
(2014) 01 MAD CK 0143

In the Madras High Court

Case No : Writ Petition No. 17562 of 2012 and M.P. No. 1 of 2012

S. Anthuvan Christi Raj

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Citation : (2014) 01 MAD CK 0143

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : M. Silambuoli for Mr. R. Venkatesan, for the Appellant; V. Subbiah, Special Govt. Pleader for R1 to R4 and Mr. P. Godson Swaminath for R6, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Petitioner has preferred the instant Writ of Certiorarified Mandamus, calling for the impugned proceedings issued by the 2nd respondent/Director of School Education in O.Mu. No. 16996/D1(2)/04, dated 20.04.2004 (permitting the conversion of the post of BT Assistant in History into that of BT Assistant English only with effect from 20.04.2004 instead of the date of original appointment on 07.06.2001) and the subsequent proceedings of the 2nd respondent/Director of School Education in Mu.Mu. No. 103394/D1(2)/05 dated 02.11.2004 refusing to reconsider his decision and to quash the same in so far as such permission is granted only with effect from 20.04.2004. Further he has sought for passing of an order by this Court in directing the respondents herein to sanction the conversion of the post with effect from the actual date of his appointment in the said post i.e., 07.06.2001 with all attendant benefits including the arrears of salary and continuity of service. According to the petitioner he has the qualification of B.A. in English and B.Ed. Degrees. He is eligible to be appointed as a BT Assistant Teacher in English. The Sixth Respondent/St. Paul's Higher Secondary School, Salem is one of the several reputed educational institutions established and administered by the Roman

Catholic Diocese Society, Salem, which is a recognised religious Minority. The institute is well known for its academic excellence and high discipline. It was established during the year 1930 as High School and latter was upgraded as Higher Secondary School in the year 1978. The school offers education from standard VI to XII both in Tamil and English mediums. As a matter of fact, the school is receiving the Grant-in-aid from the State Government.

2. The stand of the petitioner is that a vacancy arose in the post of BT Assistant (History) in the School on 01.06.2001, on account of the retirement of previous incumbent one Y. John Arul on 31.05.2001. The 6th Respondent/School decided to fill up the said vacancy with English Teacher (instead of History), for the reason that there was acute need for one BT Assistant in English. As such, the school appointed him, as he is qualified to be appointed as BT Assistant (English), as per the order of the 6th Respondent dated 07.06.2001. He joined the school as BT Assistant in English on 07.06.2001.

3. The 6th Respondent/School sent a proposal dated 07.06.2001 for the conversion of the post of BT Assistant (History) into that of BT Assistant (English) and for approval of his appointment to the 5th Respondent/District Educational Officer. The District Educational Officer through his proceedings in Na.Ka. No. 345/A2/2001 dated 07.09.2001 returned the proposal stating that the school may resubmit the proposal along with the Government Order, which permits conversion of BT Assistant (History) into that of BT Assistant (English). The school resubmitted the proposal along with G.O.Ms. No. 285 dated 01.10.1999, which says that if there are 5 sections in Standard IX and X in a school at least 10% of the posts of BT Assistant should be in English.

4. The 5th Respondent/DEO through his proceedings in Na.Ka. No. 96/A2/2002 dated 20.08.2002, recommended to the 4th Respondent/Chief Educational Officer, Salem for conversion of BT Assistant (History) into that of BT Assistant (English). Later, the 5th Respondent/DEO in Na.Ka. No. 96/A2/2002 dated 13.11.2002 instructed the Correspondent/School to give explanation as to why the School converted the post and appointed a Teacher without obtaining prior permission from the CEO. He further instructed to furnish details evidencing the working and continuance of the Teacher in the said post and returned the proposal.

5. The 6th Respondent/School through his reply dated 25.11.2001 stated that due to the academic need of the school, the said appointment was made and also submitted the details evidencing his appointment and his continuance in the said post and the school sought for approval of his appointment. There was no response. So the school also sent a reminder dated 05.12.2002, to the 5th Respondent/District Educational Officer.

6. The 4th Respondent/Chief Educational Officer, through his proceedings in Mu.Mu. No. 20077/P1/2002 dated 31.07.2003, informed the Correspondent of the School that conversion of post cannot be granted, as no prior approval was

obtained before effecting the conversion. Thereafter, the Correspondent of the school through his letter dated 29.10.2003 requested the 4th Respondent/Chief Educational Officer to reconsider his decision.

