



W.P.(MD)No.16880 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.02.2023

PRONOUNCED ON : 01.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16880 of 2019

and

W.M.P.(MD)Nos.13467 of 2019 and 1004 of 2021

P.S.Sunilkumar

... Petitioner

vs.

- 1.The Secretary,
School Education Department,
Fort St. George, Chennai-9.
- 2.The Director of School Education,
College Road, DPI Campus,
Chennai-6.
- 3.The District Educational Officer,
Thiruvattar, Marthandam,
Kanyakumari District.



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4.The Correspondent,
Purushothaman Pillai Memorial
Higher Secondary School,
Anducode, 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 of the impugned order passed by the 4th respondent through his proceedings No.PPM/C/RS/2019, dated 25.06.2019 and to quash the same as illegal and consequently, to direct the 3rd respondent to approve the petitioner's appointment as office assistant in the 4th respondent school from the date of his appointment in the light of the order passed by the Court of Madras in W.P.No.1719 of 2005, dated 24.03.2009.

For Petitioner	: Mr.S.Arivalagan
For R1 to 3	: Mr.S.Kameswaran Government Advocate
For R4	: M/s.J.Anandhavalli



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4th respondent school from 01.09.2003 due to the retirement of G. Krishnan Kutti who retired on 31.08.2003. In the said vacancy, the petitioner was appointed as Office Assistant from 01.09.2003. The contention of the petitioner is that the said Office Assistant post is a sanctioned post available in the 4th respondent school for the academic year 2003-2004 as per the staff fixation order, dated 08.11.2003. Since the school being a linguistic minority school, they need not follow the communal roster and also need not seek any list from the employment exchange, need not obtained prior permission from the Department. In the same year 2003, one Sweeper post was also vacant and the 4th respondent filled that post on 01.06.2003. Thereafter, the school submitted a proposal for approval for the said Sweeper post as well as Office Assistant post. However, the 3rd respondent returned the proposals on the ground that the Secretary to Government of Tamilnadu issued G.O.Ms.No.212 P & AR Department, dated 29.11.2001, in which fresh appointments were banned. Hence, the said two non-teaching staffs



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appointed in sanctioned posts are not able to get salary and the 4th respondent school preferred a writ petition in W.P.No.1719 of 2005 to quash the G.O.Ms.No. 212 P & AR Department, dated 29.11.2001 and also challenged the order which declined approval.

3. In the above writ petition the school submitted before the High Court that subsequently, the ban was lifted by the Government through G.O.Ms.No.14, P & AR Department, dated 07.02.2006. The school has also relied on the decision of rendered in *Thiruvalluvar Higher Secondary School vs. The Government of Tamilnadu* reported in **2008 (5) CTC 648**. The petitioner also placed reliance on the judgment rendered in W.A.456 of 2008, wherein it has been held that "the Government has issued orders in respect of similar employees approving their services from the date of his initial appointment. When once the ban is revoked



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5. The petitioner further submitted that the school was managed by the family members and there was a dispute within family. Subsequently, in the year 2014, the school was sold and transferred to the present management, i.e., V.R.Sajikumar and the petitioner was continuously working as an Office Assistant for consolidated wages. Now, suddenly, the 4th respondent through his proceedings, dated 25.06.2019 had issued termination order, wherein the petitioner was shown as an employee under self-financing section. Aggrieved over the same, the present writ petition is filed.

6. The school submitted that the petitioner has worked under self-finance section. Even though the petitioner was appointed in the year 2003, based on the ban order, the petitioner's appointment was not approved. Subsequently, from 2010 onwards, the said post was shown as surplus with staff and further it was shown as surplus without staff. Therefore, at no point of time, the petitioner was



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working in the sanctioned post. The petitioner is aware that he is working under the self-finance section from 2010 onwards, since he has signed the attendance register which is kept for self-finance section alone. Therefore, the respondents claim that the termination order is legally sustainable, since the school is not in need of the said post.

7. The official respondents submitted that each and every year a staff fixation order was issued and the school ought to accommodate based on the staff fixation order only. From 2001 to 2006, there was a ban in recruitment. Therefore, until 2006, the petitioner cannot claim to post him in the sanctioned vacancy. As far as non-teaching staff is concerned, even after lifting of ban under G.O.Ms.No.14 P & AR Department, dated 07.02.2006, the ban was continuing to the non-teaching staff post, since the Government was contemplating to outsource certain non-teaching staff like Sweepers, Scavengers, etc. Therefore, the school



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cannot appoint any non-teaching staff even after 2006 especially from 2006 to 2010. Therefore, the school cannot accommodate the petitioner even though the post is a sanctioned post. Hence, the respondents prayed to dismiss the writ petition.

