

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.1598 of 2018
and WMP.No.2008 of 2018

A.Jayapandian

... Petitioner

Vs.

1. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
2. The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.
3. The District Educational Officer,
Mayiladuthurai,
Nagapattinam District.
4. The Headmaster,
Annai Velankanni Matha Hr. Sec. School,
No.77, Peravur,
Kanchival 612 203,
Nagapattinam District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the third respondent in Na.Ka.No.3043/Aa2/2016, dated 10.10.2017 and to quash the same insofar as the date of granting approval of appointment as 22.02.2016 is concerned and consequently direct the respondents 1 to 3 to grant approval of appointment of the petitioner in the post of B.T. Assistant in 4th respondent School from the date of initial appointment on 02.01.2012 with consequential benefits including payment of salary from the date of initial appointment and other service benefits along with interest for the delay in payment, within a time frame to be fixed by this Court.

For Petitioner : Ms.M.Kaviya
for Mr.S.Nedunchezhiyan

For Respondents : Mr.M.Alagu Goutham
for RR1 to 3

ORDER

This Writ Petition is filed challenging the impugned order dated 10.10.2017 in Na.Ka.No.3043/Aa2/2016 passed by the third respondent and direct the respondents 1 to 3 to grant approval of appointment of the petitioner in the post of B.T. Assistant in 4th respondent School from the date of initial appointment on 02.01.2012 with all consequential benefits

including payment of salary from the date of initial appointment and other service benefits.

2. The case of the petitioner is that the fourth respondent School is a Government Aided Minority Educational Institution recognised under the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act. The fourth respondent School is an Aided School with reference to Standards 6, 7 and 8 and the Higher Standards viz., 9, 10, 11 and 12 are approved on Self Finance basis. With reference to the Aided Standards, viz., 6, 7 and 8, the School has been sanctioned with 3 posts of Secondary Grade Teachers. As per the orders of the Government, as and when vacancies arose to the post of Secondary Grade Teachers taking classes for Standards 6 to 8, the same would be upgraded as B.T. Assistant and it would be filled up with qualified person.

3. The vacancy to the post of B.T. Assistant in the fourth respondent School arose on 26.12.2011 due to appointment of incumbent Thiru.R.Kumar in the Government School. In the resultant vacancy, the petitioner was appointed as B.T. Assistant (History). As per the order of

appointment issued by the fourth respondent, dated 30th December 2011, the petitioner joined in the said post on 02.01.2012. From the date of appointment, he has been continuously working in the fourth respondent School as B.T. Assistant (History). After appointment of the petitioner, the fourth respondent has forwarded a proposal dated 29.05.2012 to the third respondent for approval of appointment of the petitioner. The said proposal was returned by the third respondent on 26.06.2012 stating that for approval of the petitioner, necessary permission to be obtained from the Department regarding subject roster as B.T. Assistant (History) instead of B.T. Assistant (Maths). The fourth respondent has forwarded the proposal to the third respondent on 28.08.2012 seeking permission to fill up the post of B.T. Assistant (History) by referring to the fact that there is a need for the post of B.T. Assistant (History) in the School for taking classes for Standards 6 to 8. Consequently, the third respondent has forwarded the proposal to the second respondent on 05.09.2012 for approval of subject roster. The second respondent has forwarded the proposal to the Joint Director of School Education (Secondary) on 31st January 2013. However, no further orders have been passed for granting approval of subject roster by the office of the first respondent thereafter.

4. Based on the repeated representations submitted by the fourth respondent, the third respondent again forwarded the proposal to the second respondent on 30th October 2015. After persistent efforts taken by the School Management as well as by the petitioner, the Joint Director of School Education (Secondary) issued orders on 22.02.2016 granting approval of subject roster as B.T. Assistant (History) in the vacancy arose on 26.12.2011. Accordingly, the subject approval for the post of B.T. Assistant has been granted for the vacancy arose on 26.12.2011. Subsequently, it was further represented to the third respondent to grant approval of appointment of the petitioner to the post of B.T. Assistant (History) from the date of initial appointment i.e., on 02.01.2012.

5. The said proposal forwarded by the fourth respondent dated 01.04.2016 was returned by the third respondent with an endorsement that the teacher appointed on 02.01.2012 should be qualified with passing of Teacher Eligibility Test (TET). The fourth respondent has again resubmitted the proposal on 26.08.2016 stating that passing of TET cannot be insisted in respect of appointment made in Minority Institution as per the orders

passed by the Hon'ble Apex Court in Pamati Educational Trust case as well as the orders passed by the High Court of Madras. Thereafter, the second respondent issued orders on 10.10.2017 granting approval of petitioner's appointment to the post of B.T. Assistant (History) in the fourth respondent School. But approval of appointment of the petitioner as B.T. Assistant was granted with effect from 22.02.2016, i.e., the date on which the subject approval was granted by the second respondent. Aggrieved by the action the second respondent granting approval of the petitioner's appointment, with effect from 22.02.2016, the present Writ Petition is filed.

