
(2016) 07 MAD CK 0030

In the Madras High Court

Case No : W.P. (MD) No. 1912 of 2013 and M.P. (MD) No. 1 of 2013

Correspondent, St. Aloysius Middle School

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 LLN 493

Hon'ble Judges : Mr. S.S. Sundar, J.

Bench : Single Bench

Advocate : Mr. K. Ragatheesh Kumar for Mr. S. Xavier Rajini, Advocate, for the Appellant; Mr. Aayiram K. Selvakumar Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. S.S. Sundar, J.—This Writ Petition is filed by the Correspondent of St. Aloysius Middle School, Chinthamani, Tirunelveli District, challenging the order issued by the third respondent, District Elementary Educational Officer, in proceedings Ref. O.Mu.No. 7144/Aa2/2011, dated 14.03.2012 and consequently to direct the third respondent, District Elementary Educational Officer, to approve, forthwith the appointment of one Mr. S. Antony Panneer Selvan, as BT Assistant in the petitioner school with effect from the date of appointment viz., 02.06.2008 with salary and other monetary benefits.

2. The petitioner school, St. Aloysius Middle School, Chinthamani, is one of the several schools run by the Roman Catholic Diocese of Tuticorin. The Diocese is a society registered under the Tamil Nadu Societies Registration Act, 1975. The school was originally established as a Primary School in 1952 with standards 1 to 5, it was upgraded as Middle School in the year 1984 and it is receiving grant-in-aid towards staff salary.

3. The courses and the curriculum of the school are regulated by the instructions issued by the Government from time to time. The number of staff and the

quantum of grant-in-aid are fixed by the Government periodically. The qualification for appointment of teachers is prescribed under the Rules framed by the Government. So far as middle school sections (Standards 6, 7 and 8) are concerned, the Secondary Grade Teachers were handling those standards upto May, 2002. They had the qualification of Teachers Training Certificate courses (Diploma in Teacher Education). In the year 2002, the State Government, taking note of the fact that such Secondary Grade Teachers were not qualified enough to handle the advanced syllabi prescribed for the middle school sections, evolved the policy of appointing Graduate Teachers in those schools. The Government issued G.O.Ms.No.79, Secondary Education (U-1) Department, dated 14.06.2002, in that regard. The posts of Secondary Grade Teachers were decided to be upgraded into that of Graduate Teachers with effect from 01.06.2002.

4. However, in order to protect the interest of the existing Secondary Grade Teachers, it is stated in the Government Order that the posts of Secondary Grade Teachers should be upgraded as Graduate course posts as and when those posts fall vacant, and thereafter, persons with graduate qualification should be appointed therein. Such upgraded posts would be known as "Middle Grade Graduate Teachers". Thus, Graduate Teachers with B.Ed., qualification, came to be appointed as Middle Grade Graduate Teachers, in the posts of Secondary Grade Teachers as and when they fell vacant since 01.06.2002.

5. The Government appears to have issued G.O.Ms.No. 100, School Education (Budget) Department, dated 27.06.2003, stating that the dual system of appointment of Graduate Teachers should be avoided and only B.Ed., Graduate Teachers should be appointed in all kind of schools for standards 8 to 10 according to the subject, viz., English, Science, Mathematics, History and Geography. The Government Order states that, in view of the prevailing financial situation, the appointment for various types of teacher posts should be deemed as Junior Grade appointments for a period of five years from the respective dates of appointment and that the teachers would be paid only consolidated pay during the said period of five years. It is only after five years, the said teachers would be absorbed on regular scale of pay, subject to their merit, ability and seniority.

6. In the meanwhile, certain amendments were brought into the Tamil Nadu Private Schools (Regulation) Rules, 1974, vide G.O.Ms.No.125, School Education (X2) Department, dated 12.11.2003. As per this, three new categories of teaching posts were introduced viz., Junior Grade Secondary Grade Teacher, Junior Grade B.Ed., Teacher and Junior Grade Post Graduate Assistant. Out of the three categories of teaching posts, the Junior Grade Teachers would be allowed only on consolidated pay for a period of five years. After about two years, the Government withdrew the system of Junior Grade appointments on consolidated pay with effect from 01.06.2003.

