

(2012) 03 MAD CK 0018

In the Madras High Court

Case No : Writ Petition (MD) No. 3548 of 2007 and M.P. (MD) No's. 2 and 3 of 2007

Darussalam Higher Secondary School

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Tamil Nadu Minority Schools (Recognition and Payment of Grants) Rules, 1977 — Rule 6(2)

Citation : (2012) 03 MAD CK 0018

Hon'ble Judges : K. Ravichandra Baabu, J

Bench : Single Bench

Advocate : V. Selvaraj for Mr. N. Dlipkumar, for the Appellant; V. Pandi Govt. Advocate for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

Honorable Mr. Justice K. Ravichandra Baabu

1. In this writ petition, the petitioner has challenged G.O. Rt. No. 104, Education Department, dated 12.07.2002 and G.O. Rt. No. 39, Education

Department, dated 21.03.2003 and consequently, seeking for a direction to the respondents 2 and 3 to approve the appointment of one Mrs.

P.N. Asma as Vocational Instructor in tailoring in Darussalm Higher Secondary School, Kadayanallur with effect from 30.06.2006. The case of

the petitioner is that it is a recognised minority higher secondary school aided by the Government. One Weaving Instructor, namely, K.A.

Mohamed Samsuddin, retired on 31.05.2006 and the petitioner-school appointed one P.N. Asma as Vocational Instructor in tailoring on

26.06.2006 and she is fully qualified to the said post and joined duty on 30.06.2006. Proposal for approving the appointment was sent to the 3rd

respondent and the same was returned on the ground that the said appointment cannot be approved on account of G.O. Rt. No. 104 Educational

Department dated 12.07.2002 and G.O. Rt. No. 39 Educational Department dated 21.03.2003. Consequently, the present writ petition has been

filed challenging the above said Government Orders.

2. Notice of motion was ordered by this Court on 24.07.2007. On notice, the respondents entered appearance and the 3rd respondent filed a counter affidavit.

3. It is stated by the respondents that as per G.O. Rt. No. 104 dated 12.07.2002 only the Craft Teacher in music and tailoring alone could be

appointed in the vacancy. The petitioner was appointed as Craft Teacher in tailoring contrary to the said Government order. Even the said

appointment of the petitioner was made in the resultant vacancy of one Mohamad Samsuddin, who was working only as a Weaving Instructor.

Only if the retirement vacancy is either in the subject of music or tailoring, it can be filled up by following usual conditions. It is further stated by the

respondents that the further clarification order was issued by the Government in G.O.Ms. No. 39, Education Department, dated 21.03.2002.

According to which, no post other than music and tailoring can be considered from 12.07.2002. It is further stated that the vacancy of Craft

Teacher which arose earlier to 17.07.2002 could alone be approved irrespective of the craft subject. But, in this case the vacancy that arose in the

petitioner school was on 31.05.2006, that too in Weaving Instructor post. As the Government Order in G.O.Ms. No. 104, Education Department

dated, 12.07.2002 and order issued in G.O.Ms. No. 39, Education Department, dated 21.03.2002 have come into force in the meantime, the

appointment made by the petitioner school cannot be approved.

4. Heard the Learned Counsel for the respective parties.

5. The Learned Counsel appearing for the petitioner argued that the school has appointed the teacher P.N. Asma, who is fully qualified to the post

of Vocational Instructor in tailoring. The said appointment was made in a retirement vacancy caused in the post of Weaving Instructor. According

to the Learned Counsel for the petitioner, when the appointment of the said Teacher as Vocational Instructor is within the sanctioned strength, the

approval cannot be rejected. In support of his contention, the Learned Counsel

for the petitioner relied on the order in W.P. (MD) No. 6303 of 2008, dated 26.02.2010 made by a learned single Judge.

6. Per contra, the learned Government Advocate appearing for the respondents 1 to 3 argued that when there is ban on appointment of Vocational Instructor other than Weaving and Music, the petitioner's appointment could not be approved which was admittedly made subsequent to the issuance of G.O.Ms. No. 104 Education Department, dated 12.07.2002. It is also argued by the learned Government Advocate that the petitioner school did not seek for conversion of the post from weaving to tailoring.

7. The point for consideration in this case is as to whether the petitioner school is entitled to appoint a person as Craft Teacher in Tailoring in the vacancy that caused due to the retirement of the one Weaving Teacher and whether such appointment can be approved irrespective of G.O.Ms.

