
(2013) 08 MAD CK 0280

In the Madras High Court

Case No : Writ Petition No. 46673 of 2002 and W.P.M.P. No. 67831 of 2002

B. Bhuvaneswari

APPELLANT

Vs

The Director of Elementary Education, The District
Elementary Educational Officer, The Assistant Additional
Elementary Educational Officer and The Secretary/
Correspondent, Sri Kumaragurubara Swamigal Middle School

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Constitution of India, 1950 — Article 26, 30(1)

Citation : (2014) LabIC 589 : (2013) 4 LLN 288 : (2013) 7 MLJ 427 : (2013) 6 MLJ 274

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : R. Mahalakshmi and K. Sathish Kumar, for the Appellant; R. Lakshminarayanan, Government Advocate for R-1 to R-3, Mr. K. Vijayakumar and S. Amutha for R-4, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:-- The writ petitioner submits that she passed Plus Two examination in March 1991 and Diploma in Teacher Education course in July 1997. The petitioner was appointed as a Secondary Grade Teacher in a leave vacancy from 19.07.1999 to 16.10.1999 in National Aided Primary School, Naluvadhpathi West, near Vedaranyam and the appointment was approved for the said leave vacancy post that in the fourth respondent's school, a teacher vacancy arose due to retirement of one Secondary Grade Teacher, viz., Soundaram from 01.06.1999 and she applied for the said post and was appointed as Secondary Grade Teacher from 10.01.2000. The petitioner joined in service as Secondary Grade Teacher in the fourth respondent's school on the very same day and the said post was a permanently sanctioned post from 10.01.2000. The fourth respondent's school is one of the schools established and administered by the Kasi Mutt which is declared a

minority education institution by the Sub Court, Kumbakonam in a declaration suit in O.S. No. 18 of 1985. Against the said declaration and decree, an appeal suit has been filed in A.S. No. 62 of 1986, on the file of District Court, Thanjavur and the said appeal suit has been dismissed and the trial Court judgment was confirmed. Further, this Court held that the school run by the Kasi mutt is also a minority institution and no separate declaration is required to be obtained for Schools run by the Kasi Mutt. Further, the fourth respondent-school is categorized as a religious minority institution and therefore, no employment exchange sponsorship is necessary and no communal reservation is to be followed by the Management.

The petitioner was appointed by the fourth respondent/correspondent in exercise of its minority rights under Article 26 and 30(1) of the Constitution of India. The petitioner is fully qualified for being appointed as a Secondary Grade Teacher in the fourth respondent-management. It is further submitted that on 22.01.2000, the fourth respondent-management submitted proposals for approval to the second respondent, viz., the District Elementary Educational Officer, Thanjavur District along with all the required particulars including the judgment of this Court passed in W.P. No. 19419 of 1990. The request was submitted through the third respondent and the third respondent did not forward the said proposals to the second respondent even after the expiry of several months. The said proposal was written by the third respondent through his proceedings in O.M. No. 123/A2/2000, dated 31.08.2001, by stating that the appointment is made without following communal rotation and the issue of whether or not the fourth respondent-school can be treated as non-minority school or minority school is to be clarified by the first respondent and the clarification to that effect was sought from the first respondent i.e. the Director of Elementary Education, College Road, Chennai. It is further submitted that the fourth respondent after the said order of the third respondent, dated 31.08.2001, submitted a detailed representation on 03.10.2001 and pointed out that the fourth respondent-school is already declared as a minority school which is accepted by the Educational Department and therefore, a communal roster need not be followed and consequently requested the second respondent to approve the appointment of the petitioner and the said request was submitted through the third respondent. The copy of the said representation was submitted to the second respondent. The Management also submitted a representation to the first respondent on 28.12.2000 and explained the position and requested him to issue suitable direction to the second respondent to approve the petitioner's appointment and a reminder was also sent to the first respondent on 30.06.2001 and in spite of the same, no action was taken by the first respondent and consequently, the third respondent in his proceedings O.M. No. 2006/A2/2001, dated 24.10.2001 stated that he has requested the clarification from the second respondent and returned the proposals for the approval of the petitioner's appointment. The above narrated fact clearly reveals that the respondents 1 to 3 are not taking any action for the approval of the petitioner's appointment in spite of the same

being furnished by the fourth respondent as early as on 22.01.2000 and therefore, the petitioner was unable to receive her salary even though she is appointed in a sanctioned and approved post, fully qualified for being appointed as a secondary grade teacher in the fourth respondent's educational institution.