7. The 4th Respondent/Chief Educational Officer through his proceedings in Mu.Mu. No. 15897/P1/2003 dated 12.01.2004 addressed to the Correspondent of the school informed that vide his proceedings dated 31.07.2003, he had already rejected the proposal for approval and informed, if necessary an Appeal could be preferred to the Joint Director of the School Education (Higher Secondary), Chennai. The 6th Respondent/School filed an Appeal dated 31.01.2004 to the Joint Director of School Education (Higher Secondary) against the order of CEO rejecting the approval. Later, the 2nd Respondent/The Director of School Education through his proceedings in O.Mu. No. 16996/D1(2)/04, dated 20.04.2004 permitted the conversion of post of BT Assistant (History) into that of BT Assistant (English). But, he mentioned that the conversion would take effect only from the date of his order viz., 20.04.2004.

8. The 6th Respondent/School submitted a representation dated 30.04.2004 to the Second Respondent/Director of School Education requesting him to consider granting approval from the date of original appointment i.e., with effect from 07.06.2001. There was no response from the Second Respondent/Director of School Education for a quite long time. Later, the Second Respondent in his proceedings dated 02.11.2004, refused to reconsider his decision.

9. Since there was considerable delay in granting approval of appointment and the difficulties faced by the incumbent, the School submitted a representation to the 5th Respondent/DEO on 31.07.2006 requesting for approval of petitioner's appointment, at least with effect from 20.04.2004 without prejudice to the rights of the School and the incumbent. Subsequently, the 5th Respondent/DEO through his proceedings dated 29.08.2006, requires certain particulars concerning the appointment. The school through his letter dated 20.03.2007, sent all the particulars requested by the 5th Respondent/DEO. Thereafter, the 5th Respondent/DEO through his proceedings dated 10.04.2007, required the 6th Respondent/School to furnish certain additional particulars. The School through its letter dated 17.07.2008 furnished all the particulars required by the 5th Respondent/DEO. Thereafter, there was no response from the District Educational Officer.

10. The plea of the petitioner is that the respondents are bound to grant approval of his appointment from the date of his appointment i.e., from 07.06.2001 and not from 20.04.2004, the date of the order of the second Respondent permitting conversion as no prior permission is required either before effecting the appointment or conversion of the post. Since the Second Respondent/Director of School Education has granted permission for his appointment only from 20.04.2004, his appointment is not approved and therefore, he has not drawn the salary till date. In fact the petitioner prays for his appointment as English Teacher has to be approved from the date of his

appointment viz., 07.06.2001.

11. The Learned Special Government Pleader appearing for R1 to R5 submits that the 6th Respondent/School appointed the petitioner on 07.06.2001, as an English Teacher to the vacancy in the post of BT Assistant History without prior sanction from the District Educational Officer and without converting the BT Assistant History post to the BT Assistant English post. Also that the 6th Respondent/School submitted a proposal on 07.06.2001 for the approval of the petitioner as BT Assistant English post and requested the conversion of BT Assistant History post into the BT Assistant English post. That was returned by the District Educational Officer in his proceedings dated 07.09.2001 to the 6th Respondent/School with an endorsement to resubmit it along with the Government Order regarding the conversion. The 6th Respondent/School resubmitted the proposal along with G.O.Ms. No. 285 dated 01.10.1999, which was recommended to the Second Respondent/Chief Educational Officer, Salem in office proceedings in Na.Ka. No. 96/A2/2002 dated 20.08.2002. The Second Respondent called for explanation through his proceedings in Na.Ka. No. 96/A2/2002 dated 13.11.2002 from the 6th Respondent/School as against the conversion of the post regarding to the appointment of the petitioner without permission. In fact, the Second Respondent/Director of School Education rejected the request of the 6th Respondent/School through his proceedings dated 31.07.2003 based on the reason that the reply submitted by the School was not a satisfactory one. Thereupon, the 6th Respondent/School was submitted a letter dated 29.10.2003 to the 2nd respondent to reconsider the earlier order and the same was rejected on 12.01.2004. The 6th Respondent/School filed an appeal to the Joint Director of School Education (Higher Secondary) on 31.01.2004 against the order of the 2nd respondent. The Director of School Education through his proceedings dated 20.04.2004, permitted the conversion of the post of BT Assistant History into that of BT Assistant English only to the condition that the conversion would take effect only from his order dated 20.04.2004. The 6th Respondent/School made a representation to the Director of School Education on 30.04.2004, to reconsider his earlier order and the same was rejected vide his proceedings dated 02.11.2004.

12. The Learned Special Government Pleader for R1 to R5 contends that the petitioner was newly appointed without obtaining the requisite permission from the concerned authority and further, the petitioner relies upon the order in W.P. No. 19902 of 2008 by this Court, which is not applicable to the present case. Indeed the petitioner in W.P. No. 19902 of 2008 was already appointed with permission and subsequently he was promoted and got permission for the converted post. Further, as per the guidelines mentioned in G.O.Ms. No. 285 dated 01.10.1999, a private aided school shall have 10% of sanctioned post to the BT Assistant English, but in circumstances, where there are more than 5 sections and increase in students strength, the school shall appoint and convert to a post as BT Assistant English with prior approval from the concerned authority from school Education Department.

