

**(2006) 12 MAD CK 0205**

**In the Madras High Court**

**Case No :** W.A. No's. 3776 of 2004 and 593 of 2005 and W.A.M.P. No's. 7113 of 2004, 178 and 1130 of 2005 and 1590 of 2006

The Correspondent, M.M. Higher Secondary School

APPELLANT

Vs

K. Mathur Kumar, The Director of School Education and The District Educational Officer <BR>The Director of School Education and The District Educational Officer Vs K. Mathur Kumar and The Correspondent, M.M. Higher Secondary School

RESPONDENT

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**Date of Decision :** 12-12-2006

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2007) 1 CTC 649 : (2007) WritLR 37

**Hon'ble Judges :** S.J. Mukhopadhaya, J;F.M. Ibrahim Kalifulla, J

**Bench :** Division Bench

**Advocate :** S. Silambanan, for Gladys Daniel, in W.A. No. 3776 of 2004 and G. Sankaran, Addl. G.P. in W.A. No. 593 of 2005, for the Appellant; C. Selvaraju, for K. Vasudevan, in W.A. No. 3776 of 2004 and W.A. No. 593 of 2005, G. Sankaran, A.G.P. for Respondent No. 2 and 3 in W.A. No. 3776 of 2004 and S. Silambanan, for Gladys Deniel, in W.A. No. 593 of 2005, for the Respondent

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**Judgement**

S.J. Mukhopadhaya, J.—Both the writ appeals have been preferred by the respective appellants against the common order dated 29.9.04 passed in W.P. No. 18900 of 2001.

2. In W.A. No. 3776 of 2004, the Correspondent, M.M. Higher Secondary School, Bethelpuram, Kanyakumari District (hereinafter referred to as the school) is the appellant. In the other appeal, W.A. No. 593 of 2005, the Director of School Education, College Road, Chennai and the District Educational Officer, Thuckaley, Kanyakumari District are the appellants.

3. The writ petition was preferred by the first respondent (hereinafter referred to as the petitioner) for direction on respondents 1 to 3 in the writ petition, who are the appellants before this Court, to approve (hereinafter referred to as sanction)

the petitioner's post and to pay him all the arrears of salary as was due since 1988 till the date of sanction of the post. The prayer made therein having been allowed, the appellants have challenged the impugned order.

4. The case of the writ petitioner was that he being M.Ed. Post-Graduate Degree holder and qualified, applied for reaching post of "Post Graduate Assistant" (hereinafter referred to as PG Assistant) pursuant to the application called for by the school, which is a Government aided minority school. He was selected, appointed and joined duty on 6.6.1988 as PG Assistant when he was informed by the school that his salary would be paid in the regular scale of pay after sanction of the post by the Director of School Education, Chennai (one of the appellants).

5. The main grievance as was made on behalf of the petitioner is that the State Government, while sanctioning three posts of PG Assistant for the school, the authorities of the school adjusted his juniors, who were appointed subsequently, namely, Murugavel, Senthil Kumar and Karpagavalli against those sanctioned posts; thereby the petitioner was discriminated.

6. The school countered the claim and had also shown grounds for not adjusting the petitioner against the sanctioned posts. According to the school, the writ petitioner was appointed as PG Assistant to teach Economics. Such appointment was made in anticipation of sanction of the post. The petitioner used to take classes for only two hours per day since 1.6.1988 and continued till September, 2001, for which he was paid remuneration of Rs. 1,000/- per month by the school. Further case of school was that the three persons referred to by the writ petitioner were appointed as PG Assistant for three other subjects, i.e., English, Physics and Mathematics. Their appointments were also in anticipation of posts to be sanctioned. The State Government having sanctioned three posts of PG Assistant for the subjects English, Physics and Mathematics, adjusted the aforesaid three persons. In absence of any sanctioned post of PG Assistant (Economics), the writ petitioner could not be adjusted.

