

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22685 of 2019

The Correspondent,
St.Mary's Higher Secondary School,
Kaliyal,
Kanyakumari District.

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

2.The Joint Director of School Education (Secondary),
DPI Campus, college Road,
Chennai-600 006.

3.The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.

4.The District Educational Officer,
Thiruvattar,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to Call for the records on the file of the 3rd respondent pertaining to its order bearing

Oo.Mu.No.4508/Aa2/2019 dated 30.7.2019 and to quash the same and consequently direct the 3rd respondent approve the appointment of T.S.Edward Bergin in the post of Vocational Teacher (Basic Electrical Engineering) from the date of his appointment that is from 03.6.2019 by considering the proposal submitted by the petitioner dated 22.8.2019 and disburse monetary and other attendant service benefits including payment of arrears of salary from the date of appointment that is from 03.6.2019 within a time frame that may be fixed by this Court.

For Petitioner : Mr.L.Jeen Felix

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. The case of the writ petitioner is as follows:-

The writ petitioner is a religious minority school. It is receiving aid from the Government. Vacancy arose in the post of Vocational Instructor (Basic Electrical Engineering). When the incumbent one Thiru.C.M.John attained the age of superannuation on 31.05.2019, in his place, one Thiru.T.S.Edward Bergin was appointed. Proposal was submitted for approving the said appointment. Since the application was not processed, the petitioner filed W.P.(MD)No.15160 of 2019 for

directing the respondents to approve the said appointment.

During the pendency of the writ petition, the proposal was returned by the impugned order dated 30.07.2019. Questioning the same, the present writ petition has been filed.

3. The fourth respondent has filed a detailed counter affidavit controverting the averments set out in the affidavit filed in support of the writ petition. According to the respondents, following the retirement of Thiru.C.M.John, the post held by him was liable to be surrendered. There was no sanctioned vacancy against which Thiru.T.S.Edward Bergin could have been appointed. The respondents called for dismissal of the writ petition.

4. The learned counsel appearing for the writ petitioner contended that the petitioner being a minority Institution is having fundamental right guaranteed under Article 30 of the Constitution of India. They are entitled to make appointments without getting prior permission. The proposal seeking approval of the appointment of Thiru.T.S.Edward Bergin to the post of Vocational Instructor was returned by citing G.O.Ms.No.991 Education Department, dated 16.07.1990. The Hon'ble Division Bench vide order dated **31.07.2013 made in W.A.(MD)No.652 of 2013** had held that the said G.O is

applicable only in the case of part-time Vocational Instructor and not in the case of full-time Vocational Instructor. He pointed out that even in the staff fixation, it has been clearly stated that one post of Vocational Instructor in Basic Electrical Engineering has been sanctioned for the petitioner school. There are about 28 students who have chosen the said subject in their higher secondary Course. According to the learned counsel for the petitioner, the impugned order is clearly illegal and he called upon this Court to quash the same and direct the approval of the appointment of Thiru.T.S.Edward Bergin.

5. The learned Special Government Pleader appearing for the respondents took me through the averments set out in the counter affidavit and contended that the impugned order returning the proposal deserves to be sustained.

6. I carefully considered the rival contentions and went through the materials on record. G.O.Ms.No.991 Education Department, dated 16.07.1990 clearly states that the school managements should not make any fresh appointment of part-time teacher (Vocational) without obtaining prior permission from the Director of School Education. It was further directed that the post of single part-time teacher should not be converted into a double part-time teacher and vice versa without obtaining specific orders of the Director in

this regard. G.O.(Ms)No.9, School Education (VE) Department, dated 06.01.2009 also stipulates that no new Vocational Instructor should be appointed and no new vocational courses should be started from the year 2007-08.

7. The first question that calls for consideration is whether the issue raised in this writ petition has been concluded by the decision of the Hon'ble Division Bench *in W.A.(MD)No.652 of 2013 dated 31.07.2013*.

8. I carefully went through the contents of the said order. It is true that there is a reference to G.O.(Ms)No.991, Education Department, dated 16.07.1990. Reference is found in Paragraph Nos.2 & 3. A careful reading of the aforesaid paragraphs would indicate that the Hon'ble Division Bench had only extracted the submission of the respective counsel. It had not given any finding as such on the scope and applicability of G.O.(Ms)No.991, Education Department, dated 16.07.1990. On the other hand, the issue that was formulated for consideration was whether a person appointed in a sanctioned post by a minority school can be denied approval of the appointment. The issue was answered against the Department in *W.A.(MD)No.16 of 2011, dated 25.01.2011*. This proposition is well-settled and this decision in my view does

not advance the case of the petitioner in any manner. If the petitioner can show that the post of Vocational Instructor (Basic Electrical Engineering) is a sanctioned one, then and then alone, the aforesaid Hon'ble Division Bench decision can be pressed into service and not otherwise. Reliance on the staff fixation is misplaced. The staff fixation enclosed in the typed set of papers was done on 09.04.2019. Thiru.C.M.John was then very much working as Vocational Instructor (Basic Electrical Engineering). He retired only one month later ie., on 31.05.2019.

9. The categorical stand of the respondents is that all the schools throughout Tamil Nadu had either single part-time Vocational Instructor or double part-time Vocational Instructors. They were seeking absorption in the regular stream. In order to address their demands, G.O.Ms.No.712 Education (HS) Department, dated 28.05.1990 was issued according sanction for creation of 800 posts of Vocational Instructors. The Vocational Instructors were absorbed gradually. It was however directed that these posts are person-specific. In other words, as and when the incumbent Vocational Instructor retired, the post also will have to be surrendered. Thus, when C.M.John who was holding the post of Vocational Instructor retired from service, the post also lapsed with him. The petitioner is not therefore justified in claiming that

notwithstanding the retirement of Thiru.C.M.John, the post continued to remain in the school and that vacancy had arisen. That apart, the Government had taken a policy decision to do away with the very concept of vocationalisation in the higher secondary schools. That is why, in the counter affidavit, it had been strongly contended that the petitioner school should have discontinued the vocational course and in any event, should not have appointed Thiru.T.S.Edward Bergin without getting prior permission from the competent authority.

10. I sustain the objections raised in the counter affidavit. The impugned order returning the proposal does not call for any interference. The Writ Petition is dismissed. No costs.

14.09.2022

Index : Yes / No

Internet : Yes/ No

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