6. The learned counsel for the petitioner would submit that when the petitioner was appointed in the post of B.T. Assistant (History) on 02.01.2012 in the sanctioned post and continuously working as such till date, his appointment was sought to be approved only with effect from 22.02.2016 by referring to the date of the order passed by the Joint Director of School Education granting subject approval and thereby depriving the service and salary for the period of service rendered by the petitioner from the date of initial appointment on 02.01.2012, which is illegal and arbitrary.

7. The learned counsel further submitted that as the petitioner's appointment was made in the sanctioned post within the sanctioned strength, the petitioner cannot be denied the salary and other emoluments from the date of initial appointment, i.e., on 02.01.2012. In support of his contention, the learned counsel for the petitioner relied on various orders passed by this Court.

8. On behalf of the respondents, the third respondent filed counter affidavit. It is averred in the said counter that originally in the fourth respondent School a vacancy to the post of B.T. Assistant (Maths) arose on 26.12.2011. The fourth respondent School forwarded the proposal on 29.05.2012 for granting approval of appointment of the petitioner as B.T. Assistant (History) in the post of B.T. Assistant (Maths). The same was returned by the third respondent on 26.06.2012 stating that the vacancy is for Maths, but the petitioner is having qualification of History.

9. It is averred in the counter that as per the Government Orders, there is no provision to change the said roster from Maths to History for Standards 6 to 8. But the fourth respondent School, again forwarded the

proposal to the Chief Educational Officer, Nagapattinam, through third respondent. The same was forwarded to the Director of School Education (Secondary), recommending to change the subject roster from Maths to History. Considering the same, the first respondent passed order on 22.02.2016 changing the subject roster from Maths to History. Thereafter, the third respondent has approved the appointment of the petitioner in the post of B.T. Assistant (History) and salary and other benefits also paid to the petitioner. It is also averred in the counter affidavit that as per the Government Orders, salary and other benefits have to be calculated from the period of appointment only. In the present case, subject roster has been changed by the first respondent on 22.02.2016 and the approval was granted with effect from that date.

10. The learned Government Advocate appearing for the respondents 1 to 3 submitted that as the change of subject roster was approved on 22.02.2016, the petitioner is entitled for appointment of approval with effect from the said date only, and the petitioner is not entitled for approval of appointment from the initial date of appointment.

11. This Court gave its anxious consideration to the arguments advanced by the respondent counsel and carefully perused the materials available on record. There is no dispute that originally there was a post of B.T. Assistant (Maths) in the fourth respondent School. A vacancy to the post of B.T. Assistant (Maths) arose on 26.12.2011 due to appointment of incumbent Thiru.R.Kumar in Government School. In the said vacancy, the petitioner was appointed as B.T. Assistant (History) on 30th December 2011 by the fourth respondent. The petitioner joined the said post on 02.01.2012. It is also not in dispute that the order of conversion was passed on 22.02.2016. Further, the fact remains that the petitioner has been working from 02.01.2012. The appointment was made by the fourth respondent in accordance with the Tamil Nadu Recognised Private Schools (Regulation) Rules 1974.

12. The only issue to be considered in this Writ Petition is that as to whether the order of the second respondent in granting approval of appointment of the petitioner as B.T. Assistant (History) in the fourth respondent School with effect from 22.02.2016, i.e., the date on which the subject approval was granted by the second respondent is in accordance with the settled preposition of law or not.

13. This Court on several occasions has considered similar issue and rendered consistent decisions and accordingly, the issue is no more *res integra*. As rightly contended by the learned counsel for the petitioner, approval has to be granted only from the date of appointment and not from the date of change of subject roster or from the date on which permission of conversion of the post was granted.

14. While dealing with an identical issue in ***C.Wilson Sundar Raj vs. Director of School Education, Chennai and others***, reported in 2012 3 MLJ 678, a learned Single Judge of this Court has held as follows:

"12. A Perusal of the judgments, which are relied on by the learned counsel for the petitioner support his case for seeking approval of the post of P.G.Assistant (English) from the date of appointment of the petitioner namely on 19.01.1999 and get the salary and other attendant benefits instead of 19.03.2002 being the date of the order passed by the 1st respondent permitting the conversion. Once the 1st respondent granted permission to convert the post from P.G.Assistant (Tamil) into P.G.Assistant (English) at the 4th respondent school, such permission should take effect from the date of appointment of the petitioner, especially when the request for conversion of the post was made by the school based on the appointment of the petitioner on 19.1.1999."

