10.1998 onwards. Therefore, the services of the writ petitioner is to be regularized, provided in the sanctioned post in view of G.O.Ms.No.35 dated 09.02.2007. The Government order issued in G.O.Ms.No.35 reveals that the qualified temporary part time vocational instructors may be absorbed in the vacant posts. The order states that the eligible part time vocational instructors are to be fixed with the time scale of pay and accordingly, actions were taken. Accordingly, similarly placed persons were brought under the regular time scale of pay.

4. The learned counsel for the petitioner made a submission that those Government orders were passed pursuant to the directions issued by the High Court in writ petitions. When the benefit of approval of appointment was granted to part time vocational instructors pursuant to the orders of the Court, the similar benefit is to be extended to the petitioner also.

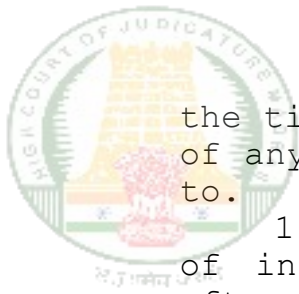
5. The learned counsel for the petitioner relied on the judgment dated 17.04.2018 in W.P.No.31021 of 2015 also. It is contended that many such similarly placed persons were granted with the benefit of approval of appointment in the regular time scale of pay.

6. The learned Additional Government Pleader disputed the contention by stating that the petitioner was found not eligible for approval of appointment and there was no part time or full time posts of vocational subject were sanctioned to the aided Higher Secondary School more specifically in the 5th respondent school. In the absence of any sanctioned posts, the authorities will not be in a position to grant approval of appointment. Thus, the petitioner's contention that the approval has been granted to the other similarly placed persons cannot be considered, as there is no sanctioned post in the case of the 5th respondent school and therefore, the claim was rejected.

7. In the order impugned, the authorities relied on the amended Tamil Nadu Recognised Private Schools Regulation Act, 1978. Section 14(A) of the said Act reads as under:

"14A. Grant not payable to new private schools and new class and course of instruction-notwithstanding

<https://hcservices.courtservice.org> maintained in this Act or in any other law for



the time being in force in any judgment, decree or order of any Court or other authority, no grant shall be paid to.

1.any private 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.

2.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.

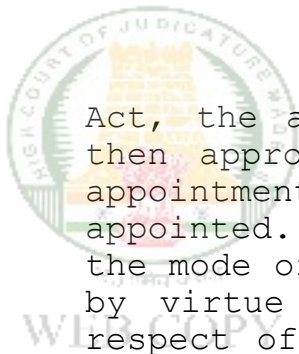
3.any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and any class or course of instruction opened on or after the date of commencement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

8. Under Section 14(A) of the said Act, the schools, which all are not eligible to get sanctioned post prior to 11.04.1992, the benefit of approval of appointment cannot be granted in view of the amended Act. The said position was clarified by the Government in letter dated 13.01.2015. The above Section 14(A) also unambiguously stipulates the above position. Therefore, the case of the writ petitioner was not considered.

9. While considering the similar cases by the Courts, the facts are to be established with reference to the provisions of the Act. The Courts are not expected to blindly follow the precedents without analysing the facts and circumstances of the individual case, as the Hon'ble Supreme Court of India repeatedly held that facts and circumstances are fatal to consider the cases with reference to certain precedents in the subject. When the facts are distinguishable and the provisions of the Act also contemplates that in the absence of sanctioned post, the benefit of appointment of approval cannot be granted. This Court is of the opinion that for the appointment of vocational teacher appointed in a private school, if granted approval of appointment, a person has to be accommodated in some other school and in such circumstances, it is to be construed that the appointment was not initial or in accordance with the Government service rules in force.

10. A distinction is to be drawn. A teacher appointed by a private school by following the procedures under the Act is different and a Teacher appointed by the Teachers Recruitment Board in accordance with the recruitment rules are different. Therefore, a teacher appointed in an aided school in accordance with the



Act, the appointment must be made only against a sanctioned post, then approval is to be granted by verifying the sanctity of the appointment and considering the eligibility of the Teacher, who was appointed. Therefore, the mode of appointment in aided school and the mode of appointment in Government schools are entirely different by virtue of certain similarities by approval of appointment in respect of the teachers appointed in aided schools, then they will posted in a Government school, which would be in contradiction with the Government recruitment rules for appointment to the particular post.

11. No doubt, the petitioner was appointed as a part time vocational instructor. However, his case was not considered, as there was no sanctioned post available in the 5th respondent school in which he was appointed as a part time vocational instructor.

12. Thus, in the event of any sanctioned post, if approval is granted, then the authorities have to post him in any other Government school and in such circumstances, it will result in violation of the recruitment rules applicable to the Government school teachers and all these aspects are to be taken into consideration before issuing approval of appointment. Every private aided school is an establishment under the provisions of the Act and it is an entity independent. Thus, the appointments are to be made in accordance with the provisions of the Act and Rules and against a sanctioned vacancy and in the absence of any sanctioned post, the appointment cannot be approved and in the present case, the respondents in their counter has categorically stated that no aid was granted to the new course started in aided school after 01.06.1991 and hence, no part time post or full time post of vocational teachers were sanctioned to the aided higher secondary school. The petitioner was appointed in the year 1998. Therefore, as on the date of appointment of the petitioner as part time vocational instructor, there was no post sanctioned and no aid was granted to the vocational instructor course in the 5th respondent school. Thus, this Court do not find any infirmity in respect of the reasons stated in the impugned order.

13. Accordingly, the writ petition stands dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

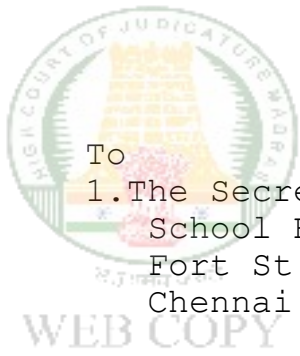
Sd/-

Assistant Registrar (AE)

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/ /2022

Sub Assistant Registrar(CS)



To

- 1.The Secretary
School Education Department,
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Chennai.
- 2.The Director of School Education,
DPI Compound,
Nungambakkam, College Road
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- 3.The Joint Director of School Education,
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DPI Compound,
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- 4.The Chief Education Officer,
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Tuticorin District.

W.P. (MD)No.4112 of 2021
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MGJ(25.03.2022) 5P 5C