



W.A.(MD)Nos.125 and 126 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2024

CORAM:

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
AND**

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)Nos.125 and 126 of 2017

and

C.M.P(MD)No.1248 to 1250 of 2017

S.Vijayakumari

.. Appellant on both cases

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government(Education),
Fort.St.George,
Chennai-9.

2. The Joint Director of School Education(Higher Secondary),
Chennai – 6.

3. The District Educational Officer,
Virudhunagar District.

4. Kshatriya Girls Higher Secondary School,
Virudhunagar Town and District Rep. by its Secretary.

5. The School Committee,
Kshatriya Girls Higher Secondary School,
Virudhunagar Town and District
Rep. by its Secretary.

.. Respondents
in both cases



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COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent to set aside the common order dated 23.01.2014 passed in W.P.(MD)Nos. 4492/2009 and 9366/2009.

In both cases:

For Appellant : Mr.S.Rajasekar

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader
for R1 to R3

: Mr.V.Meenakshisundaram
for R4

COMMON JUDGMENT

(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

These writ appeals are filing to set aside the order dated 23.01.2014 passed in W.P.(MD)Nos. 4492 of 2009 and 9366 of 2009.

2. The appellant/petitioner filed W.P.No.6492 of 2009 for directing the respondents 3 to 5 to appoint and approve the petitioner in the post of Post Graduate Assistant Teacher in English in the fourth respondent school which is vacant due to retirement with retrospective effect and with consequential



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benefits. W.P.No.9366 of 2009 came to be filed by the petitioner for Writ of Certiorari for setting aside the impugned order of the third respondent dated 26.06.2009.

3. The brief facts averred in the writ petitions are as follows:

The petitioner, possessing M.A. English and M.Ed. English, was appointed in the 4th respondent school in the post of Secondary Grade Teacher on 04.06.1990 in the retirement vacancy. It was also subsequently approved by the third respondent on 16.11.1990. While so, one Shanthini, who was P.G. Assistant Teacher in English, went on maternity leave and the fourth respondent herein temporarily promoted the petitioner as P.G. Assistant in the maternity leave vacancy and the same was subsequently approved by the third respondent in his proceedings, dated 17.10.1989. While so, one regular vacancy arose on 31.5.2006 due to retirement of one Tmt.E.Thilagavathy Paul as P.G. Assistant in English and the sixth respondent / Tmt.Mahalakshmi was appointed in the retirement vacancy on 31.05.2006 by the fourth respondent school. Challenging the same, the petitioner preferred an appeal. The second respondent / Joint Director of School Education (Higher Secondary), Chennai, disposed of the appeal by proceedings, dated 06.01.2009, in and under which the appointment



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of Tmt.Mahalakshmi was cancelled with a direction to the fourth respondent school to consider the petitioner for promotion to the post of P.G. Assistant Teacher in English. In the meanwhile, the Second Appeal Nos.1570 & 1571 of 2008 came to be disposed of on 18.12.2008, thereby the minority status of the institution was upheld and while doing so, the fourth respondent school was given liberty to approach the Government for obtaining appropriate relief. Accordingly, the issue relating to the appointment of 15 teaching and non teaching staffs in the fourth respondent school was taken up for consideration and G.O.Ms.No.132, dated 16.06.2009 came to be passed in and under which the appointment of 15 teaching and non teaching staffs was approved and the Director of School Education was directed to issue appropriate orders in this regard. The appointment of 6th respondent / Mahalakshmi in the retirement vacancy of Tmt.Thilakavathi Paul is also one of the appointments which is covered under G.O.Ms.No.132, dated 16.06.2009 and the same is followed by order, dated 26.06.2009, thereby granting the approval to 13 posts, one of which is the appointment of 6th respondent / Mahalakshmi. Aggrieved against the original appointment of the 6th respondent / Mahalakshmi in the retirement vacancy by the 4th respondent is W.P.(MD)No.4492 of 2009 and aggrieved against the latest order of approval of appointment of the 6th respondent in the



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same vacancy is W.P.(MD)No.9366 of 2009 by the same petitioner.

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4. The learned Single Judge observed as follows:

It is not in dispute that the petitioner during the pendency of these two writ petitions retired on 31.5.2010. As rightly argued by the learned counsel for the respondents, the retirement of the petitioner will render the relief sought for herein as infructuous. Even otherwise, the petitioner, while challenging the impugned order, dated 26.06.2009, omitted to challenge G.O.Ms.No.132, dated 16.06.2009, which is the original order based on which the order impugned herein came to be passed. The Secretary to Government being the ultimate authority for approval of the appointments, G.O.Ms.132, School Education (X-2) Department, dated 16.06.2009, prevailed over the order of the second respondent in setting aside the appointment of the 6th respondent / Mahalakshmi in the retirement vacancy of Tmt.Thilagavathi Paul. Thus, there is absolutely no legal ground made out for the petitioner to claim right of promotion to the post of P.G. Assistant. Further, as the minority status of the institution is already upheld and the institution is already granted the benefit under the relevant provisions of law which deals with the appointment on the basis of the merit and efficiency, the question of considering the



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petitioner's case does not arise herein. Hence, the learned Single Judge dismissed the writ petitions by holding that the petitioner is not entitled to claim any right for promotion to the post of P.G. Assistant in view of the subsequent development. Aggrieved by the same, the present writ appeal has been filed by the appellant.

