



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2023

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CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

Rev.Aplc(MD)No.73 of 2022

C.M.P(MD)No.3285 of 2022

and

W.A.(MD) No: 1052 of 2020

- 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 – 600 009.
- 3.The Chief Educational Officer,
Madurai,
Madurai District.
- 4.The District Educational Officer,
Madurai – 625 002,
Madurai District.

... Review Applicants/Appellants

-VS-



The Correspondent,
Holy Family Girls Higher Secondary School,
Gnanaolivupuram,
Madurai – 625 016.

... Respondent/Respondent

PRAYER: Review Application filed under Order 47 Rule 1 and 2 of C.P.C.,
read with Section 114 of C.P.C., to review the order passed in
W.A(MD)No.1052 of 2020, dated 06.12.2021.

For Petitioners : Mr.R.Basakaran,
Additional Advocate General, assisted by
Mr.D.Sadiq Raja,
Additional Government Pleader

For Respondent : Ms.A.Amala

ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

This Review Application is filed to review the order of the Division Bench, dated 06.12.2021, made in W.A(MD)No.1052 of 2020, in and by which, the appeal filed by the Government came to be dismissed upholding the dictum of the Writ Court on the applicability of G.O.Ms.No.238, School Education (Pa.Ka.6(1)) Department, dated 13.11.2018, for the approval of the candidature one Ignatius as a Record Clerk in the respondent school. The



vacancy to the post of Record Clerk arose due to the retirement of one Kulanthai Therasa, who was superannuated on 31.05.2018. In the said vacancy, the said Ignatius was appointed as a Record Clerk. When approval was sought for, the Chief Educational Officer, Madurai, by his proceedings, dated 03.04.2019, rejected the approval on two grounds. The first ground is that the Pre-Foundation Course which is conducted by the Madurai Kamarajar University has not been declared as equivalent to S.S.L.C., the required qualification. The second ground is that in G.O.Ms.No.238, there has been a stay or ban on appointment of persons in non-teaching posts. The Writ Court had not dealt with the first ground on which the approval was rejected. The Division Bench had also confirmed the order of the Writ Court. Upon the review application being moved on the ground that the first ground for rejection was not all discussed either by the Writ Court or by the Division Bench, the Division Bench has passed the following order:

“2.The learned Additional Advocate General submitted that the State is not aggrieved with the findings of the learned Single Judge and the Division Bench, qua, G.O.Ms.No.238, but the State is aggrieved with the requirements of the pre-foundation course equivalence certificate, about which, there is absolutely no whisper either in the order of the learned Single



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Judge or in the judgment of the Division Bench though that was also one of the ground, which was referred to in the impugned order dated 03.04.2019 of the Chief Educational Officer, which has been quashed by the learned Single Judge and confirmed by the Division Bench. Thus, the review is limited only with respect to Paragraph No.1 of the order of the Chief Educational Officer dated 03.04.2019.

3.In the light of the above, there shall be an order of interim stay. Notice to the respondent returnable by four weeks. Private Notice is also permitted. Permission is granted to inform Ms.Amala, learned counsel, who appeared for the respondent in the writ proceedings. Post the review application on 22.08.2022.”

2. We have heard Mr.R.Baskaran, learned Additional Advocate General appearing for the review petitioners and Ms.A.Amala, learned counsel appearing for the respondent school management.

3. Mr.R.Baskaran, learned Additional Advocate General appearing for the review petitioners would invite our attention to the order, dated 03.04.2019, wherein the first ground that is taken for rejection of the approval is the absence of a equivalence declaration on the Pre-Foundation Course.



The learned Additional Advocate General would also invite our attention to G.O.(Ms).No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, wherein it has been made clear that the Pre-Foundation Course and the Foundation Course for two years, conducted by the Universities are not equivalent to S.S.L.C., and Higher Secondary Course respectively. Once the Government had passed an order even in 2017 declaring that these courses are not equivalent to S.S.L.C., and Higher Secondary Course, the said Ignatius is not qualified to be appointed on the date when he was appointed to the Post.

4. Ms.Amala, learned counsel would however contend that G.O.Ms.No.144, has been held to be prospective. Therefore, any person who had completed the Course prior to passing of G.O.Ms.No.144, would be eligible for appointment.

5. We are unable to agree with the said contention. If a Course is declared as not equivalent, any person who has completed the said Course will become disqualified from the date of such declaration and the date on which the said person obtained the qualification is wholly irrelevant. She would also rely upon a judgment of the Division Bench wherein it was held that



G.O.Ms.No.144, would be prospective. If the Government Order is prospective, the cut off date would be 20.11.2017. If any person appointed to the Post prior to 20.11.2017, the said appointment would be valid. It will not mean that a person who obtained the qualification prior to 20.11.2017 could be appointed after that, on the ground that his qualification is equivalent to S.S.L.C or Higher Secondary Course. Non consideration of this very vital aspect, in our opinion is an error on the face of the record which would vitiate the entire proceedings. Hence, we find that the review application has to be allowed. Accordingly, it is allowed. Consequentially, the writ appeal will stand allowed and the writ petition will stand dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.] [P.V., J.]

13.06.2023

NCC : Yes/ No
Index : Yes/ No

PM



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R.SUBRAMANIAN, J.
and
P.VELMURUGAN, J.

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