7. Learned single Judge having noticed that the writ petitioner was serving in the school for the last thirteen years, allowed the writ petition by the impugned order dated 29.8.04 and directed respondents 1 to 3 in the writ petition (appellants herein) to sanction the post against which the writ petitioner was functioning with further direction to pay him arrears of salary for the period from 1988 till the date of sanction of the post and costs of Rs. 5,000/- was also imposed on the school.

8. Admittedly the post of PG Assistant for the subject Economics against which the writ petitioner was appointed has not been sanctioned by the State Government. There is nothing on record to suggest that the service of the writ petitioner was also approved by the authorities of the State. It appears that the State Government earlier sanctioned five posts of PG Assistant for five different subjects by G.O. Ms. No. 552, Education Department, dated 11.1.92 with effect

from 1.6.91, namely:

1. Tamil : 1 post 2. History : 1 post 3. Political Science : 1 post 4. Botany : 1 post 5. Zoology : 1 post

Subsequently, vide proceedings Na. Ka. No. 95192/W6/2000, dated 13.9.2001, three more posts of PG Assistants for three different subjects were sanctioned, namely:

1. P.G. Assistant in English, .. 1 post from 4.6.2301 2. P.G. Assistant in Physics .. 1 post from 4.6.2001 3. P.G. Assistant in Mathematics .. 1 post from 4.6.2001

9. It is settled law that if a person has been appointed against a post not sanctioned by the State Government, he cannot claim salary against such unsanctioned post. There is nothing on record to suggest that the post of PG Assistant (Economics) was required to be sanctioned for the school, in absence of which the teaching in the school would have been affected. In absence of such averment and other details, according to us, no relief could have been granted in the manner granted by the learned single Judge and in the manner as was sought for by the writ petitioner. If the petitioner was appointed against a post created by the school management, but not sanctioned by the State Government, the petitioner, at best, could claim for wages from the school management, which was paid to him at the rate of Rs. 1,000/- per month for taking classes for two hours per day. In such a situation, the impugned order dated 29.9.2004 passed by the learned single Judge in W.P. No. 18900 of 2001 cannot be upheld.

10. However, one of the questions raised is as to whether the State Government could be directed to sanction the post of PG Assistant (Economics) in respect of the school in question. Such issue cannot be determined by this Court under Article 226 of the Constitution of India and could be determined by the competent authority or a Court of law, if details of data and other information are available. If the school is teaching students up to +2 level and Economics is one of the compulsory subjects for passing +2 examination, then the State Government could be directed to sanction the post of PG Assistant for Economics for teaching the students, subject to being compulsory. But if economics is an optional subject, then no mandamus could be issued to the State to sanction the post, though management of the aided school could make arrangement by way of appointment from their end to teach the students of the school.

11. For the reasons aforesaid, we set aside the impugned order dated 29.9.2004 passed by the learned single Judge in W.P. No. 18900 of 2001, but remit the case to the appellant-Director of School Education, Chennai, to determine whether one post of PG Assistant for the subject Economics could be sanctioned for the school in question and the date from which such post was required to be sanctioned. If any student passed with Economics as one of the subject in +2 examination in the year 1990 or earlier, then it would be open to the authority to sanction the post of PG Assistant (Economics) from such retrospective date.

12. If the school so require, it may make a fresh requisition for sanction of a post of PG Assistant for the subject Economics and in such a case, the Director of School Education, Chennai, will determine the question, preferably within two months thereof. If any favourable order is passed by the authority, the school will determine whether against such post, the petitioner's service could be adjusted from the date of such sanction and whether he is entitled for any consequential benefit. If the petitioner is no more in the service of the school and if the post is sanctioned from any subsequent date, i.e., from a date subsequent in the removal of the petitioner, in such a case, no benefit could be allowed in favour of the petitioner.

13. These writ appeals stand disposed of with the aforesaid observations and directions. Consequently, connected miscellaneous petitions are closed. However, there will be no order as to costs.