2. It is submitted that since the petitioner could not receive her salary pursuant to the order of the third respondent dated 24.10.2001, the same was challenged in W.P. No. 6533 of 2002, on various grounds including the declaration given by the Sub Court, Kumbakonam and District Court, Thanjavur to the fourth respondent as a minority institution and the judgment of this Court, reported in The Correspondent, St. Ignatius Higher Secondary School, Kurumbanai-629 251, Kanyakumari District and others Vs. Director of School Education, College Road, Chennai 6 and others, , The Secretary, D.G. Vaishnav College, Arumbakkam, Chennai-600 106 and Another Vs. T. Venkataraman Reader and Head, Post Graduate and Research, Dept. of Chemistry, D.G. Vaishnav College, Chennai-106 and Others . This Court taking note of the said decision by order dated 28.02.2002 directed the second respondent to follow the said judgment and pass orders on merits based on the representation dated 28.12.2000 followed by the reminder dated 30.06.2001 within a period of four weeks. The second respondent has chosen to pass order on 07.05.2002, without considering the direction contained in the judgment and therefore, the petitioner issued a legal notice and called upon the second respondent to pass orders in accordance with the directions issued.

3. It is further stated that the third respondent again through his proceedings dated 25.06.2002 passed erroneous order without considering the above mentioned judgment and rejected the claim. Hence, a contempt petition No. 541 of 2002 was filed and this Court taking serious note of the order, directed the second respondent to withdraw the above order dated 25.06.2002 and pass fresh order within four weeks by its order dated 06.11.2002, and the second respondent called upon the petitioner and the management to appear for an enquiry on 28.11.2002 and the same was adjourned to 18.12.2002. The petitioner, fourth respondent and Headmaster of the School appeared before the second respondent and gave a joint statement explaining in detail the declaration of minority status of the fourth respondent which was accepted by this Court in W.P. No. 19419 of 1990, dated 03.09.1991 and the judgment of this Court reported in The Secretary, D.G. Vaishnav College, Arumbakkam, Chennai-600 106 and Another Vs. T. Venkataraman Reader and Head, Post Graduate and Research, Dept. of Chemistry, D.G. Vaishnav College, Chennai-106 and Others and the acceptance of the minority character of the institutions by the Division Bench of this Court. The said minority status was also accepted by the Collegiate Education and the Department of School Education. The petitioner also pointed out that similar Denominational Minority institution viz., Thiruvavaduthurai Adheenam Middle School is even now treated as Denominational Minority school based on the civil Court judgment and appointments made in this school is approved by the very same second respondent with reference to any

Government order for treating the institutions as minority institution and approved the educational institution's appointment of one Satya Priya, even though she was not sponsored, through Employment Exchange through its order in M.M. No. 2751/A4/2001, dated 11.06.2001.

4. The writ petitioner further stated that the second respondent only to reiterate his earlier stand has chosen to ignore all the above legal position and rejected the request for approval on the very same erroneous ground that the fourth respondent cannot be treated as a minority school and therefore, the appointment of petitioner without reference to the Employment Exchange Sponsorship and communal roster cannot be approved. The said order was passed by the second respondent/the District Elementary Educational Officer, Thanjavur District, in his proceedings Na.Ka. No. 1624/A3/2001, dated 23.12.2002. Therefore, the petitioner is unable to receive her salary even though she is working in the fourth respondent's school in a sanctioned post from 10.01.2000. Hence, the writ petitioner filed this petition to quash the second respondent's impugned order.

