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W.A.(MD)NO.353 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

W.A.(MD)No.353 of 2021 AND

C.M.P.(MD)No.1222 of 2021

1. The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
2. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
3. The District Educational Officer,
Thuckalay, Kanyakumari District. ... Appellants/ Respondents 1 to 3

Vs.

1. D.Albin ... 1st Respondent / Writ petitioner
2. The Correspondent,
St. Bernadette's Higher Secondary School,
Mangalakuntu – 629 178,
Kanyakumari District. ... 2nd Respondent / 4th Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 25.04.2019 passed in W.P.(MD)No.16096 of 2016.



For Appellants : Mr.V.Om Prakash,
Government Advocate.

For R-1 : Mr.S.C.Herold Singh,

For R-2 : Mr.K.Ragatheshkumar

* * *

J U D G M E N T

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard both sides.

2. The writ petitioner D.Albin was appointed as P.G.Assistant in Political Science by the management of the second respondent herein. The appointment was made on 01.04.2014. The proposal was submitted to the Department for approval. On 01.06.2016, the approval was declined. The reason set out in the order impugned in the writ petition is that the candidate did not have Political Science as his subject in the under graduation. It is seen that the petitioner had passed B.A.History and took M.A.Political Science. This is a case of cross major.



3. Challenging the rejection order dated 01.06.2016 seeking approval of appointment, the candidate filed W.P.(MD)No.16096 of 2016.

4. The learned Single Judge noted that the issue raised in the writ petition had been settled by the Hon'ble Division Bench in the decision reported in **2009 (2) TLNJ 101(Civil) (The Director of School Education, College Road, Chennai – 6 and others V. Geldon Wifred Viola and another)**. The Hon'ble Division Bench in the said decision had held as follows:-

“4. The question is whether the conditions of service could be made applicable to the second respondent School which is a minority institution: Even though the school in question is a minority institution, it cannot appoint a person to the post of teacher who is not possessing the required qualifications under the rules. Inasmuch as the teacher in question has obtained her Post Graduate Degree in History, the School is competent to appoint her as Junior Grade Post Graduate Assistant (History) by placing reliance on the rules made under Annexure V-A.

5. Mr. S. Rajasekar, learned Additional Government Pleader would however submit that inasmuch as G.O.Ms.No.720 Education Department, dated



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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 of course is made on the basis of the impugned order in the writ petition which is totally a misconception. A careful reading of those Government Orders would indicate that the qualifications prescribed there under 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 Recognized Private Schools (Regulation) Act, 1973 and rules made there under 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 there under. 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, 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 there under. 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.

6. In view of the above, we are of the considered view that the impugned order in the writ petition is unsustainable and accordingly the same is liable to be set aside as has been done in the writ petition.

7. In the result, the writ appeal is dismissed. The Director of the School Education is directed to accord approval of the appointment of the first respondent teacher - Ms. Geldon Wilfred Viola from the date of her appointment and provide all the benefits attached to the said post. No costs. ”



5. We are more than satisfied that the writ petition was rightly allowed. Interference is not warranted. This writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)

13th November 2024

NCC : Yes / No
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