



W.P(MD)No.24829 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.08.2023**

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.24829 of 2016

B.S.Jalaja

...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 Chief Educational Officer,
Kanyakumari District.

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

5.The Correspondent,
Higher Secondary School,
Kalluppalam, Edaicode
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified



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Mandamus calling for the records relating to the impugned order issued by the 4th respondent herein in Na.Ka.No.8383/A2/E1/2016 dated 30.11.2016, quash the same and further direct the 4th respondent herein to approve forthwith the appointment of petitioner as Post Graduate Assistant (History) from 01.04.2011 to 30.11.2015 in the 5th respondent-school with salary and other attendant benefits.

For Petitioner : Mr.E.V.N.Siva
For R1 to R4 : Mr.V.Nirmal Kumar
Government Advocate
For R5 : No appearance

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4 and perused the record.

2. The case of the petitioner is that the petitioner was appointed as Post Graduate Assistant (History) in the 5th respondent



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school on 01.04.2011. She possessed B.A degree in History and M.A degree in History from the University of Kerala and B.Ed degree from Madurai Kamaraj University. Apart from that, she had passed II class Language Test in Tamil and as such, she is fully qualified to the post of Post Graduate Assistant (History).

3. The 5th respondent submitted a proposal to the 4th respondent on 30.12.2011 for approval of the appointment of the petitioner as Post Graduate Assistant (History) and for the purpose of disbursement of grant in aid towards salary to the petitioner. The fourth respondent vide his proceedings date 09.02.2012 returned the proposal seeking certain documents and the required documents are furnished by the fifth respondent on 15.02.2012. The original certificates were also produced along with the proposal for certificate verification. The petitioner repeatedly approached the fourth respondent seeking approval of salary.



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4. The petitioner retired from service on 30.11.2015 and submitted a representation to the 4th respondent on 09.03.2016 and reminder on 26.07.2016. As there was no response from the fourth respondent, the petitioner filed a Writ Petition in W.P(MD)No. 15672 of 2016 before this Court. The said Writ Petition was disposed of by order dated 20.09.2016 with a direction to the fourth respondent to pass orders on the representation submitted by the petitioner. In compliance of the same, the fourth respondent passed the proceedings in Na.Ka.No.8383/A2/E1/2016 dated 30.11.2016 refusing the approval on the ground that the petitioner has not possessed 50% of marks in M.A degree as contemplated under Tamil Nadu University Examination Rules. The said proceedings is under challenge in this Writ Petition.

5. The learned counsel for the petitioner submits that the order of the fourth respondent is liable to be set aside on the ground that the provision of the Tamil Nadu Recognized Private Schools



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(Regulation) Act 1973 (hereinafter referred as 'the Act,1973') and rules made thereunder are alone made applicable to the fifth respondent school and the Government Orders are not applicable to the 5th respondent school.

6. On behalf of the respondents 1 to 4, a counter affidavit has been filed wherein they reiterated their stand mentioned in the impugned order. The learned Government Advocate appearing for the respondents 1 to 4 would submit that as the petitioner failed to acquire 50% of marks in Master degree, the petitioner is not entitled for the relief sought and requested to dismiss the Writ Petition.

7. Having heard the submissions of the respective counsels and upon careful perusal of the materials available on record, only issue to be considered in this Writ Petition is whether the Act, 1973 and rules made thereunder are applicable to the 5th respondent school or the Government Orders issued for different purposes would bind the private schools and the appointments, the condition



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of service etc.

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8. Admittedly, the 5th respondent school is a recognized private aided school Linguistic Minority Educational Institution in terms of Article 30(1) of the Constitution of India and the 5th respondent school is governed by the Act, 1973. The said Act was enacted to provide for the regulation of recognized private schools in the State of Tamil Nadu. There is no dispute that the school in question would be governed by the provisions of the Act, 1973.

9. Section 19 of the Act, 1973, contemplates the qualifications, the conditions of service etc to Teachers and other persons employed in private schools. Section 20 of the Act provides the appointment of Teachers and other employees in private schools and the manner in which such appointments are to be made. Section 56 of the Act, 1973 empowers the State Government to make the rules to carry out the purpose of the Act, 1973. Rule 15 of the Tamil Nadu recognized private schools (Regulation) Rules, 1974 provides the qualifications, the conditions of service of Teacher and other persons. For appointment of the Junior Grade Post Graduate Assistant, annexure V-A to the said rules



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contemplates a Master's Degree or its equivalent in the relevant subject and B.T., or B.Ed., Degree or its equivalent.

