
(2011) 08 MAD CK 0104

In the Madras High Court

Case No : Writ Petition No. 9522 of 2011 and M.P. No's. 1 and 2 of 2011

S. Jeyakumar

APPELLANT

Vs

Director of School Education and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 2 MLJ 37

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Muthukumaraswamy and A. Jenasenan, for the Appellant; P. Karthikeyan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The Petitioner is a Post Graduate in Commerce and also passed B.Ed., degree examination. He was originally

employed as a Higher Secondary School Warden in a private aided Management School at Megnanapuram, Tuticorin District during 1998-2001.

One Mr. Maria Kurus Antony, Vocational Instructor in the fifth Respondent school retired from service on reaching the age of superannuation on

31.05.2001.

2. The Chief Educational Officer, Tuticorin, the third Respondent herein, issued an order dated 14.08.2001 directing the fifth Respondent to fill up

the vacancy in the post of Vocational Instructor that was caused due to the retirement of Mr. Maria Kurus Antony. Accordingly, the fifth

Respondent took steps for filling up the vacancy in the post of Vocational Instructor.

3. Since the Petitioner registered his name in the Employment Exchange, his

name was sponsored for appointment as Vocational Instructor in the fifth Respondent school and the Petitioner was appointed as Vocational Instructor in the fifth Respondent school, by an order dated 29.11.2001. It is stated in the appointment order that his appointment was subject to approval of the District Educational Officer, Kovilpatti, the fourth Respondent herein.

4. The fifth Respondent school sent proposals to the fourth Respondent District Educational Officer, Kovilpatti for approval of appointment of the Petitioner as Vocational Instructor. The fourth Respondent approved the appointment of the Petitioner as Vocational Instructor by an order dated 27.02.2002. The Petitioner was paid salary from the grant received from the Tamil Nadu Government.

5. While so, the first Respondent passed the impugned proceedings dated 13.05.2008 stating that when the vacancy in the post of Vocational Instructor arose on 31.05.2001, the same should have been surrendered and the fifth Respondent should have obtained permission for making appointment to the said post. Since the said procedure was not followed, the appointment of the Petitioner to the post of Vocational Instructor is irregular.

6. Based on the proceedings dated 13.05.2008 of the first Respondent, the third Respondent sent a letter dated 01.07.2008 to the fifth Respondent school directing them to surrender the post of Vocational Instructor.

7. In these circumstances, the Petitioner filed a writ petition in W.P. No. 18017 of 2008 seeking to quash the aforesaid order dated 13.05.2008 of the first Respondent. This Court, while admitting the said writ petition on 29.07.2008, granted interim stay. By a further order dated 16.12.2008, the interim stay was extended until further orders.

8. In the meantime, salary paid to the Petitioner was stopped from 01.07.2008 and the Petitioner continued to serve as a Teacher, without payment of salary. He made various representations to the Respondents to pay salary from 01.07.2008.

9. While so, the P.G. Assistant (Commerce) post became vacant in the fifth Respondent school. The Petitioner was promoted to the post of P.G. Assistant (Commerce) by the fifth Respondent, by an order dated 31.05.2009, stating that since the Petitioner was in possession of required

educational qualification for the post of P.G. Assistant, he was promoted to the said post against the regular vacancy.

10. The fifth Respondent sent a letter dated 10.06.2009 to the fourth Respondent seeking to approve the promotion of the Petitioner as

P.G.Assistant (Commerce).

11. In these circumstances, the writ petition in W.P. No. 18017 of 2008 filed by the Petitioner was dismissed as infructuous on 27.08.2009 taking

note of the fact that the Petitioner was promoted to the post of P.G. Assistant (Commerce) in the fifth Respondent school.

12. Thereafter, the Petitioner preferred an appeal before the first Respondent requesting to approve his promotion as P.G. Assistant (Commerce)

and to pay him salary from 01.07.2008. However, the second Respondent rejected the appeal by an order dated 10.03.2011 on the ground that

the promotion of the Petitioner as P.G. Assistant (Commerce) is contrary to Rules. According to the second Respondent, the Petitioner was not

regularised in the post of Vocational Instructor and therefore, he could not be promoted as P.G. Assistant (Commerce).

13. The Petitioner has filed the present writ petition seeking to quash the order dated 13.05.2008 of the first Respondent and order dated

10.03.2011 of the second Respondent, rejecting his appeal for approve his promotion.

14. By consent, the writ petition is taken up for final disposal. No. counter affidavit is filed and the learned Government Advocate has made

submissions based on instructions.