5. The learned counsel for the appellant submitted that the minority status of the respondent School has been set aside by the order of this Court dated 18.12.2008 and in view of hte same, it is needless to challenge the G.O.Ms.No.132 dated 16.06.2009 in which relaxation was given by the Education Department. It is well settled principle of law that Statute prevails over the Government Orders and in view of the same, the Rule 15(4) of the Tamil Nadu Recognised Private School Regulation Act prevails over the G.O.Ms.No.132 dated 16.06.2009 and the said Government Order soas to providing relaxation to the 6th respondent is invalid in the eye of law since the appellant has claimed her right to be promoted as per the Statue right from the date of arisen of vacancy. But the same was not considered by the learned Single Judge. Hence, after the retirement of the appellant, still she is knocking the doors of this Court for her remedy.



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6. The learned counsel for the 6th respondent/Mahalakshmi would submit that the entire scenario is not established by the appellant, ie., the Second Appeal Nos.1570 & 1571 of 2008 came to be disposed of on 18.12.2008, thereby the minority status of the institution was upheld and while doing so, the fourth respondent school was given liberty to approach the Government for obtaining appropriate relief. Accordingly, the issue relating to the appointment of 15 teaching and non teaching staffs in the fourth respondent school was taken up for consideration and G.O.Ms.No.132, School Education (X2) Department, dated 16.06.2009 came to be passed in and under which the appointment of 15 teaching and non teaching staffs was approved and the Director of School Education was directed to issue appropriate orders in this regard. The appointment of 6th respondent / Mahalakshmi in the retirement vacancy of Tmt.Thilakavathi Paul is also one of the appointments which is covered under G.O.Ms.No.132, dated 16.06.2009 and the same is followed by order, dated 26.06.2009, thereby granting the approval to 13 posts, one of which is the appointment of 6th respondent / Mahalakshmi. Even otherwise, the petitioner, while challenging the impugned order, dated 26.06.2009, omitted to challenge G.O.Ms.No.132, dated 16.06.2009, which is the original order based



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on which the order impugned herein came to be passed. The Secretary to Government being the ultimate authority for approval of the appointments, G.O.Ms.132, School Education (X-2) Department, dated 16.06.2009, prevailed over the order of the second respondent in setting aside the appointment of the 6th respondent / Mahalakshmi in the retirement vacancy of Tmt.Thilagavathi Paul. Thus, there is absolutely no legal ground made out for the petitioner to claim right of promotion to the post of P.G. Assistant. Hence, he prays for dismissal of these writ appeals.

7. Considering the facts and circumstances, this Court is of the considered view that already appropriate orders have been passed by this Court and the appellant was also retired on attaining superannuation on 31.05.2010 and hence, the prayer become infructuous. Secondly, the appellant challenged the impugned order, dated 26.06.2009, but omitted to challenge G.O.Ms.No. 132, dated 16.06.2009, which is the original order based on which the order impugned herein came to be passed. The Government is the appropriate authority to take appropriate decision of the appointment as observed in the judgment dated 18.12.2008 passed in the above Second Appeals, wherein the learned Single Judge clearly observed that the Government is the authority for



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regularising the teachers who were appointed for the period from 02.03.1995 to 02.06.2004. The State had passed an order in G.O.Ms.No.160 School Education (X2) Department, dated 06.07.2007 granting the benefit of exemption from the provisions of Rules 15(7), 15(8) and 15(4) of the Tamil Nadu Recognised Private Schools (Regulations) Rules, 1974. But, however, it was made known that such exemption will be available only from the date of the order passed by the Government in G.O.Ms.No.160 School Education (X2) Department dated 06.07.2007. Hence, that order will take care of the problem to be faced by the management. Thereafter the School Management approached the Government for appropriate orders, in consequence, G.O.Ms.No.132, dated 16.06.2009 came to be passed in and under which the appointment of 15 teaching and non teaching staffs was approved and the Director of School Education was directed to issue appropriate orders in this regard. The appointment of 6th respondent / Mahalakshmi in the retirement vacancy of Tmt.Thilakavathi Paul is also one of the appointments which is covered under G.O.Ms.No.132, dated 16.06.2009 and the same is followed by order, dated 26.06.2009, thereby granting the approval to 13 posts, one of which is the appointment of 6th respondent / Mahalakshmi. Hence, the appellant has nothing to do with the said appointment since the appellant was originally



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appointed as Secondary Grade Teacher on 04.06.1990 in the retirement vacancy and while one P.G. Assistant Teacher in English, went on maternity leave and the fourth respondent herein temporarily promoted the petitioner as P.G. Assistant in the maternity leave vacancy and the same was subsequently approved by the third respondent in his proceedings, dated 17.10.1989. But when a regular vacancy arose on 31.5.2006 due to retirement of one Tmt.E.Thilagavathy Paul as P.G. Assistant in English and the sixth respondent / Tmt.Mahalakshmi was originally appointed on 02.08.1995 and was appointed permanently in the retirement vacancy on 31.05.2006 by the fourth respondent school. The appellant has not shown any other material that she was appointed as permanent in the post of P.G. Assistant in English. Hence, these appeals have no merits and accordingly liable to be dismissed.

8. In view of the above, these Writ Appeals stand dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

[V.B.S.,J.] [K.K.R.K.,J.]
05.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
PJJ



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