10. The qualification of the petitioner is concerned, there is no dispute, but, only dispute is with regard to the decision of the 4th respondent to reject to accord approval for the appointment of the petitioner on the ground that she did not possess 50% of the marks in Master degree.

11. On a careful perusal of Sections 19 and 20 of the Act, 1973 and rules made thereunder, there is no such condition that the candidates shall possess 50% of the marks in Post Graduate degree. Basing on the Tamil Nadu University Examination Rules, wherein it is contemplated that 50% of marks in each subject in master degree is necessary, the 4th respondent passed the impugned order.

12. In the considered opinion of this Court, provision of the Tamil Nadu recognized Private Schools (Regulations) Act, 1973



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and rules made thereunder are only applicable to the 5th respondent school and the qualifications prescribed under the said rules are only to be considered by the 4th respondent to consider the proposal sent by the 5th respondent. The opinion of this Court, is fortified by an order of a Division Bench of this Court in **the Director of School Education, Chennai – 6 and 2 others Vs. Geldon Wilfred Viola and another** reported in **2009 (2) TLNJ 101 (Civil)** while considering the issue of applicability of the provision of the Act, 1973 and rules made thereunder to the private schools. In this regard, this Court held as follows:

5. Mr.S.Rajasekar, learned Additional Government Pleader would however submit that inasmuch as G.O.Ms.No.720 Education Department, dated 28.04.1981 and G.O.Ms.No.361 Education Department, dated 31.12.1999 prescribe a minimum qualification for the said post viz., Bachelor's Degree as well as Post Graduate Degree in the subject, the teacher is not eligible, as she does not possess a Bachelor's Degree in History. In our opinion, the said submission ofcourse is made on the basis of the impugned order in the writ



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petition which is totally a misconception. A careful reading of those Government Orders would indicate that the qualifications prescribed thereunder are primarily intended for the appointment of teachers in the Government Schools. Nevertheless Government Order contemplates that the said qualifications are also applicable in respect of aided schools as well pending amendment to the relevant rules. It is well settled in law that the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and rules made thereunder are alone made applicable to the second respondent-School and the qualifications are prescribed under the rules framed in exercise of the powers conferred under Section 56 of the Act. Any prescription of the qualification by way of the Government Order without amendment to the rules cannot be given effect to bind the private schools and the appointments, conditions of service, qualification are all governed by the provisions of the Act and the rules made thereunder. The Government Order G.O.Ms.361 Education Department dated 31.12.1999 which is questioned though has been issued in exercise of the power under Article 309 of the Constitution of India, in our opinion,



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that would be made applicable only to the Government Servants viz., the teachers who are employed in the Government Schools and not to the teachers in private schools, as those teachers are governed only by the provisions of the Act and the rules made thereunder. In the given case, as the rules contemplate only a Master's Degree in the subject for appointment of a Junior Grade Post Graduate Assistant and does not mandate a Bachelor's Degree as well in the same subject. A teacher who has secured a Master's Degree in the subject would be entitled and is eligible for appointment to the post. The rejection of the request for approval to the said post is therefore erroneous, as it was done by following the Government Order G.O.Ms.361 Education Department, dated 31.12.2009.

13. In my opinion, the proposition of law laid down by the Division Bench of this Court in the judgment stated supra is squarely applicable to the issue raised in this Writ Petition. In view of the same, it has to be held that the order impugned in this Writ Petition is unsustainable under law and it is liable to be set aside.



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14. Accordingly, this Writ Petition is allowed with the following directions:

i) The order impugned in this Writ Petition in Na.Ka.No. 8338/A2/E1/2016 dated 30.11.2016 is set aside;

ii) The 4th respondent is directed to approve the appointment of the petitioner as Post Graduate Assistant (History) from 01.04.2011 to 30.11.2015 in the 5th respondent school forthwith and pay salary and other attendant benefits to the petitioner;

iii) The enquiry exercise shall be completed within a period of 6 weeks from today.

15. No costs.

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Index : Yes / No
NCC : Yes / No
CM



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To,

1. The Secretary,
State of Tamil Nadu
Department of School Education,
Fort St.George,
Chennai – 600 009.

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

3. The Chief Educational Officer,
Kanyakumari District.

4. The District Educational Officer,
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BATTU DEVANAND, J.

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