7. The Director of School Education, issued two proceedings, dated 26.10.2004 and 13.01.2005, to the effect that a subject roster should be followed while effecting such appointments. The subject roster, announced by the Director of

School Education, was opposed by several private schools not only on the ground of infringement of their right to appoint teachers, but also on the ground that such practise would denude the academic standard in the schools. This Court, by order dated 18.10.2006 in W.P.No.7717 of 2006 filed by CSI Corporate Schools belonging to CSI Diocese of Kanyakumari District, quashed the said Director's proceedings as repugnant to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules. Thereafter, the Director, quoting the orders of this Court in W.P.No.7717 of 2006, issued another proceedings dated 15.06.2007, withdrawing earlier subject roster, dated 26.10.2004. However, the Director has instructed the Chief Educational Officers and District Educational Officers to give permissions to fill up the posts and to approve the appointment of teachers only after ensuring the compliance of another subject roster (English, Mathematics and Science) as provided under G.O.Ms.No.100, School Education (Budget) Department, dated 27.06.2003. It is also stated by the Director that since the implementation of the above subject roster would involve subject transfer, in the sanctioned post, approval to those appointments should be made only after obtaining the permission of the Director.

8. Vide proceedings in Na.Ka.No.30687/D/E2/2004, dated 14.08.2007, the Director modified the earlier order dated 15.06.2007 by instructing the Chief Educational Officers and District Educational Officers to fill up the posts and to approve the appointment of teachers after ensuring the compliance of the different subject roster viz., Mathematics, Science and English.

9. The State Government, thereafter, issued G.O.Ms.No.244, School Education Department, dated 22.09.2007, giving preference not only to subjects viz., English, Mathematics and Science but also other subjects when graduate teachers are appointed in standards 6, 7 and 8.

10. The State Government issued another order vide G.O.Ms.No.144, School Education (D-1) Department, dated 04.07.2008, modifying the instructions given in the previous Government Order viz., G.O.Ms.No.244, School Education Department, dated 22.09.2007. By this Government Order, the Chief Educational Officer was directed to fix the subject roster viz., Tamil, English, Science and Social Science. As per this Government Order, this roster cannot be changed in future. It is pertinent to mention that it was subsequently mentioned therein that steps would be taken for making necessary amendments to the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, indicating that the Government Order is only an administrative instruction and that the terms of the Government Order would be introduced by amendments to the Rules framed under the Tamil Nadu Recognised Private Schools (Regulation) Act.

11. Facts leading to the filing of the above writ petition can be summarised as follows:

11.1. The petitioner school is having the students strength of 146 and there are six teachers viz., one Headmaster, one B.T. Assistant, three Secondary Grade

Teacher and one Sewing Mistress. It is stated by the petitioner that one post of Secondary Grade Teacher fell vacant on 01.06.2008 due to the superannuation of the then previous incumbent Mr. A. Gnanaprakasam on 31.05.2008. It appears that the petitioner management, appointed one S.Antony Paneer Selvan, with effect from 02.06.2008 as B.T. Assistant. The said teacher possesses B.A. in History and B.Ed., degree. The Teacher, Mr. S. Antony Paneer Selvan, joined duty on 02.06.2008 fore noon. The petitioner management submitted proposal to the third respondent on 18.08.2008 for the approval of the appointment and for disbursement of grant-in-aid towards the salary. The third respondent viz., the District Elementary Educational Officer returned the proposal vide proceedings in O.Mu.No. 1438/Aa4/2009, dated 27.02.2009, calling for certain details from this petitioner regarding compliance of G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008 and other particulars. Though the petitioner submits that all the particulars were furnished with explanation and the proposal was resubmitted to the third respondent on 15.04.2009 seeking approval for the appointment and for disbursement of salary to the newly appointed teacher, the District Elementary Educational Officer returned the proposal vide his proceedings in O.Mu.No.3561/Aa4/2009, dated 07.07.2009, stating that the appointment is not in conformity with G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008. Though there are other grounds stated in the return, this Court is not presently concerned with the other reasons, as the respondents confined his arguments to support the return only on the ground of non-compliance of G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008. The third respondent has stated that the petitioner school had not submitted the details regarding the availability of qualified teachers in the school to handle subjects like Mathematics and Science in standards 6, 7 and 8 and that the details of surplus teachers and BT qualified Secondary Grade Teachers working in other schools under the same Management.

11.2. It is further submitted by the petitioner that the petitioner school, after getting papers, resubmitted the proposal to the third respondent, through proper channel on 25.09.2009 explaining (i) that G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008, does not preclude the appointment of BT Teachers; (ii) that the petitioner school, being a minority institution, could not be compelled to fill up the posts by way of promotion since Rule 15(4) would not apply to a minority institution; (iii) that sufficient qualified teachers are working in the school to teach other subjects and that the surplus Secondary Grade Teachers cannot be appointed against the present post which had already been upgraded to that of a BT Assistant.

11.3. According to the petitioner, the fourth respondent, Additional Assistant Elementary Educational Officer, returned the proposal vide proceedings dated 11.04.2011 instructing the school to resubmit the proposal after complying with the deficiencies pointed out in the earlier return by the District Elementary Educational Officer, dated 07.07.2009.