5. The second respondent, viz., District Elementary Educational Officer, Thanjavur District, has filed a counter affidavit and resisted the writ petition. The respondent stated that in the fourth respondent's school, a Secondary Grade Teacher vacancy arose due to the retirement of a Secondary Grade Teacher, viz., Soundaram from 01.06.1999. The petitioner applied for the said post and was appointed as Secondary Grade Teacher by the fourth respondent from 10.01.2000 without following the procedures of Education Department, such as:--

a) Employment Exchange particulars

b) Communal rotation as per G.O.Ms. No. 280 P & A.R. Department, dated 13.08.1992.

It was submitted that the fourth respondent sent a proposal to the second respondent and requested to approve the appointment of the petitioner.

6. The second respondent further submits that they had refused to approve the appointment for the following reasons:--

(a) The Secretary of Sr. Kumaragurupara Swamikal Middle School, Thiruppanandal a non-minority institution has appointed the petitioner without following the procedure of calling for the list of candidates from the Employment Exchange and the rule of reservation applicable to non-minority education institution.

(b) It seems that the management has appointed the petitioner herein as Secondary Grade Teacher treating itself as a Minority Institution without seeking prior permission to the competent authority to make such appointment. In view of the fact that the institution in which the petitioner was appointed is not a minority one, and a procedure for appointment has not been followed by the management, certain clarifications were sought for from the Director of

Elementary Education in regard to the approval of the appointment of the petitioner. In the circumstances stated above, approval of appointment of the petitioner was pending till date.

7. The second respondent further submits that the petitioner has filed a writ petition before this Court in W.P. No. 6533 of 2002. The following direction was given by this Court in W.P. No. 6533 of 2002 and W.P.M.P. No. 9014 of 2002, dated 28.02.2002,

I do not propose to go into the merits of the contentions raised by the petitioner. It is sufficient to point out that on the same context the petitioner has forwarded a representation to the fourth respondent on 28.12.2000 and a reminder on 30.06.2001. Hence, it is sufficient to direct the second respondent to dispose of the said representation in accordance with law and on merits after giving a hearing to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No costs. Consequently W.P.M.P. No. 9014 of 2002 is closed.

8. The respondent further submits that as per the directions given by the Court, the petitioner was called for by the second respondent and explained the rules and regulations for the approval of appointment. Finally, the second respondent was not in a position to approve the appointment as per the Rules and the order was passed in R.C. No. 1624/A3/2001 dated 07.05.2002.

9. The respondent further submits that again the petitioner has approached this Court in W.P.M.P. No. 67831 of 2002 in W.P. No. 46673 of 2002, with prayer to issue a writ of certiorarified mandamus calling for the records relating to the second respondent passed in his proceedings Na.Ka. No. 1624/A3/2001, dated 23.12.2002 to quash the same and consequently direct the second respondent to approve the appointment of the petitioner as Secondary Grade Teacher of the fourth respondent school from 10.01.2000 with salary and all other benefits forthwith and thus render justice. This Court passed an order of notice and interim injunction on 31.12.2002.

10. The respondent further submits that the fourth respondent's school is a minority one, it is not necessary to get any permission from the District Elementary Educational Officer, Thanjavur to fill up the vacant post of Tmt. V. Soundaran who was retired on 31.05.1999. But the fourth respondent sought permission from the District Elementary Educational Officer, Thanjavur and the permission was granted in L.Dis. No. 5858/A4/99 dated 19.11.1999 of the District Elementary Educational Officer, Thanjavur to fill up the above said vacancy. This shows that the fourth respondent himself had agreed that the institution was a non-minority one. As such, the fourth respondent should have followed the roster system with the number call from Employment Exchange. But, this has not been followed as per procedure stipulated in L.Dis. No. 5858/A4/99 dated 19.11.1999.

11. The respondent further submits that in the Government orders (1) G.O.Ms. No. 270, Hr.Edn.(J1) Dept., dated 17.06.1998 (2) G.O. No. 375, School Education, dated 12.10.1998 it has been clearly stated that:--

(v) To decide whether an applicant (institution) is a minority or not based on religion or language, the total population of that minority people in the State of Tamil Nadu shall be taken into consideration and not the population of that minority in any particular region where the educational institution is situated.