13. In pith and substance, the stand taken by the Respondents 1 to 5 is that the prior approval of change of post was not sought for by the 6th Respondent/school and as such the appointment of petitioner as BT Assistant English can only be given effect to on an from 20.04.2004. Also that the prayer of the petitioner deserves no consideration.

14. At this stage, the Leaned Counsel for the petitioner cites the Division Bench Judgment of this Court dated 21.03.2011 in W.A. No. 2058 of 2010 between the State of Tamil Nadu, Rep. by its Secretary, Department of School Education, Chennai v. The Manager, RC Schools, Salem Diocese Society (Salem Namakkal Districts), Marry Palace, Salem, wherein in Paragraph Nos. 2 to 4 it is observed and held as under:

2. Learned Addl. Government Pleader appearing for the appellants submitted that when the respondent Management sought for conversion from the post of PG Assistant History to PG Assistant English with effect from 3.9.2003, the date on which the concerned teacher was appointed, the second appellant allowed the conversion sought for by the respondent with effect from 9.12.2005, instead of 3.9.2003 on the ground that no prior permission of the Chief Educational Officer is sought for. Since the refusal on the part of the appellants is in accordance with G.O.Ms. No. 285 Educational Department, dated 1.10.1999, the impugned order is liable to be set aside.

3. We have perused the materials on record. It is seen that one Thiru S. Sebastian, who served as B.T. Assistant (History), was promoted as PG Assistant with effect from 03.09.2003 and in the said post the appellant was appointed with effect from 03.09.2003. On the aforesaid factual scenario, the learned single Judge by relying on an earlier decision of this Court reported in M. Sivakumar Vs. The Government of Tamil Nadu, has set aside the order passed by the appellants. It is not the case of the appellants that the aforesaid decision is not applicable to the facts of the present case. Since the post fall vacant on 3.9.2003 and the respondent had appointed the concerned teacher on 3.9.2003, we do not see any illegality in the order passed by the learned single Judge and the appellants cannot resist the claim of the respondent on the ground that prior permission ought to have been sought for.

4. In view of the above, we do not see any reason to entertain the writ appeal, which is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

15. The Learned counsel for the Petitioner also seeks in aid of the order dated 03.12.2013 in W.P. No. 30171 of 2011 between the Correspondent, STAR Special School for Mentally Retarded St. Anne's Rehabilitation Centre for the Handicapped, Singanallur & Post, Coimbatore District. v. The State Government, Rep. by its Secretary, Department of Differently Abled, Chennai, whereby and whereunder in Paragraph Nos. 9 and 10 it is observed and laid down as follows:

9. The Learned Counsel for the petitioner in order to lend support to his

contention for conversion of a post is to be done from the date of initial appointment, seeks in aid of the Hon''ble Division Bench Judgment of this Court made in W.A. No. 2058 of 2010 dated 21.03.2011. For better appreciation, the Judgment is reproduced hereunder:

Aggrieved by the order of the learned Single Judge in W.P. No. 19902 of 2008, dated 30.04.2009, allowing the writ petition filed for conversion of the BT Assistant post into English with effect from 03.09.2003 with all attendant benefits, the State along with its Subordinate Officers have come with the present appeal.

2. Learned Addl. Government Pleader appearing for the appellants submitted that when the respondent Management sought for conversion from the post of PG Assistant History to PG Assistant English with effect from 3.9.2003, the date on which the concerned teacher was appointed, the second appellant allowed the conversion sought for by the respondent with effect from 9.12.2005, instead of 3.9.2003 on the ground that no prior permission of the Chief Educational Officer is sought for. Since the refusal on the part of the appellants is in accordance with G.O.Ms. No. 285 Educational Department, dated 1.10.1999, the impugned order is liable to be set aside.

3. We have perused the materials on record. It is seen that one Thiru S. Sebastian, who served as B.T. Assistant (History), was promoted as PG Assistant with effect from 03.09.2003 and in the said post the appellant was appointed with effect from 03.09.2003. On the aforesaid factual scenario, the learned single Judge by relying on an earlier decision of this Court reported in M. Sivakumar Vs. The Government of Tamil Nadu, has set aside the order passed by the appellants. It is not the case of the appellants that the aforesaid decision is not applicable to the facts of the present case. Since the post fall vacant on 3.9.2003 and the respondent had appointed the concerned teacher on 3.9.2003, we do not see any illegality in the order passed by the learned single Judge and the appellants cannot resist the claim of the respondent on the ground that prior permission ought to have been sought for.