11.4. Once again the petitioner school resubmitted the proposal to the third respondent, District Elementary Educational Officer, on 23.06.2011 with required documents and explanation to all the queries that were raised in the previous return. The school also annexed all the required documents. However, the District Elementary Educational Officer appears to have returned the proposal by proceedings in Ref. No. O.Mu.7144/Aa2/2011, dated 14.03.2012. Challenging the said order passed by the District Elementary Educational Officer, the petitioner has filed the present writ petition for a writ of certiorarified mandamus to quash the return order of the third respondent dated 14.03.2012 and further to direct the third respondent to approve forthwith, the appointment of Mr. S. Antony Paneer Selvan as BT Assistant in the petitioner school with effect from his date of appointment viz., 02.06.2008.

12. It is the specific case of the petitioner that though the third respondent has raised several queries while returning the proposal submitted by the petitioner, for the third time, the petitioner has answered/explained to the satisfaction of the third respondent, on all counts except the requirement insisted by the third respondent to follow the subject roster as per G.O.Ms. No. 100, School Education (Budget) Department, dated 27.06.2003 and G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008.

13. The third respondent has filed a counter affidavit. Even in the counter affidavit, the main ground is that the impugned order of the third respondent, rejecting the proposal for the appointment of teacher only on the ground that the petitioner school should follow the subject roster system prescribed in the existing vacancy and that the next BT post should have been filled up only by a person who is a Mathematics, Science teacher. Since there was reference to some other points, this Court wanted to know from the learned Government Advocate for the respondents whether the respondents have any other submissions on merit except the requirement of compliance of G.O.Ms.Nos.100, School Education (Budget) Department, dated 27.06.2003 and G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008, the learned Government Advocate fairly conceded that the third respondent seeks to sustain the order only on the ground with reference to G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008.

14. The learned counsel for the petitioner relied upon the unreported judgment of this Court, dated 21.03.2012 in W.P.(MD) No. 18044 of 2011 and the unreported judgment of the Division Bench dated 22.04.2006, in W.A. (MD)Nos.828 of 2014 and batch. He also relied upon, yet another unreported judgment of the Hon''ble Division Bench of this Court in W.A. No.1198 of 2007, dated 20.09.2007 [State of Tamil Nadu and others v. the Correspondent, TELC Middle School, Vilupuram]. Paragraph 3 of the judgment of the Hon''ble Division Bench is extracted as under:

"3. In fact the legal implication of the said proceedings dated 26.10.2004, was considered by this Court in the light of Tamil Nadu Recognised Private Schools

(Regulation) Act, 1973 (in short T.N. Act 29 of 1974) in the Correspondent, Britannia Higher Secondary School, Chennai v. State of Tamil Nadu, rep. by its Secretary, Department of School Education, Chennai and others (2007 (2) MLJ 760), and held that the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate teachers. That was also the decision taken earlier by the Madurai Bench of Madras High Court in the Corporate Manager, CSI Corporate Schools v. State of Tamil Nadu (2006 (5) CTC 504). It was also considered in the above said cases that the executive instruction cannot supersede the statutory provision, by relying upon the decision of the Supreme Court in B.N. Nagarajan v. State of Karnataka (1979 II LLJ 209 (SC), which was subsequently reiterated by the Supreme Court in V. Sreenivasa Reddy v. Government of A.P. [AIR 1995 SC 586]. Therefore, by virtue of the above said judgments, it is the categoric decision of this Court that the proceedings of the second appellant dated 26.10.2004 by imposing subject roster in making appointment is not valid and is in violation of the provisions of the Act 29/74. In view of the same, there is absolutely no reason to interfere with the order of the learned Single Judge. Consequently, the writ appeal fails and the same is dismissed with direction to the appellants to approve the appointment of V.J. Titus Prabhakar (Mathematics) with effect from the date of his appointment with salary and other benefits within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

15. In view of the unequivocal expression of the proposition by the Hon"ble Division Bench that executive instructions cannot supersede the statutory provisions, after relying upon a few decisions of the Hon"ble Supreme Court, this Court is unable to sustain the objections raised by the third respondent for the approval. Considering the facts narrated above and the law laid down by this Court, I am of the view that the impugned proceedings issued by the third respondent, District Elementary Educational Officer in O.Mu.No.7144/Aa2/2011, dated 14.03.2012 is liable to be quashed and accordingly, the same is quashed. Therefore, the third respondent is directed to approve the appointment of Mr. S. Antony Panneer Selvan, in the post of BT Assistant in the petitioner school with effect from the date of appointment viz., 02.06.2008 with salary and other monetary benefits, within a period of eight weeks from the date of receipt of a copy of this order.

16. In the result, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.