(vi) In so far Tamilnadu state is concerned, any person whose mother tongue is any language other than tamil, shall be considered as linguistic minority in the state and in respect of religious minority, any person whose religion is other than Hinduism shall be considered as a religious minority in the State.

12. The respondent further submits that he is having highest regards for the orders of this Court. The proposal for approving the appointment of the petitioner was still pending with this respondent for the reason that the appointment was irregular and it was done without following the procedure for non-minority institution. The respondent further submits that on the basis of the Government orders cited above, it is evident that the fourth respondent's school is not a minority one. The appointment of the petitioner is not in order. The petitioner herein is entitled to claim salary from the Government Grant only after approval of her appointment. In view of the irregularity committed in the appointment of the petitioner, the same has not been approved. Once the appointment of the petitioner is not approved, the petitioner cannot have a right of claim against the Government for the salary. The liability of paying the salary to a teacher whose appointment is not approved for any irregularity, lies with the management. In pursuance of the directions issued by this Court, the matter was considered on merits with all relevant records including the representation of the petitioner and an enquiry was also conducted on 18.12.2002. After hearing the petitioner as well as the Secretary and Headmaster of the fourth respondent-institution, a detailed order was passed in R.C. No. 1624/A4/2001, dated 23.12.2002, rejecting the claim of the petitioner stating that her appointment order is not in order with Rules and Regulations of Tamilnadu Recognized Private Schools Act, 1973. Under the circumstances, the second respondent prayed that this Court may be pleased to vacate the interim injunction granted on 31.12.2002 in W.P.M.P. No. 67831 of 2002 in W.P. No. 46673 of 2002, as the petitioner has not made out any prima-facie case for the grant of any interim order and thus render justice.

13. The learned counsel for the petitioner argued that the fourth respondent's educational institution had been declared as minority educational institution by the Sub Court, Kumbakonam in O.S. No. 18 of 1985 and the same has been confirmed by the District Court, Thanjavur and also affirmed by this Court in writ proceedings in W.P. No. 14914 of 1990. The judicial findings is existing and operating over the fourth respondent's school. As such, the fourth respondent's educational institution is classified as minority institution. The same has been

pointed out before the respondents. Even then, they have not considered the said judicial order. In support of her case, the highly competent counsel has cited the judgment reported in The Secretary, D.G. Vaishnav College, Arumbakkam, Chennai-600 106 and Another Vs. T. Venkataraman Reader and Head, Post Graduate and Research, Dept. of Chemistry, D.G. Vaishnav College, Chennai-106 and Others

Educational Institution - Minority Status - Civil Court granting minority status - Decree of Civil Court granting minority status became final -Government have been party and suffering decree and allowing it to be final ? Bound by such decree unless there is specific legislation provided such legislation is not affront to decree granted by Judicial Authority.

The learned counsel for the petitioner also cited another judgment in support of her case, viz., (W.P. No. 16151 of 1993, dated 12.11.2002)

25. Learned single judge in the judgment under appeal dismissed the writ petition on the ground that the impugned order is not inconsistent with the Rules as they are supplement to the Rules. While Rule 15(4)(i) and 15(4)(ii) of "the School Rules" enable the School Committee to follow a particular mode of recruitment, including promotion and by direct recruitment, by the impugned proceedings the very right of the School Committee to select the best of the candidates in the manner prescribed under the Rule is taken away. Hence, the impugned proceedings cannot be considered as of supplementing the Rules. For the above reasons, we are unable to agree with the findings of the learned Single Judge. Accordingly, the order of the learned single judge is set-aside.

14. The learned counsel for the petitioner further submits that the petitioner is working in the fourth respondent's school without salary from 10.01.2000 and she is a qualified teaching staff. The very competent counsel further contended that this Court granted interim injunction in favour of the petitioner after it was found that a prima-facie case has been made out.

