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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

W.A.(MD)No.716 of 2022 AND

C.M.P.(MD)No.6039 of 2022

1. The Director of School Education,
College Road, Chennai – 6.

2. The Chief Educational Officer,
Nagercoil – 629 001,
Kanyakumari District.

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

... Appellants /Respondents

Vs.

The Correspondent,
L.M.S.Girls Higher Secondary School,
Marthandam,
Kanyakumari District.

... Respondent/ Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 24.08.2021 made in W.P.(MD)No.24891 of 2016 and allow the writ appeal.

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

For Respondent : Mr.K.Ragatheesh Kumar

* * *



J U D G M E N T

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

Heard both sides.

2. The management of L.M.S.Girls Higher Secondary School, Marthandam, Kanyakumari District appointed one C.Silvance as P.G.Assistant in Political Science with effect from 02.09.2014. Proposal was submitted to the District Educational Officer, Kuzhithurai on 22.04.2018 for approval. Approval was declined on the ground that it was a case of cross major.

3.It is true that Silvance passed B.A.History and thereafter, took M.A.Political Science. Questioning the stand of the Department, the management filed W.P.(MD)No.24891 of 2016. The writ petition was allowed vide order dated 24.08.2021 in the following terms:-

“10.The learned Senior Counsel for the petitioner relied upon the judgment of the Honourable Division Bench of this Court in the case of ***Director of Education Vs. Geldon Wilfred Viola and another, reported in 2009 (2) TLNJ 101 (Civil)***, wherein, the Honourable Division Bench of this Court considered the issue, whether an appointment to the post of



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Junior Grade Post Graduate Assistant in History could be rejected on the ground that the appointee did not possess the basic degree in the subject (Under Graduation) in terms of the G.O.Ms.No.720, Education Department, dated 28.04.1991 and G.O.Ms.No.361, Education Department, dated 31.12.1999. The relevant portion of the said judgment is extracted below:

“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 of course is made on the basis of the impugned order in the writ petition which is 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), 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.No. 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 rules made thereunder. In the given case, as the provisions of the Act 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 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 side as has been in the writ petition.”

...

18.Accordingly, this Writ Petition is allowed and the



impugned orders passed by the third respondent, dated 30.03.2016 and 29.06.2016 are quashed. At this juncture, the learned Counsel for the petitioner submitted that the approval of the Teacher has to be considered now by the second respondent and that therefore, the relief in the Writ Petition should be suitably moulded to give a direction to the second respondent instead of third respondent. Hence, the second respondent is directed to approve the appointment of C.Silvance, as P.G.Assistant in Political Science with effect from 02.09.2014 in the petitioner School and disburse the grant-in-aid. The entire exercise shall be undertaken by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.”

Challenging the same, the Department has filed this writ appeal.

4.It is true that the statutory rules have undergone a change. But during the relevant time, it was held that cross major cannot be a ground for denying approval of appointment. In fact, we had followed the decision of the Hon'ble Division Bench reported in **2009 (2) TLNJ (Civil) The Director of School Education, College Road, Chennai -6 and others V. Geldon Wifred Viola and another)** while disposing of W.A.(MD)No.353 of 2021 on 13.11.2024.



5.The case on hand is absolutely similar. No case has been made out to interfere with the impugned order. This writ appeal is dismissed.

No costs.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)
4th December 2024

NCC : Yes / No
Index : Yes / No
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R.POORNIMA, J.

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