No. 104 Education Department dated 12.07.2002 and G.O.Ms. No. 39, Education Department, dated 21.03.2002.

8. In this case, the petitioner school appointed one P.N. Asma as Craft Teacher in Tailoring in the resultant vacancy of one Weaving Instructor

post. The said appointment was also made only on 31.05.2006. In between G.O.Ms. No. 104 Education Department dated 12.07.2002 came

into effect. Under the said G.O. the Government has taken a policy decision in respect of certain Vocational Instructor Courses and ordered that

only vacancies relating to tailoring and music Craft Teacher posts alone to be filled up. In this case, the petitioner-school has not sought for any

conversion of post from the subject weaving to tailoring. On the other hand, without seeking any such conversion they have appointed a Tailoring

Teacher in the vacancy caused due to the retirement of the Weaving Teacher. When the school is sanctioned with only the Weaving Teacher post,

unless the school gets the conversion order, appointment of one P.N. Asma as Craft Teacher in tailoring cannot be approved in view of the

G.O.Ms. No. 104 Education Department, dated 12.07.2002.

9. The decision relied on by the Learned Counsel for the petitioner in W.P. (MD) No. 6303 of 2010 dated 26.02.2010 is also not helping the

petitioner in this case based on the facts and circumstances. In that case, the school sought for conversion of the post which was also granted

originally by the department and thereafter, the same was rejected in a

subsequent proceedings, which came to be challenged in that petition and the learned Judge has found that the school entitled to get the approval of conversion. In this case, no material is placed before me to show that the school has sought for any conversion of said post. In the absence of any such prayer for conversion before the authority and in the absence of any order passed for such conversion, the appointment made by the petitioner to the post of craft teacher in tailoring subject was rightly rejected to be approved. In this connection, the order passed by the Hon"ble Division Bench of this Court in W.A. No. 237 of 2009 dated 18.11.2010 in the matter of M. Martin and the State of Tamil Nadu and others is useful to be referred, wherein also the challenge was made against the G.O.Ms.

No. 104, Education Department, dated 12.07.2002 and G.O.Ms. No. 39, Education Department dated 21.03.2002. The Hon"ble Division Bench after considering the case on merits has observed at paragraphs 8, 9, 10, 12 and 13 as follows:

9. The Government Order imposing ban was issued as early as in the year 2003. The Government was well within their powers to ban appointments as it was only the Government who have to pay salary to the teachers. Therefore, we are not in a position to agree with the contention raised by the Learned Counsel with respect to the challenge made to the Government Orders.

10. The fifth respondent school was receiving grant from the Government of Tamil Nadu in accordance with the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules 1977. Grant was given subject to the provisions of the Rules. Rule 6(2) provides that ""payment of monthly staff grant shall be made only in respect of qualified and admissible teachers actually appointed in minority schools whose appointments have been approved by the concerned authorities according to the number of posts sanctioned to the institutions concerned"". It is true that the appointment of the appellant was made against a sanctioned post. Even in respect of sanctioned post, approval of the appointment has to be made by the Education Department. The Government have issued orders whereby and whereunder, further appointments of Craft Teachers were banned. The question of approval of appointment does not arise when the very appointment was made in violation of the Government Order.

12. The Government Orders impugned in the writ petition were issued as part of austerity measures taken by the Government. The Government have clearly banned appointment of craft teachers. Even the order dated 02.06.2004 contains a statement that the appointment of the appellant was without the permission of the Government. Therefore, there was no question of approval of appointment and the consequential payment of salary by the Government.

13. The appellant has not made out a case for quashing the Government Orders impugned in the writ petition. Therefore, the learned Judge was fully justified in rejecting the contention regarding the invalidity of the Government Order in G.O.Ms. No. 104 and G.O.Ms. No. 39.

10. Therefore, the petitioner is not entitled to succeed in this writ petition in view of the categorical findings given by the Hon"ble Division Bench.

However, it is open to the petitioner to approach the respondents seeking for conversion of the post from weaving to tailoring and consequently to

seek approval of the appointment made by the petitioner and if any such request is made, it is open to the respondents to consider the same on

merits and in accordance with law. With the above observation, this writ petition is dismissed. No costs. Consequently, connected miscellaneous

petitions are also dismissed.