4. In view of the above, we do not see any reason to entertain the writ appeal, which is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10. In view of the fact that limited prayer of the petitioner in the Writ Petition is only for issuance of a direction of by this Court, directing the second respondent to consider and pass orders forthwith on his representation dated 20.07.2009 (and also when the petitioner in support of his contentions relies on the Hon''ble Division Bench of this Court dated 21.03.2011 in W.A. No. 2058 of 2010, as referred supra), this Court in the Interest of Justice, Fair Play, Equity, Good Conscience and even as a matter of prudence, directs the second Respondent/ State Commissioner of Differently Abled, Chennai, to consider the petitioner''s representation dated 20.07.2009, in a Fair, objective and dispassionate manner

(for conversion of Secondary Grade Post from the physically handicapped category to the mentally retarded category as recommended by the third respondent through proceedings Na.Ka. No. 451/A/09 dated 10.08.2009), by passing a reasoned and speaking order, in the manner known to law and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

16. The Learned counsel for the Petitioner invites the attention of this Court to the decision M. Sivakumar Vs. The Government of Tamil Nadu, , wherein in paragraph No. 7, it is observed as follows:

7. A careful perusal of the impugned orders would show that no reasons have been assigned by the respondents to order salary for the petitioner only from 28.03.1996 when the Management has very clearly stated that he joined duty as P.G. Assistant History on 25.10.1993 itself and is serving in the said capacity till date. But, neither the second respondent in his order dated 28.03.1996 nor the third respondent in his order dated 18.03.1997 have considered this aspect so as to grant the approval as it has been sought for on the part of the Management nor any reason has been assigned for denying the salary to the petitioner from 25.10.1993 to 27.03.1996 and granting the same only from 28.03.1996 in spite of the specific case of the school authorities that on the retirement of the erstwhile Headmaster Mr. S. Krishnamoorthy, who was also taking History Classes for the Higher Secondary Sections, there was virtually no teacher to take the History Classes in the school and hence the petitioner who was a M.A. (History), B.Ed candidate was appointed to care to the needs of the school. Therefore, both the orders passed by the respondents 2 and 3, since being inconsistent ones, this Court has to cause its interference into the same and quash the same and grant the relief as sought for on the part of the petitioner and hence the following order:

17. As seen from the Judgment of this Court dated 21.03.2011 in W.A. No. 2058 of 2010, it is quite clear that the Respondents 1 to 5 cannot turn down the plea of the petitioner for his appointment as English Teacher with effect from 07.06.2001 based on the reason that prior permission ought to have been sought for by the 6th Respondent/School authorities concerned, when infact the Second Respondent/Director of School Education through his proceedings in O.Mu. No. 16996/D1(2)/04 dated 20.04.2004 permitted the conversion of post of BT Assistant History into that of BT Assistant English, then he ought to have granted permission only from 07.06.2001 viz., the date of appointment of the petitioner and not from the date viz., 20.04.2004 mentioned by him in his order. At this juncture, it is needless for this Court to make a significant mention that a Teacher cannot work in a School without getting his salary being paid by the School authorities. For the work turned out by a School Teacher in the instant case viz., the petitioner is certainly entitled to get his due salary and that cannot be deprived of by any one much less by the Educational Authorities as opined by this Court. On a careful consideration of the entire facts and circumstances of the

case in an encircling fashion, and in the light of Division Bench of this Court dated 21.03.2001 in W.A. No. 2058 of 2010 between the State of Tamil Nadu, Rep. by its Secretary, Department of School Education, Chennai v. The Manager, RC Schools, Salem Diocese Society (Salem Namakkal Districts), Marry Palace, Salem and the other order dated 03.12.2013 of this Court in W.P. No. 30171 of 2011 between the Correspondent, STAR Special School for Mentally Retarded St. Anne's Rehabilitation Centre for the Handicapped, Singanallur & Post, Coimbatore District. v. The State Government, Rep. by its Secretary, Department of Differently Abled, Chennai, and the decision M. Sivakumar Vs. The Government of Tamil Nadu, , this Court comes to an inevitable and inescapable conclusion that the aforesaid judgment and the decisions are squarely applicable to the facts of the present case with full vigour and vitality. Therefore, this Court, without any hesitation whatsoever by following the aforesaid judgment and orders and the decisions referred to supra, allows the present Writ Petition filed by the Writ Petitioner, by quashing the impugned proceedings of the Second Respondent/Director of School Education in O.Mu. No. 16996/D1(2)/04, dated 20.04.2004 (permitting the conversion of the post of BT Assistant in History into that of BT Assistant English only with effect from 20.04.2004 instead of the date of original appointment on 07.06.2001) and the subsequent proceedings of the Second Respondent in Mu.Mu. No. 103394/D1(2)/05 dated 02.11.2004 in refusing to consider his decision. Further this Court directs the Respondents to sanction the conversion of the post of English Teacher in respect of the petitioner from the date of his actual Appointment viz., 07.06.2001 and to shower him all resultant, monetary benefits (including the arrears of salary) and continuity of service etc., within eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.