

(2013) 12 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No. 30171 of 2011 and M.P. No. 1 of 2011

The Correspondent STAR Special School for Mentally
Retarded St. Anne's Rehabilitation Centre for the Handicapped

APPELLANT

Vs

The State Government

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2013) 12 MAD CK 0021

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : P. Godson Swaminathan, for the Appellant; V. Subbiah, Spl. G.P., for the Respondent

Final Decision : Disposed Off

Judgement

M. Venugopal, J.—The petitioner has focused the instant writ of mandamus praying for issuance of order by this Court in directing the

second respondent/State Commissioner to consider and pass orders forthwith on the petitioner's representation dated 20.07.2009, for the

conversion of the Secondary Grade Post from the Physically Handicapped category to the Mentally Retarded category as recommended by the

third respondent vide proceedings Na.Ka. No. 451/A/09 dated 10.08.2009. According to the Learned counsel for the petitioner, the

petitioner/School one among the numerous educational institution owned and administered by the Congregation of the Sisters of St. Anne's,

Trichy, Maria Province. The School is a recognised Minority Educational Institution, established in the year 1984 and offers primary education

from standards I to V for the Physically Handicapped and Mentally Retarded during the period from 1984 to 2008. From June 2008 onwards, the

State Government abolished the category of primary education for Physically Handicapped.

2. The Learned counsel for the petitioner submits that the petitioner/School is offering rehabilitative education under two categories viz. (i) Mentally

Retarded and (ii) Deaf & Dumb. The second respondent/State Commissioner (previously known as the Director for Rehabilitation of the Disabled)

granted recognition for these two categories of education. The School is also providing education for the Deaf and Dumb from standards I to XII.

For the mentally retarded, there are eight stages of education viz. Early Intervention, Pre-Primary, Primary, Elementary, Middle Junior, Middle

Senior, Pre Vocational and Vocational Classes.

3. It is brought to the notice of this Court on behalf of the petitioner/School that at present there are 275 students in the School. Out of that, 200

students are studying under the Mentally Retarded category and the remaining 75 under the Deaf and Dumb category. Further, 36 staff are

employed in the school viz. 18 Special Educators/Secondary Grade Teachers, 1 Physiotherapist, 2 Vocational Instructors, 3 Assistant Teachers

and 11 Non-Teaching staff. Out of 36 staff, the State Government extends grant-in-aid towards the salary for only one Secondary Grade Teacher

and the remaining 35 staff are working under the Management pay. It was also stated that 150 students are staying in the Hostel and the

Congregation is meeting out the expenses of the Hostel as well.

4. One of the essential conditions for the grant of recognition is that adequacy of qualified staff, but the second Respondent sanctioned only one

post of Secondary Grade Teacher to the school vide proceedings dated 02.12.1993. The school appointed on Rev. Sr. Victoria in that place and

she had been working there from 04.12.1993 till 31.07.1994, when she was transferred to another place. In that vacancy, the school appointed

one Rev. Sr. Arockia Mary, with effect from 01.08.1994. The second Respondent granted approval to the appointment vide proceedings in

Mu.Mu. No. 10940/Ni.2/1996 dated 21.11.1996, and disbursed the grant towards her salary and she was drawing salary upto May, 2008.

5. From June, 2008 onwards, suddenly, the Respondents stopped the payment of grant-in-aid towards her salary and she is working without

salary since June, 2008, to till date. It is the stand of the petitioner that she

possesses the special qualification required for teaching the mentally retarded students. Indeed the School made a representation to the second respondent/state Commissioner for the Differently Abled, Chennai, on

20.7.2009, requesting to covert the Secondary Grade Post from the Physically Handicapped category to the Mentally Regarded category. The

said representation was submitted through proper channel i.e. the third respondent/District Differently Abled Welfare Officer.

The third Respondent also recommended to the second respondent for conversion vide proceedings Na.Ka. No. 451/A/09, dated 10.08.2009.

6. The grievance of the petitioner is that the second Respondent has not passed any orders so far and since the School is a charitable institution run

by a charitable society and offering free education to the mentally regarded and Deaf and Dumb students, and finds it extremely difficult to bear the

heavy financial burden of meeting out the staff salary. As such the petitioner has filed the present Writ Petition, seeking an order from this Court,

directing the second respondent to consider and pass orders immediately on the representation so made dated 20.7.2009.

7. At this juncture, the Learned counsel for the petitioner frivolously contends that the conversion of post is to be granted from the date of

appointment and in this case from June, 2008 in respect of Rev. Sr. Arockia Mary, who is working without salary from June 2008, till date, though

she possessed special qualification required for teaching the mentally retarded students.

8. 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 30.4.2009, allowing the writ petition filed for conversion of

the BT Assistant Post into English with effect from 3.9.2003 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, the

connected Miscellaneous Petition is closed.

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 20.7.2009 (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 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.

With the aforesaid direction, the Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.