



W.A.(MD).No.846 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.07.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.A.(MD).No.846 of 2018
and
C.M.P.(MD).No.5134 of 2018

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Secretariat,
Chennai – 9.
 - 2.The Director of School Education,
College Road,
Chennai.
 - 3.The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.
 - 4.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.
- ... Appellant/Respondents 1 to 4
- Vs.
- 1.D.Devaraj
- ... 1st Respondent/Writ Petitioner



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2.The Correspondent,
St.John Vianney's Girls High School,
Palliady,
Kanyakumari District.

... 2nd Respondent/5th Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order dated 27.02.2017 passed in W.P.(MD).No.5880 of 2016.

For Appellants	: Mr.D.Sadiq Raja Additional Government Pleader
For R-2	: Mr.K.Ragatheesh Kumar for M/s.Issac Chambers
For R-1	: No appearance

JUDGMENT

(Judgment of the Court was made by K.RAJASEKAR,J.)

This intra-Court appeal has been filed by the Government challenging the order passed in W.P.(MD).No.5880 of 2016 dated 27.02.2017, whereby, the learned Single Judge has directed to approve the appointment of the writ petitioner with effect from 13.12.2002 along with grant of monetary and service benefits and pay arrears.



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2. For the sake of convenience, the parties herein are referred to as per their rank in the Writ Petition.

3. The case of the writ petitioner is that he was originally appointed as Watchman on 13.12.2002 in the fifth respondent School in the vacancy, which arose on account of the resignation of one R.Paul Edward Joseph. The School has forwarded the proposal for approval of appointment of the writ petitioner to the first respondent, since it is mandatory under the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. The fourth respondent, who has received the proposal for approval, has not granted the same and kept the proposal pending on the ground that there was a ban in employment. After lifting the ban on 26.01.2006, the fourth respondent granted approval of appointment of the writ petitioner with effect from 07.02.2006, though the writ petitioner was eligible for appointment with effect from 13.12.2002. The Government has issued G.O.Ms.No.203 dated 23.07.2010, which mandated that certain categories of non-teaching staff like Junior Assistant, Librarian, Laboratory Assistant, Record Clerk and Office Assistants have to be approved from the date of appointment. The same is applicable to the writ petitioner also. Hence, he had approached this



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Court seeking Mandamus to direct the fourth respondent to regularise the services of the writ petitioner from the date of original appointment, i.e., 13.12.2002 and grant consequential benefits.

4. The learned Single Judge, after considering the case of the writ petitioner, by relying on the order passed by the learned Single Judge in ***Deva Asir Vs. The Secretary to Government, School Education Department, Chennai and others*** reported in ***2016-3-L.W. 152***, wherein, this Court has quashed G.O.Ms.No.115, School Education Department, dated 30.05.2007 and G.O.Ms.No.203, School Education Department, dated 23.07.2010, had disposed of the Writ Petition with a direction to the District Educational Officer to approve the appointment of the writ petitioner, if he is otherwise eligible with effect from 13.12.2002.

5. Aggrieved over the order passed by the learned Single Judge, the present Writ Appeal has been filed by the Education Department.

6. The learned Additional Government Pleader appearing for the appellants would submit that the writ petitioner was appointed and approval



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was granted prior to the issuance of two Government Orders, i.e., G.O.Ms.No.115 dated 30.05.2007 and G.O.Ms.No.203 dated 23.07.2010.

Hence, the same is not applicable to the case of the writ petitioner. The writ petitioner's appointment was approved on 07.02.2006 and after his retirement on 31.05.2015, he came forward with the Writ Petition seeking Mandamus, that too, without challenging the approval order passed by the District Educational Officer. He would further submit that the learned Single Judge has not considered the fact that the order of approval still sustains and the same has not been challenged till date and the writ petitioner has come forward with the Writ Petition after 10 years, that too, after his retirement. Hence, he is not eligible to claim any relief from this Court and thereby, the learned Additional Government Pleader prays to set aside the order of the learned Single Judge.

7. The first respondent/writ petitioner, inspite of service of notice, has not come forward to appear before this Court.

8. The learned counsel for the fifth respondent School would submit that the Government Order banning the appointment is not applicable to the



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non-teaching staffs and the Government Orders have also been quashed in *Deva Asir's* case cited supra. Hence, the delay in approval is not a ground from granting the relief to the writ petitioner.

9. Heard the learned Additional Government Pleader appearing for the appellants and the learned counsel for the second respondent.

10. Admittedly, the writ petitioner was appointed on 13.12.2002 and his application for approval was forwarded to the fourth respondent in the year 2003, but approval was not granted immediately. The approval of appointment was granted only on 07.02.2006 and after serving till 31.05.2015, the writ petitioner has come forward with the Writ Petition, that too, a writ of Mandamus seeking direction to the fourth respondent to regularise the service of the writ petitioner from the date of original appointment, i.e., from 13.12.2002 and consequential benefits. Since the order of approval, which was passed on 07.02.2006, is not yet challenged by the writ petitioner and also the writ petitioner has approached this Court belatedly nearly after ten years, this Court is of the view that granting relief to the writ petitioner at this stage without setting aside the order of approval



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is not proper and thereby, the order of the learned Single Judge is liable to be set aside.

11. Accordingly, the order passed by the learned Single Judge in W.P. (MD).No.5880 of 2016 dated 27.02.2017 is set aside and the Writ Appeal stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(A.D.J.C.,J.) (K.R.S.,J.)
08.07.2024

NCC : Yes / No
Index : Yes / No
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