



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2022

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

W.P. (MD)No.4550 of 2017

and

W.M.P. (MD)Nos.3643 and 3644 of 2017

The Correspondent,
St. Antonys Higher Secondary School,
Kanyakumari - 629 702,
Kanyakumari District.

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The Joint Director of School Education (Vocational),
College Road, Chennai - 600 006.

4.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

5.The District Educational Officer,
Nagercoil, Kanyakumari District.

... Respondents

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 impugned proceedings issued by the 5th respondent District Educational Officer in O.Mu.No.4806/A3/2016, dated 06.09.2016 (refusing approval to the appointment of S.Mary Annaculate as P.G. Assistant in Commerce), to quash the same and further to direct the 5th respondent District Educational Officer herein to approve forthwith the appointment of S.Mary Annaculate as P.G.Assistant in Commerce in the petitioner school with effect from the date of her appointment viz., 01.06.2016, with salary and all attendant benefits.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chamber

For Respondents : Mr.V.Om Prakash
Government Advocate (Civil side)



O R D E R

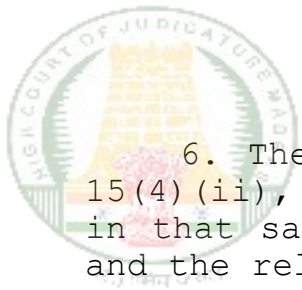
The Correspondent of the School has filed this Writ Petition to quash the impugned order, dated 06.09.2016 and consequential relief to approve the promotion of one S. Mary Annaculate as P.G.Assistant with effect from 01.06.2016.

2. In the School, which is a Private Minority Aided School, one post of P.G. Assistant in Commerce was vacant on 01.06.2016 due to the retirement of the then incumbent namely, Ms. J. Mary Jeyamathi on 31.05.2016. The School considered all eligible candidates to fill up the said vacancy and found it fit to promote Ms. S. Mary Annaculate, who was serving as a Vocational Instructor in the same School. The said Mary Annaculate was appointed in the petitioner School as Vocational Instructor on 02.09.1996 and she has put in service of 19 years and 8 months as Vocational Instructor. The School submitted a proposal, dated 19.08.2016 to the 5th respondent DEO for granting approval and disbursement of grant-in-aid towards her salary. The DEO returned the proposal, vide proceedings, dated 06.09.2016, directing to resubmit the proposal along with the Government Orders, if any, to appoint Vocational Instructor to the post of P.G. Assistant and also to enclose prior promotion obtained from the Joint Director of School Department (Vocational) for continuing to release the pay admissible to the post of Vocational Instructor to the P.G. Assistant.

3. The contention of the petitioner is that as per Rule 15 of Tamil Nadu Private Schools Regulation Act, the Vocational instructors were eligible to be appointed for the P.G. Assistant post, if they are otherwise qualified. The said Mary Annaculate is possessing B.Com., M.Com. and B.Ed., degrees with 19 years and 8 months of experience as Vocational instructor. Therefore, the petitioner has filed this Writ Petition to quash the impugned order, where it is denying approval to the promotion proposal.

4. The 5th respondent has filed a counter affidavit stating that the School has appointed in the retirement vacancy one Ms. Mary Annaculate. In the resultant vacant post of Mary Annaculate, the petitioner has appointed one Arasu Vaz and obtained an order to approve the said appointment. The said appointment is under litigation. Therefore, the respondents denied the approval to this promotion as well.

5. Heard Mr.K.Ragatheesh Kumar, learned Counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate appearing for the respondents.



6. The contention of the petitioner is that according to Rule 15(4)(ii), promotion from among the qualified Vocational instructors in that same School can be considered for promotion in any vacancy and the relevant portion is extracted below:

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"(4) (i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(ii) Appointments to the various categories of Teachers shall be made by the following methods:-

(i) Promotion from among the qualified Teachers in that school; or

(ii) Promotion from among the qualified Vocational Instructors in that School;

(iii) If no qualified and suitable candidate is available by method (i) above,-

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of Teachers;

(b) Appointment of teachers from any other school;

(c) Direct recruitment.

In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teachers' Training Institutions setting out the reasons for such appointment. In respect of Corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this Rule."

7. Therefore, this Court is of the considered opinion that as per Rules prescribed, the petitioner school is entitled to appoint any Teachers from Vocational stream also by way of promotion. Therefore, the respondents are incorrect in denying the approval. Therefore, the respondents are directed to approve the proposal of promotion and disburse grant-in-aid. The said exercise shall be completed within a period of 4 weeks from the date of receipt of a copy of this order. It is made clear that the resultant vacancy due to promotion of Mary Annaculate is a separate issue, covering under different proceedings, where litigations are pending and there is nothing to do with this case and the respondents are directed to act according to order that would be rendered in those litigations.



8. With this observation, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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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

1. The Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2. The Director of School Education,
College Road, Chennai - 600 006.

3. The Joint Director of School Education (Vocational),
College Road, Chennai - 600 006.

4. The Chief Educational Officer,
Nagercoil, Kanyakumari District.

5. The District Educational Officer,
Nagercoil, Kanyakumari District.

+1 CC to M/s. K. RAGATHEESH KUMAR (ISAAC CHAMBERS), Advocate (SR-12759 [F] dated 17/03/2022)

+1 CC to M/s. SPL GP (SR-12733[F] dated 17/03/2022)

W.P. (MD) No. 4550 of 2017

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CK (CO)

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