

(2011) 07 MAD CK 0003
In the Madras High Court
Case No : Writ Petition No. 35318 of 2002

M. Mercy

APPELLANT

Vs

The Joint Director of School (Secondary), The Chief Educational Officer, The District Educational Officer and The Secretary, Sri Mariamman Hindu High School

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0003

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : P. Mahalakshmi, for the Appellant; S.V. Duraisolaimalai, AGP for R1 to R3 and Packiaraj, for R4, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The Petitioner, after completing SSLC in the year 1983, had also completed T.T.C (sewing) in the year 1987. With these

qualifications, she was appointed as part time Vocational Instructor in the fourth Respondent school on 01.10.1988. After her appointment, she

was also paid with salary from 01.10.1988 to 01.11.1989.

2. In that context, the grievance of the Petitioner is that though the fourth Respondent school was established as a primary school by Sri Kuliyadi

Mariamman Kalvi Kazhagam in the year 1966, the school was upgraded as a middle school in the year 1971 and after some time, the said school

was further upgraded as a High School from 01.06.1987. The fourth Respondent is also having standards 1 to 5 in Primary Sections and

standards 6 to 10 in Middle and High School sections. When the school was having sanctioned post, one Jothi was appointed as Craft Teacher

and she had held that post till 30.09.1988. But, the fourth Respondent, after coming to know that Jothi, who was working as part time Craft

Teacher, was not possessing the requisite educational qualification, by ousting the service of the said Jothi, appointed the Petitioner, as she was

possessing the requisite qualification, in the place of said Jothi.

3. Subsequent to the above, the Assistant Educational Officer, Sathankulam, undertook inspection in the fourth Respondent school and upon his

inspection, he has submitted a report dated 15.12.1988 stating that the fourth Respondent school was having requisite strength including the post

of Petitioner, as part time Craft Teacher. Therefore, the question of refusing approval to the Petitioner's appointment as part time Craft Teacher

will not arise, hence, it was contended that the third Respondent is not totally justifiable in rejecting the Petitioner's request.

4. Further, the learned Counsel for the Petitioner submitted that on the basis of the report submitted by the AEO, Sathankulam, the Petitioner was

appointed as part time Craft Teacher on 01.10.1988 and therefore, she is entitled to get the benefit of G.O.Ms. No. 109, dated 26.04.1999. As

per the said GO, the learned Counsel for the Petitioner submitted that if the Middle School, on its upgradation as a High School, was already

having the post of part time Craft Teacher, then the part time Craft Teacher is entitled to continue in the High School, but at the same time, the

High School, on upgradation, is not entitled to appoint any fresh teacher for the post of part time Craft Teacher. Therefore, in view of the said GO

as well as proceedings dated 15.12.1988 passed by the AEO, Sathankulam, the Petitioner has been appointed as part time Craft Teacher on

01.10.1988 and on that basis, she pleaded for allowing the present writ petition.

5. Supporting the argument advanced by the learned Counsel for the Petitioner, learned Counsel appearing for the fourth Respondent school

submitted that at the time when the Middle School was upgraded as a High School on 01.06.1987, one Jothi was holding the post of part time

Craft Teacher even on 01.10.1988. Since the said Jothi was not possessing the requisite qualification, the fourth Respondent school had appointed

the Petitioner in the place of the said Jothi. Further, the Petitioner's appointment was also confirmed by accepting the strength in the fourth

Respondent school. Therefore, it was contended that since the AEO,

Sathankulam, in his inspection report dated 15.12.1988, had confirmed the appointment of the Petitioner as a part time Craft Teacher, it is not open to the third Respondent to question the appointment of the Petitioner by passing the impugned order. Had the AEO, Sathankulam in his inspection report, disproved the appointment of the Petitioner, the Petitioner could have found suitable employment then and there. But, by accepting the Petitioner's appointment, the third Respondent cannot take a different stand, than one taken by the AEO, Sathankulam. On that basis, he prayed for allowing the present writ petition.

6. Per contra, learned Counsel appearing for the Respondents 1 to 3 submitted that there is No. rule for appointing any part time Craft Teacher in the High School and again, it was submitted that once the Middle School upgraded as High School on 01.06.1987, the question of considering the promotion of the Petitioner for continuing in the High School as part time Craft Teacher, that too, with the benefit of G.O.Ms. No. 109, dated 26.04.1999, will not arise.

In his further submission, it was contended that the first Respondent has issued approval on condition that the school should be run by the management fund for the period of 3 years, therefore, the fourth Respondent, after completion of 3 years, approached the first Respondent to sanction as an aided school and the second Respondent approved the fourth Respondent school as an aided school vide proceedings dated 28.01.1991 and further directed to pay the scale of pay on par with Government school. Only thereafter, the fourth Respondent school sent a list of teachers including the Petitioner for approval, so as to pay the salary on par with other government school teachers and in turn, the second Respondent has also approved the list of teachers, except the Petitioner. Therefore, when the second Respondent approved the list of teachers, except the Petitioner, it is not open to the Petitioner or the fourth Respondent to support the appointment of the Petitioner as part time Craft Teacher in the fourth Respondent school. On that basis, he prayed for dismissal of the present writ petition.

7. Heard the learned Counsel appearing on either side and perused the materials available on record.

8. It is true that the fourth Respondent school was originally founded as Primary

School in the year 1966. After its registration under the Societies

Registration Act, on seeing the performance of the school, the fourth Respondent school was subsequently upgraded as Middle School in the year

1971 and after some time, the fourth Respondent school was further upgraded as a High School from 01.06.1987.

9. At the time when the school was functioning as Middle School, one Jothi was appointed as a part time Craft Teacher. But, unfortunately, since

the said Jothi was not having the requisite qualification, the fourth Respondent school, by ousting the said Jothi, appointed the Petitioner as a part

time Craft Teacher. Thereafter, the Assistant Educational Officer, Sathankulam, undertook the physical verification of the school and after that

inspection, he has submitted a report dated 15.12.1988. The said AEO, in his proceedings dated 15.12.1988, after noting the strength of the

school, has specifically mentioned that the fourth Respondent school was having requisite strength of staff members including the Petitioner as Part-

Time Craft Teacher. Therefore, when the said Authority himself has approved the appointment of the Petitioner as Part-Time Craft Teacher, it

follows that she is entitled to get the benefit of G.O.Ms. No. 109, dated 26.04.1999. As I mentioned above, the said GO clearly states that if a

Middle School is upgraded as a High School, on upgradation, the said School is entitled to continue the post of Part-Time Craft Teacher, if any

Teacher worked and continued as Part-Time Craft Teacher at the time of upgradation. It is also not even the case of the Respondents 1 to 3 that

the AEO, Sathankulam, in his inspection report, had ever disapproved the appointment of the Petitioner. Had it been done, she could have found

suitable employment then and there, but, that not being the case, this Court is not inclined to accept the argument advanced by the learned Counsel

for Respondents 1 to 3. Therefore, this Court, by quashing the impugned order passed by the first Respondent, allows the present writ petition as

prayed for. No. Costs.