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W.A.No.3548 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN**

**Writ Appeal No.3548 of 2024
and C.M.P.Nos.27492 and 26208 of 2024**

The Correspondent
St.Josephs Higher Secondary School
Manjakuppam, Cuddalore-607 001.

... Appellant

Vs.

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

2.The Director of School Education
(Vocational), College Road
Chennai 600 006.

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

4.The Chief Educational Officer
Cuddalore District
Pennaiyar Road, Manjakuppam
Cuddalore - 607 001.

5.The District Educational Officer
Cuddalore Educational District
Pennaiyar Road, Manjakuppam
Cuddalore - 607 001.

.... Respondents



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Writ Appeal under Clause 15 of the Letters Patent against the order dated 12.10.2022 made in W.P.No.4005 of 2016.

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For Appellant : Ms.H.Mary Sowmi Rexi
for M/s.Isaac Chambers

For Respondents : Mr.U.M.Ravichandran
Special Government Pleader - for R1 to R5

J U D G M E N T

(Delivered by **R. SURESH KUMAR, J.**)

This intra Court appeal has been filed against the order of the Writ Court dated 12.10.2022 in W.P.No.4005 of 2016.

2. The appellant was the writ petitioner viz., The Correspondent, St.Josephs Higher Secondary School, Manjakuppam, Cuddalore. It is an aided recognized minority run educational institution. In 1979, when the higher secondary course was started at the petitioner / appellant school, a course called Electrical Motor Rewinding Unit (EMR), being a vocational course has been started, where 39 students in 11th Standard and 31 students in 12th standard were studying and a post of Vocational Instructor (EMR) was established. The staff fixation order was issued by the Chief Educational Officer (In short 'CEO'), Cuddalore by his proceedings dated 23.11.2001. The staff strength approval continued in the subsequent years ie., 2003-04. According to the appellant, even the said position continues now. When that being so, in the vacancy



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caused in the said position of Vocational Instructor (EMR), a teacher was appointed on 06.06.2001 by the School Management. Thereafter, a proposal had been sent to the educational authorities for approval, which has been rejected by order dated 02.03.2004 by relying upon a Government Order issued in this regard in G.O.Ms.No.991, Education Department dated 16.07.1990.

3. This rejection of approval has been challenged before the writ Court in W.P.No.4005 of 2016 and the said writ petition was dismissed by the order impugned dated 12.10.2022, wherein the writ Court has taken a view that since as per G.O.No.991 dated 16.07.1990 prior approval is required from the educational authorities for making an appointment of Vocational Instructor, and such an approval since has not been obtained by the school for the appointment made on 06.06.2001, the approval was rejected and therefore such a rejection order was to be sustained. The learned Judge dismissed the writ petition through the impugned order, against which the present appeal has been directed.

4. We have heard Ms.Mary Sowmi Rexi for the appellant and Mr.U.M.Ravichandran, learned Special Government Pleader for the respondents.

5. Insofar as the appointment of the teacher to the post of Vocational Instructor is concerned, that vacancy must have been sanctioned by the



educational authorities. For the said purpose, each and every academic year, such kind of staff fixation orders are being issued by the educational authorities. In this context, in respect of the appellant school, such a staff fixation order has been issued by the CEO on 23.11.2001 for the academic year 2001-02. Therefore, the post of Vocational Instructor since has already been sanctioned and has been continued for the current academic year also, where the position has become vacant, there was no impediment for the school authorities to appoint a person in the said vacancy caused on 06.06.2001. Moreover, such a position has been continuing in all successive years and every year such a staff fixation orders were passed by the CEO concerned, where the post of Vocational Instructor has been continuously sanctioned.

6. Insofar as the Government Order in G.O.Ms.No.991 dated 16.07.1990 referred to above for getting prior approval is concerned, such kind of prior approval, if at all insisted upon, it must be implemented only in respect of non-minority institutions as it is a settled proposition of law under Section 9 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, which provides exemption to minority institutions from getting approval for establishment and administration of the school. This legal position has been reiterated by a Constitution Bench judgment of the Hon'ble Supreme Court in **P.A.Inamdar -vs- State of Maharashtra [2006 (6) SCC 537]** and many other judgments. When that being the position, insisting of prior approval for making appointment



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in the sanctioned staff strength on the basis of G.O.No.991 dated 16.07.1990 is palpably wrong. Therefore, on that ground, the rejection order dated 02.03.2004 cannot be sustained.

7. However, the learned Judge has taken a view as if that the institution has to get prior permission for making such an appointment to the post of Vocational Instructor. That decision of the learned Judge would go against the settled legal proposition. Therefore, we have no hesitation to hold that the order impugned before the writ Court dated 02.03.2004 passed by the CEO, Cuddalore rejecting the appointment of Vocational Instructor is palpably wrong and therefore that order ought to have been interfered with and set aside by the writ Court. However, since the Writ Court has not considered the issue in the said perspective, in view of the legal proposition, we are inclined to interfere with the order impugned. Resultantly, the following orders are passed in this writ appeal:

- That the order dated 12.10.2022 made in W.P.No.4005 of 2016 by the Writ Court is set aside and the Writ Appeal is allowed.
- The respondents are directed to approve the appointment made in respect of the teacher concerned to the post of Vocational Instructor, on 06.06.2001 at the appellant School.



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- It is needless to mention that once the approval is granted, the Department can verify whether the teacher has been continuously working in the school for all these years and if so, the teacher would be entitled to get all service benefits including salary arrears.
- The aforesaid directions shall be complied with within a period of three months from the date of receipt of a copy of this judgment.

8. With the above directions, the Writ Appeal is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (C.S.N.,J.)
04.12.2024

NCS : Yes/No
Index : Yes/No
KST



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