15. The very competent counsel for the respondents 1 to 3 argued that the fourth respondent's educational institution does not come under the classification of minority institution as per Article 30(1) of the Constitution since the educational institution is functioning in the Tamilnadu jurisdiction and administering in tamil language in the said institution and therefore, it is not covered under linguistic minority as well as religious minority since the institution belongs to Hindus. Further, the fourth respondent has not followed the communal roster as per the Government order in Go.M.S. No. 280 P & A.R. Department, dated 13.08.1992, which is operating across the State. The fourth respondent has no power to appoint any teaching or non-teaching staff in their institution directly. All the modes of appointment is only through employment exchange. Further, the impugned order has been passed after well considering the Constitutional law, Article 30(1) and Civil Court judgment and G.O.Ms. No. 280 P & A.R. Department, dated 13.08.1992. Therefore, the impugned order is fit to be

proceeded with. Hence, the very competent counsel for the State entreats the Court to dismiss the writ petition.

16. The highly competent counsel for the fourth respondent contended that as per this Court's Division Bench judgment, the civil Court's judgment is maintainable as regards decision of minority status. As such, the fourth respondent got a declaration before the Sub Court, Kumbakonam that their institution is a minority educational institution and the same has been confirmed by the District Court, Thanjavur. The judgment would bind over the respondent also. The petitioner is a qualified teacher and she is teaching in the sanctioned post, without any remarks. Her service has been availed by the students for the past 13 years. If the petitioner's appointment is approved by the respondents 1 to 3, they would not be prejudiced since the post is recognized as "sanctioned post".

17. From the above discussion, this Court is of the view that:--

(i) the fourth respondent's educational institution is not coming under the religious minority or linguistic minority as per the Article 30(1) of the Constitution of India since the fourth respondent's school administering the teaching of tamil language and also belongs to the Hindu religion. Therefore, the fourth respondent has to seek prior approval for appointment of the petitioner as a secondary grade teacher of the fourth respondent institution.

(ii) The fourth respondent should follow the roster system with a number call from the Employment Exchange, but this has not been followed as per procedure stipulated in L.Dis. No. 5858/A4/99 dated 19.11.1999, which is existing.

(iii) However, the fourth respondent appointed the petitioner in the sanctioned post from 10.01.2000 and she is also working in the same post as a secondary grade teacher and she is possessing the required educational qualifications and as such, she is an appropriate candidate for the teaching post.

(iv) Though the communal roster system was not followed, it is seen that the petitioner is working for over 12 years and hence, in such a situation, it would cause unethical practice to have her removed. However, in the future this lacuna may be corrected. Besides this, it is seen that the petitioner is now aged about 40 years and has perhaps crossed the threshold of opportunity to start afresh. This Court had granted interim injunction in W.P.M.P. No. 67831 of 2002 in W.P. No. 46673 of 2002, i.e., in the instant case on 31.12.2002 and as such, the petitioner has enjoyed the judicial order for the past around 11 years. Under the circumstances, if this Court should pass any adverse order, it would cause sheer injustice to the writ petitioner. At the same time if the writ petition is allowed, then the respondents 1 to 3 will not be prejudiced. This Court's further view is that the petitioner is working as a teacher under the fourth respondent's school for about 13 years without receiving salary which has caused injustice and mental agony to the petitioner and had also violated her personal and fundamental rights. Further non- payment of salary is against the principles of

natural justice. If at this stage an order is passed stating that her employment is not conceivable, it would not only be unethical but the writ petitioner would also be put into irreparable hardship.

18. On considering the factual position of the case and arguments advanced by the learned counsel for the petitioner and arguments advanced by the learned Additional Government Pleader for the respondents 1 to 3 and arguments advanced by the learned counsel for the fourth respondent and on perusing the impugned order of the second respondent and this Court's view listed above, this Court holds that the writ petition has enough force to be allowed. In the result, the above writ petition is allowed. Consequently, the second respondent's order in his proceedings Na.Ka. No. 1624/A3/2001, dated 23.12.2002 is quashed. Resultantly, this Court directs the respondents 1 to 3 to approve the appointment of the petitioner as a secondary grade teacher of the fourth respondent's school from 10.01.2000 with salary and all other benefits within 30 days from the date of receipt of a copy of this order. Accordingly ordered. Connected miscellaneous petition is closed.