15. While dealing with the similar issue, a Division Bench of this Court in WA.(MD).No.828 of 2014 etc., batch of cases has held as follows:

“12.Contention by the appellants that the returned proposals were not challenged by the management and hence it has to be treated as accepted and hence the teachers have no right to question the same cannot be accepted. It has to be seen that ultimately, it is the teachers who are affected. Therefore, even if the management has not taken up the cause, the aggrieved teacher has every reason to question the returned proposals. The educational authorities ought to have considered that the very object of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules made thereunder are to protect the interests of the teachers and students. Therefore, right of the teacher cannot be said to be extinguished. Power of the educational authorities to issue directions to fill-up the posts on conversion cannot be questioned. At the same time, the schools should be given latitude to fill-up the required posts. If Maths and other subject teachers are already working in a school, the management should have the right to fill up the posts with other subjects, if there is a need for filling up the posts with the required subjects. ”

16. A similar issue was dealt with by this Court in WP.No.34238 of 2017, and by an order dated 27.06.2013, this Court held as follows:

“6. After considering the entire gamut of facts and law, the Hon'ble Division Bench of this Court concluded that the institutions being recognised as minority institutions were protected under Article 30(1) of the Constitution of India. Though the State may have power to regulate the minority educational institutions in the interest of 'Efficiency', 'Discipline', 'Health', 'Sanitation', 'Morality' and 'Public order', the same cannot extend over entire administrative control of the minority institutions over its staff and its right to establish unregistered educational institutions. The Hon'ble Division Bench of this Court agreed with the order of the learned Single Judge and held that no prior permission was required before converting the Secondary Grade post to B.T.Assistant post.

7. One another Hon'ble Division Bench of this Court in W.A.(MD).No.201 of 2020 dated 14.08.2020 had followed the consistent view taken by this Court and held that it is settled position of law that once the appointment is made to a sanctioned post, then, prior approval is not necessary. The said writ appeal was also at the instance of the State and it came to be dismissed.

8. *Per contra*, the learned Additional Government Pleader appearing for the respondents 1 to 4 would place reliance on the judgment in Rev.Aplc(MD).No.136 of 2022 in W.A.(MD).No.1115 of 2019 dated 06.6.2023 and submit that the recent view taken by the Hon'ble Division Bench of this Court should prevail and the review application was disposed of directing the management to fill up the vacancies in the teaching post only after getting prior permission from the Department and the petitioner's case cannot be accepted.

9. Considering the entire facts and circumstances, including the various pronouncements of this Court upto the recent pronouncement in Rev.Aplc(MD).No.136 of 2022 in W.A.(MD).No.1115 of 2019 dated 06.6.2023, the issue certainly is no longer *res integra*.

10. In view of the judgments relied on by the learned counsel for the petitioner, two of which are the Hon'ble Division Bench of this Court. However, the decision relied on by the learned Additional Government Pleader, appears to be taking a contrary view. However, at the same time, from the reading of the judgment of Hon'ble Division Bench rendered in Rev.Aplc(MD).No.136 of 2022 in W.A.(MD).No. 1115 of 2019 dated 06.6.2023, it is clear that a direction was given to the management to fill up the vacancies in teaching post only after getting prior permission from the Department and the right of the minority institution has also been discussed. However, at

the same time, none of the earlier judgments of this Court had been placed before the Hon'ble Division Bench and moreover a direction was given by the Hon'ble Division Bench in the review application, which appears to be only prospective while filling up the vacancies in teaching post. However, in the instant case the petitioner's appointment was made on 10.09.2012 and she has already attained the age of superannuation and she is before this Court only for getting her service benefits that she would be entitled. ”

17. A learned Single Judge of this Court in W.P.No.2251 of 2024 while dealing with identical issue held as follows:

“6. In view of the above, the impugned order dated 05.12.2023 in Na.Ka.No.4502/Aa3/2020 passed by the third respondent, is hereby quashed. Accordingly, this Writ Petition stands allowed. The third respondent is directed to approve the appointment of the petitioner as BT Assistant (History) in the fifth respondent School from initial date of appointment with effect from 12.09.2008 with all consequential and monetary benefits, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.”

18. Considering the above submissions and the judgments referred supra, in my considered view, the impugned order is unsustainable and

liable to be quashed.

19. For the aforesaid reasons, this Writ Petition is allowed with the following directions:

i) The impugned order in Na.Ka.No.3043/Aa2/2016, dated 10.10.2017 passed by the third respondent is hereby quashed.

ii) The third respondent is directed to approve the appointment of the petitioner as B.T. Assistant (History) in the fourth respondent School from the initial date of appointment i.e., on 02.01.2012 with all consequential and monetary benefits within a period of three months from the date of receipt of a copy of this order.

No costs.

Consequently, connected miscellaneous petition is closed.

19.03.2024

Speaking/Non-speaking order

Index : Yes/No
Internet : Yes/No
pvs

To

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DPI Campus, College Road,
Chennai 600 006.
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Nagapattinam District,
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