15. The fifth Respondent school is an aided private school governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and

gets 100% aid from the Tamil Nadu Government. One Mr. Maria Kurus Antony, Vocational Instructor was retired from service in the fifth

Respondent school on 31.05.2001 on reaching the age of superannuation. Hence, a regular vacancy arose for the said post. The Chief Educational

Officer, Tuticorin wrote a letter dated 14.08.2001 to the fifth Respondent directing them to fill up the vacancy in the post of Vocational Instructor

that was caused due to the retirement of Mr. Maria Kurus Antony, which reads as follows:

J}j;Jf;Fo khtl;l Kj d;ikf; fy;tp mYtyhpd; bray;Kiwfs; J}j;Jf;Fo e/f/vz;/ 8475-

m2/2001. ehs; ; 14/08/2001 bghUs;:fy;tp nky;;epiy cjtbgWgit

flk;gk;e;J ehlhh;fs; nky;epiyg;gs;sp. bjhHpw;fy;tp Mrphpah; fhypg;gzpaplk;
epug;g mDkjp ntz;oaJ fUj;JUf;fs; ghpe;Jiu bra;J gzpe;jDg;g[jy;

rrh;g[ghh;it;:nfhtpy;gl;o khtl;lf;fy;tp mYtyhpd; e/f/vz;/4595- m3/2001. ehs;
03/08/2001

ghh;itapy; Fwpg;gpl;Ls;s nfhtpy;gl;o. khtl;lf; fy;tp mYtyhpd;
ghpe;Jiuapd;goa[k;. murhiz vz;/525 fy;tpj;Jiw. ehs; 29/12/97d;goa[k;
flk;gk;e;J

ehlhh;fs; nky;epiyg;gs;spapy; jpU/k/khpa FU!; me;njhzp vd;w KGneuj;
bjhHpw;fy;tp Mrphpah; 31/05/2001y; gzpapypUe;J Xa;t[bgw;Ws;s;hy;

Vw;gl;Ls;s fhypg;gzpaplj;ij tpjpfspd;go jFjpahd Mrphpaiuf; bfhz;L epug;g mDkjp
tH";fg;gLfpwJ/

16. Pursuant to the aforesaid order issued by the Chief Educational Officer, Tuticorin, the fifth Respondent took steps to fill up the vacancy. In the

said circumstances, the name of the Petitioner was sponsored by the Employment Exchange and the Petitioner was also appointed as Vocational

Instructor. Subsequently, the fifth Respondent sent proposals to the District Educational Officer, Kovilpatti, for approval of appointment of the

Petitioner and the same was also approved. Since the very appointment of the Petitioner as Vocational Instructor was made pursuant to the

directions issued by the Chief Educational Officer, Tuticorin, against a regular vacancy, the first Respondent is not correct in issuing the impugned

proceedings dated 13.05.2008 stating that the appointment of the Petitioner as Vocational Instructor is irregular, since the post was not

surrendered on the retirement of Mr. Maria Kurus Antony on 31.05.2001.

17. Admittedly, after retirement of Mr. Maria Kurus Antony from the post of Vocational Instructor, the Chief Educational Officer, Tuticorin

directed the fifth Respondent to fill up vacancy. Accordingly, the fifth Respondent appointed the Petitioner as Vocational Instructor. Therefore,

neither the fifth Respondent school nor the Petitioner could be blamed for making appointment. Furthermore, it is not known as to whether if any

person retires from service in the regular vacancy, such post should be surrendered and permission should be obtained from the Educational

Authority to fill the post. There is No. such rules or circulars to that effect. In my

view, even if there is any such circulars or rules, they could not advance the cause of education. As soon as the vacancy arises, the school is expected to fill the vacancy and the educational authority should see that the vacancies are filled without loss of time so that the students are benefited.

18. On the other hand, the first Respondent issued the impugned order dated 13.05.2008 stating that the post should be surrendered and

permission should be obtained for filling up the said post. In fact, the Petitioner was appointed, on permission being granted by the Chief

Educational Officer, Tuticorin, which was not taken note of by the first Respondent, while passing the order dated 13.05.2008. Hence, in my view,

the order dated 13.05.2008 of the first Respondent is per se illegal and is liable to be quashed.

19. Since the Petitioner was appointed as Vocational Instructor in 2001 and his post was approved, the second Respondent is not correct in

stating that the Petitioner could not be promoted to the post of P.G. Assistant (Commerce) on the ground that he was not regularised in the post of

Vocational Instructor and his probation was not declared. The non regularisation of the service and non declaration of probation is not due to the

fault of the Petitioner and it is the fault of the Department. It is not the case of the Department that the Petitioner does not possess the required

qualification and there is No. vacancy. In these circumstances, the impugned order dated 10.03.2011 of the second Respondent stating that the

approval could not be granted for promotion of Petitioner to the post of P.G. Assistant (Commerce) on the ground that he was not regularised in

service as Vocational Instructor, is not correct and it is not legally valid. Hence, the impugned order dated 10.03.2011 of the second Respondent

is arbitrary and violative of Article 14 of the Constitution and the same is liable to be quashed.

20. In similar circumstances, this Court in the following judgments has held that whenever a sanctioned post fell vacant, the same could be filled up

by the college/school and there is No. need for prior permission from the department.

(a) The Government of Tamil Nadu by its Secretary, Higher Education Department and Ors. v. J.Premakumari and Ors. in W.A. Nos. 140, 811

of 2006 and 805 of 2007 (decided on 21.10.2010)-para 4 of the common judgment reads as follows:

4. We have perused the impugned order as well as the earlier Division Bench decision. In this earlier Division Bench decision, it was categorically held that once appointment of a person in a sanctioned post is made in accordance with law, No. prior permission from the Directorate of Collegiate Education is required. In the case on hand, the issue involved is appointment of persons against the sanctioned post. Therefore, the ratio of the earlier Division Bench decision is squarely applicable to the facts of the present case.