8. Heard Mr.S.Arivalagan, learned Counsel appearing for the petitioner, Mr.S.Kameswaran, learned Government Advocate appearing for the respondents 1 to 3 and M/s.J.Anandhavalli, learned Counsel appearing for the 4th respondent and perused the records.

9. The claim of the petitioner is that he was appointed as Office Assistant in the vacancy that arose due to the retirement of one G. Krishnan Kutti who retired on 31.08.2003 and the petitioner was appointed from 01.09.2003. There was a ban in recruitment as per G.O.Ms.No.212 P & AR Department, dated 29.11.2001

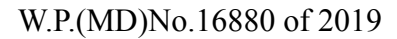


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and the ban was lifted through G.O.Ms.No.14, P & AR Department, dated 07.02.2006. Hence there was ban for recruitment from 29.11.2001 to 07.02.2006. But the petitioner was appointed in the year 2003, during the ban period, hence the petitioner is not entitled to claim to approve his appointment until 07.02.2006, since it is totally against G.O.Ms.No.212 P & AR Department, dated 29.11.2001 and G.O.Ms.No.14, P & AR Department, dated 07.02.2006.

10. As far as the non-teaching staff is concerned, even after lifting of ban under G.O.Ms.No.14, the ban was continuing for non-teaching staff alone. In 2010, there were claims from several schools to grant permission wherever vacancy is there to fill up the non-teaching staffs. The Government sought a list of such vacancies and has directed the aided schools not to recruit any person to the post of Sweepers and Scavengers since the work allotted to those two posts would be outsourced and further, clarified that the non-teaching staff will be



11. In the present case, from 2006 to 2010, there was no such permission granted to the present school to appoint anybody in any vacancy. Moreover, in the staff fixation order for the years from 2010 to 2014, it is mentioned that the school is having two posts of Office Assistant and one post is declared as “surplus without any staff”. Which means one post is surplus and the petitioner cannot be accommodated in the said post and in another post already a person is serving. In the staff fixation order for the academic year 2014 to 2019 is concerned, the school was sanctioned only one post of Office Assistant and there is no vacancy, hence the petitioner cannot be accommodated.



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12. The contention of the petitioner is that in the earlier round of litigation, this Court has directed the school to appoint the person and approve the same. However, the fact that there was continuous ban even after the G.O.Ms.No.14, P & AR Department, dated 07.02.2006, was not brought to the knowledge of the Learned Single Judge. If the same was brought to the knowledge, the petitioner therein would not have got a positive order to approve his appointment. Moreover, the strength of students in the school was continuously decreasing, taking this factor into consideration, the official respondents while issuing staff fixation order has granted only one post to the school continuously from 2010 onwards and the other sanctioned posts were declared as surplus. That is why the school has not submitted any proposal for approval for the appointment of the petitioner and the petitioner was continuing the service under self-financing category. The erstwhile management has sympathetically considered the petitioner case and allowed the petitioner to continue in the self-financing



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category and has paid the consolidated salary to the petitioner. The fact that the petitioner is receiving only consolidated pay would indicate that the petitioner is well aware that his appointment is not approved and the Learned Counsel appearing for the management is right in stating that the petitioner has filed this petition belatedly. Subsequently the school was sold to another person. The subsequent management deemed it fit to terminate the service of the petitioner and has passed the impugned order, which is challenged in the present writ petition.

13. The contention of the school management is that since the said post was continuously kept under self-finance section, the school taking the financial status of the school was under dilemma whether the said post is necessary or not. Thereafter the school has taken a decision that such post is not necessary under



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self-finance section. Therefore, the school has terminated the petitioner from service.

14. Therefore, this Court is of the considered opinion since the petitioner is coming under the self-finance category, the school alone is the appropriate person to take a decision and the said decision is legally sustainable. However, the petitioner was terminated without any notice. Hence, the petitioner is entitled to some compensation and the 4th respondent is directed to pay Rs.35,000/- (Rupees Thirty Five Thousand only).

15. With the above said direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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