



W.P.(MD)No.19074 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 28.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)No.19074 of 2020
and
W.M.P(MD).No.15965 of 2020

T.Samson Amos

... Petitioner

Vs

- 1.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 2.The District Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 3.The Correspondent,
Schwartz Higher Secondary School,
Ramanathapuram District,
Ramanathapuram.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Mu.Mu.No.5992/A5/2019 dated 24.07.2019 passed by the first respondent and impugned consequential order of the second respondent in Mu.Mu.No.1713/A4/2019 dated 09.10.2019 and



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quash the same and consequently direct the respondents 1 and 2 to approve the appointment of the petitioner in the third respondent School with effect from 03.10.2018 with consequential benefits.

For Petitioner : Mr.S.Anwar Sameem
for Mr.T.Antony Arul Raj
For Respondents : Mr.N.Satheeskumar (for R1 & R2)
Additional Government Pleader
No appearance (for R3)

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Drawing Teacher in the third respondent School on 03.10.2018, in the vacancy caused by the retirement of one incumbent namely, Sekar Jeyakumar. The said Sekar Jeyakumar was working in a sanctioned post. The eligibility of the writ petitioner to hold the said post is not in doubt. The third respondent is the Minority Institution run by CSI Diocese of Madurai-Ramnad. When proposal for approving the petitioner's appointment was submitted, it was rejected by the impugned order, by citing G.O.Ms.No.39, School Education (D1) Department, dated 21.03.2003. Challenging the rejection order, this writ petition came to be filed.



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3.Counter affidavit has been filed by the official respondents. The official respondents now contend that in view of the fall in students' strength, the writ petitioner's appointment cannot be approved. However, at the time of arguments, the learned Additional Government Pleader appearing for the official respondents called upon this Court to sustain the impugned order on the reasons setout therein. He also submitted that this Court should take into account not only G.O.Ms.No.39, School Education (D1) Department, dated 21.03.2003, but also G.O.Ms.No.101, School Education Department, dated 18.05.2018 and G.O.Ms.No.104, School Education (D1) Department, dated 12.07.2002.

4.I carefully considered the rival contentions and went through the materials on records.

5.The stand taken in the counter affidavit cannot be sustained, in view of the decision of the Hon'ble Division Bench reported in **2019 SCC Online Mad 29282** in the case of **State of Tamil Nadu Vs., Y.Thangababy and another**. The Hon'ble Division Bench in the said



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decision has held that the reduction of students' strength cannot be a reason to deny approval of the appointment of a teacher against the sanctioned post. As regards G.O.Ms.No.39, School Education (D1) Department, dated 21.03.2003, the issue has already been answered by the Hon'ble Division Bench in W.P.(MD).No.1569 of 2015, dated 20.02.2018. The said Hon'ble Division Bench was also concerned with the appointment of a Drawing Teacher in the vacancy caused by the retirement of the incumbent teacher. The Hon'ble Division Bench read down G.O.Ms.No.39, School Education (D1) Department, dated 21.03.2003. Paragraph Nos.4 and 7 of the said order in W.P.(MD).No.1569 of 2015, dated 20.02.2018 read as follows:

“

4.In our considered view, on a reading of G.O.Ms.No.39, one gets an impression that there is an absolute ban, however the object of the Government Order for restricting the conversion between two posts is not very clear. In any event, if the Government Order is read as a whole, it appears that the intention of the Government is to consider as to whether there is a need for conversion of the post in a particular institution. But, it has not been stipulated explicitly as the preamble of the Government Order says that conversion can be made only between Sewing and Music.

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7. Therefore, we are of the firm view that the conditions stipulated in G.O.Ms.No.39, dated 21.03.2003 should be read down to mean that the predominant aspect which has been considered is the need for the particular branch of vocational instruction and this need should be decided by the Institution considering the demand of the students/parents etc. Thus, the stand taken in the impugned communication dated 30.07.2014 is not tenable.
...”

6. It is well settled that the impugned order will have to be rested only in the light of what has been stated therein. It is not open to the official respondents to add reasons at the time of argument. Since the twin stand taken by the respondents has been found to be without merit, I have no hesitation to set aside the impugned order in this writ petition. Accordingly, the order impugned in this writ petition is quashed. The Writ Petition is allowed. The official respondents are directed to approve the petitioner's appointment with effect from 03.10.2018 and disburse the grant-in-aid towards the writ petitioner's salary and other allowance forthwith, without any delay. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Internet : Yes/No

Rmk

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G.R.SWAMINATHAN, J.,

Rmk

To

- 1.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 2.The District Educational Officer,
Ramanathapuram District,
Ramanathapuram.

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