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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:23.04.2019
CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.4549 of 2017
and
W.M.P.(MD)Nos.3641 and 3642 of 2017

The Correspondent,
St.Antony's Higher Secondary School,
Kanyakumari-629 702,
Kanyakumari District. ... Petitioner

vs.

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

2.The Director of School Education,
College Road, Chennai-600 006.

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

4.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

5.The District Educational Officer,
Nagercoil, Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the fifth respondent District Educational officer, in O.Mu.No. 4805/A3/2016 dated 06.09.2016 (denying approval to the appointment of B.Arasu Vaz as Vocational Instructor) quash the same and further Direct the fifth respondent District Educational officer herein to approve forthwith the appointment of B.Arasu Vaz as vocational instructor in Accountancy and Auditing in petitioner's school w.e.f.the date of appointment viz. 01.06.2016 with salary and all attendant benefits.

For Petitioner : Mr.T.Cibi Chakraborthy

For Respondents : Mrs.S.Srimathy
Special Government Pleader

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ORDER

The Writ Petition is filed seeking to quash the impugned proceedings issued by the fifth respondent in O.Mu.No. 4805/A3/2016, dated 06.09.2016 (denying approval to the appointment of B.Arasu Vaz Vocational Instructor) and further direct the fifth respondent to approve forthwith the appointment of B.Arasu Vaz as vocational instructor in Accountancy and Auditing in petitioner's school w.e.f. the date of appointment viz. 01.06.2016 with salary and all attendant benefits.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. The learned counsel appearing for the petitioner submitted that the issue involved in the present Writ Petition is squarely covered by the earlier Judgment of this Court in ***The State of Tamil Nadu and others Vs. The Secretary/Correspondent [W.A(MD)No.1494 of 2017, decided on 01.03.2018]***, and prayed for allowing the Writ Petition on the similar lines.

4.The learned Special Government Pleader appearing for the respondents is not disputing the same and submitted that the Government has also issued G.O(Ms)No.142, School Education (SE7-1) Department, dated 13.07.2018.

5.It is useful to refer to the relevant portions of the Judgment of this Court in ***The State of Tamil Nadu and others Vs. The Secretary/Correspondent [W.A(MD)No.1494 of 2017, decided on 01.03.2018]***, hereunder:-

> *"7.After elaborate and careful perusal of the materials on record, we find from the staff fixation year 2013-14, dated 29.10.2017 as on 01.08.2013 there was one post of Vocational Instructor for the subject General Mechanist and on the date when Thiru.R.Kannan was appointed, ie., 10.06.2013, the School had one post of Vocational Instructor and therefore, to state that the appointment itself is not sustainable is a stand which has to be rejected.*
>
> *8.Next we come to staff fixation done by the Department for the year 2014 vide order, dated 07.11.2014. It is interesting to note that in the said order, the appellant department records the fact that there are 46 students in the 11th standard and 39 students in the 12th standard inspite of the same stated in the fixation order that one post is surplus. In our considered view, the Department cannot take such a technical plea. When it is admitted fact there exists sufficient students strength, the course has to continue. Thus, the order of the fifth respondent showing one post of*

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Vocational Instructor as surplus, he has virtually closed down the said course as there would be no teacher. We cannot lose sight of the fact when there is full students strength and course is in demand, the Department cannot take such a stand and render one post as surplus. In the Government Order in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997, in paragraph No.IV, the number of post eligible for Higher Secondary School is mentioned in the clause (d) of the said order which states that for vocational stream, two posts of teachers (full time) will be sanctioned irrespective of the number of courses. Therefore, even while passing the order, dated 29.10.2013 and fixing the staff strength for the year 2013-14, the respondent/Management was entitled to two post of Vocational Instructor. Thus, we find the reason for rejection of approval of the Vocational Instructor, Thiru.R.Kannan as well as staff fixation for the year 2014-2015 is completely flawed.

9.In the result, we dismiss the Writ Appeal for the reasons stated above and issue the following directions:-

(i) The respondents 4 and 5 shall approve the appointment of Thiru.R.Kannan, Vocational Instructor, which appointment was made on 10.06.2013, as the post was very much available in terms of staff fixation order, dated 29.10.2013.

(ii) Insofar the Academic Year 2014-2015 is concerned, the respondents 4 and 5 are directed to take note of the factual aspects which is admitted in the fixation order itself, namely, students strength and sanction one post with effect from the year 2014-2015 onwards in the category Vocational Instructor and the petitioner is entitled to be paid salary in the said post.

10.The above direction should be complied with within a period of twelve weeks from the date of receipt of copy of this order. Accordingly, the Writ Appeal fails and stands dismissed."

6.Following the same, the Writ Petition is disposed of on the similar lines. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Crl.side)

/ True Copy /

Sub Assistant Registrar(CS-)

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To

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

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2.The Director of School Education,
College Road, Chennai-600 006.

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

4.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

5.The District Educational Officer,
Nagercoil, Kanyakumari District.

+1 CC to M/s.ISAAC CHAMBERS, Advocate
(SR-62246[F] dated 24/04/2019)

+1 CC to M/s.SPL GP (SR-62724[F] dated 25/04/2019)

W.P(MD)No.4549 of 2017
23.04.2019

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