(b) Government of Tamil Nadu rep. by its Secretary, Higher Education Department and Ors. v. B.Ravichandran and Ors. in W.A. Nos. 92 and

93 of 2008 (decided on 06.01.2010) -para Nos. 2,3 and 4 of the common judgment reads as follows:

2. One Thiru C. Karunakaran was appointed as a Lecturer in Chemistry in V.H.N.S.N. College (2nd Respondent herein) on 2.7.1990 which fell

vacant on resignation of Dr. A.Chellamani to his approved sanctioned post on 17.10.1989. He made a representation to the Appellants to

approve his appointment from 2.7.1990 by regularizing his services, citing the case of one Thiru.B.Ravichandran, lecturer in commerce who was

granted the benefit of regularization of service with monetary benefits from the date of appointment. By proceedings, dated 28.2.1997, the

Director of Collegiate Education rejected the claim of Karunakaran, but also cancelled the earlier orders passed in favour of Ravichandran granting

approval from 1.11.1991 while ordering recovery of salary for the period 1.11.1991 to 3.11.1994. Aggrieved by the said proceedings, both the

persons have come forward with W.P. Nos. 14450 and 4960 of 1997 respectively.

3. The learned single Judge has dealt with both the above said Writ petitions together and by following the decision of this Court rendered in W.P.

No. 28396, dated 29.3.2006, the learned Judge has categorically held that once appointment of a person in a sanctioned post is made in

accordance with law, No. prior permission from the Director of Collegiate Education is required. While holding so, the learned Judge has quashed

the impugned proceedings, dated 28.2.1997 and directed the Appellants to approve the writ Petitioner"s (C. Karunakaran) appointment from

2.7.1990 with all consequential service benefits.

4. In view of the such a categoric conclusion of the learned single Judge which was arrived by him by following the earlier decision of this Court

rendered in W.P. No. 28396, dated 29.3.2006, we do not find any scope to interfere with the said order, except to confirm the same.

(c) Mrs. Natasha Sebastian Vs.The Government of Tamil Nadu rep. by its Secretary, Higher Education Department in W.P. No. 28396 of 2004

(decided on 29.03.2006) -para Nos 8 to 11 of the order reads as follows:

8. At the outset it is has to be stated that the Petitioner was appointed by the third Respondent to the post of Lecturer as against the vacancy that

arose due to the retirement of one Dr. A.M.Vasudevan Pillai and as per rules an approval was sought for from the second Respondent, which was

rejected stating that No. prior approval was obtained.

9. So, the question that now arises for consideration is as to whether the appointment of the Petitioner is well within the sanctioned post. In this

context, it would be worthwhile to extract Rule 11(1) of the Rules:

The number of teachers employed in a college shall not exceed the number of posts fixed by the Director from time to time, with reference to the

academic requirements and norms of work load prescribed by the respective Universities and overall financial considerations

10. Thus it is evident from the above, any such appointment of teachers should not exceed the number of posts fixed by the Director. In the

present case, the third Respondent college has been sanctioned with two posts of Malayalam Lecturers and since a vacancy has arisen due to the

retirement of one Dr. A.M.Vasudevan Pillai, the Petitioner herein was appointed through direct recruitment process in the said vacancy.

11. Further as regard the other limbs of the rule relating to the norms of the workload and financial considerations also, when there is No.

reduction of workload in the third Respondent college and in the absence of any order passed by the second Respondent pointing out any such

reduction or financial constraints, it can be held that the appointment of the Petitioner is done in accordance with the Rule and therefore, No. prior

permission is required to appoint the Petitioner.

(d) Voorhees College, Vellore Vs.State of Tamil Nadu rep. by Secretary, Education Department in W.P. No. 45169 of 2002 (decided on

03.12.2003) -para 6 of the order reads as follows:

6. I have considered the submissions of both sides. The ground on which the claim in favour of the fourth Respondent is rejected is not on the

ground that Christian Everest was appointed as against nonsanctioned post. The fact that Christian Everest was appointed as against the vacancy

caused by resignation of a permanent incumbent. It substantiated by various letters sent by the Petitioner/Institution. Moreover, the said issue has

also been finally held in favour of the Petitioner in W.P. No. 13723 of 1995 dated 15.3.2002 in which the learned Judge has positively held that

there was No. question of disbelieving the uncontradicted statement of the college that Christian Everest come to be appointed only in the place of

T.Joseph who was a Lecturer and who had resigned subsequently.

21. In the light of the same, both the orders dated 13.05.2008 of the first Respondent and 10.03.2011 of the second Respondent are quashed.

Since the impugned orders are quashed, the Respondents are directed to pay salary to the Petitioner for the post of Vocational Instructor for the

period from 01.07.2008 to 31.05.2009 and thereafter, salary for the post of P.G.

Assistant (Commerce), within a period of eight weeks from the date of receipt of a copy of this order.

22. The writ petition is allowed. No. costs. Consequently, connected miscellaneous petitions are closed.