

(2015) 04 MAD CK 0035

In the Madras High Court

Case No : Writ Appeal (MD) No. 2 of 2015 and M.P. (MD) No. 1 of 2015

The Director of School Education, Chennai and Others

APPELLANT

Vs

J. Frederick Jeyakumar and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Citation : (2015) 04 MAD CK 0035

Hon'ble Judges : S. Manikumar and V.M. Velumani, JJ.

Bench : Division Bench

Advocate : VR. Shanmuganathan, Special Government Pleader, for the Appellant; V. Paneer Selvam for C.S. Associates, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—The appellants, who are the respondents 1 and 2 in the Writ Petition in W.P.(MD) No. 2530 of 2012, have come forward with this appeal challenging the order of the Writ Court, dated 24.03.2014, passed in W.P. (MD) No. 2530 of 2012.

2. The first respondent herein has filed W.P.(MD) No. 2530 of 2012, to quash the order passed by the second appellant in Na.Ka. No. 3946/A5/2011, dated 16.11.2011 and direct the appellants and the second respondent to approve the appointment of the first respondent as a Library Clerk from the date of appointment i.e., 01.04.2005 with all consequential benefits.

3. The facts of the case:

"(i) The second respondent herein is an aided minority Educational Institution. The second respondent has appointed the first respondent as Library Clerk on 01.04.2005. The said post is a permanent one. The vacancy arose as the incumbent one Mrs. P. Gnanam resigned. On 16.05.2006, the second respondent sent a proposal for approval of appointment of the first respondent. The first appellant returned the same on 09.11.2006 on the ground that the Government have appointed a High Level Committee with regard to filling up of non-teaching

staff and after receiving orders from the High Level Committee, question of granting approval would be considered. Again, the second respondent re-submitted the proposal on 07.09.2007. The first appellant, by the proceedings, dated 11.10.2007, returned the said proposal to re-submit the same with orders, if any, received in this regard.

(ii) The first respondent is working from 01.04.2005. He made a representation to the appellants on 02.09.2008, to approve his appointment, as the appellants did not pass any orders on the representation of the first respondent. He has filed W.P. No. 3397 of 2010. This Court, by the order, dated 24.08.2011, directed the second respondent to re-submit the proposal within two weeks and directed the second appellant to pass appropriate orders within a period of eight weeks.

(iii) The second respondent re-submitted the proposal on 22.09.2011 for approval. The second appellant passed the impugned order on 16.11.2011, rejecting the proposal for approval. The second appellant in the order, referred to G.O.(Ms) No. 115, School Education (D2) Department, dated 30.05.2007, stating that the first respondent was appointed on 01.04.2005. The second appellant had also stated that the second respondent did not obtain prior approval for appointment.

(iv) As per the Tamil Nadu Recognised Private Schools (Regulations) Act and Rules, prior approval is not necessary. The first respondent has filed W.P.(MD) No. 2530 of 2014 to quash the impugned order of the second appellant, dated 16.11.2011 and for a direction to approve his appointment.

(v) The appellants in their counter have stated that the first respondent was appointed unilaterally without prior approval from the first appellant. Even though the first respondent was appointed on 01.04.2005, the second respondent has intimated the same to the second appellant, only on 17.02.2007. The second respondent subsequently has produced the relieving order of P. Gnamam on 20.03.2007, in whose place, the first respondent has been appointed.

(vi) The second respondent has sent a proposal to the second appellant on 11.10.2007 to approve the post of the first respondent as Library Clerk, from the date of appointment, i.e., 01.04.2005. This Court, in W.P. No. 3397 of 2010, filed by the first respondent, directed the appellants to consider the proposal of the second respondent for approval of appointment of the first respondent within eight weeks. As per orders of this Court, the second appellant considered the proposal and by his proceedings, in Na.Ka. No. 3946/A5/2011, dated 16.11.2011, rejected the same, on the ground that the appointment is without prior approval of the first appellant.

(vii) The appellants further stated that as per G.O.(Ms) No. 115, School Education (D2) Department, dated 30.05.2007, non-teaching staff can be appointed, only after obtaining permission from the Government. The post of Library Clerk will not come under the purview of G.O.(Ms) No. 115, School Education (D2) Department, dated 30.05.2007. Therefore, the appellants have

stated that the order dated 16.11.2011, is as per law.

(viii) The learned Single Judge after considering various Judgments of this Court on this issue, allowed the writ petition, setting aside the order of the second appellant, dated 16.11.2011 and directed the appellants to approve the appointment of the first respondent as Library Clerk from the date of appointment, i.e. 01.04.2005. Against the said order, the present writ appeal is filed."

4. Assailing the correctness of the order, the learned Special Government Pleader contended that the appointment of the first respondent was during ban period and therefore, the first respondent is entitled to approval only from the date of lifting of the ban order i.e., 07.02.2006.

5. The learned Special Government Pleader further contended that the various Judgments referred to by the learned Single Judge are not applicable to the facts of the present case. The learned Single Judge ought to have seen that G.O.(Ms) No. 115, School Education (D2) Department, dated 30.05.2007, squarely applies to the facts of the present case. The reason given by the learned Single Judge that the said Government Order is subsequent to the appointment of the first respondent and therefore, not applicable to the first respondent's case is not correct.

6. The learned Special Government Pleader relied on the following Judgments:

"(i) W.A.(MD) No. 267 of 2009, dated 12.08.2009 [The Chief Educational Officer, Kanyakumari District at Nagercoil and another v. The Superintendent of RC Schools, Thoothukudi].

(ii) W.A.(MD) No. 165 of 2010, dated 20.07.2012 [The Director of School Education, Chennai and others v. Uma Maheshwara Higher Secondary School Committee, Rep. by the Secretary, Kranthai, Thanjavur and another]

(iii) Review Application (MD) No. 101 of 2013, dated 24.03.2014 [State of Tamil Nadu, Rep. by the Secretary to Government, School Education Department, Chennai and others v. A. Manivannan and another]

(iv) W.P.(MD) No. 484 of 2007, dated 30.10.2007 [S.D. Rajkumar v. State of Tamil Nadu, School Education Department, Chennai and others]."

7. Per contra, the learned counsel for the first respondent contended that the order of the learned Single Judge is as per judicial pronouncements rendered by this Court in various Judgments and that the issue involved is already decided by this Court. The learned counsel for the first respondent also submitted that it is not open to the appellants to argue that the first respondent is entitled to approval only from the date of lifting of the ban order i.e., 07.02.2006. He further added that it is not their case in the impugned order of the second appellant, dated 16.11.2011. In the counter affidavit also, the appellants relied on only G.O.(Ms) No. 115, School Education (D2) Department, dated

30.05.2007. The said Government Order is not applicable to the post of Library Clerk and the appellants themselves have admitted in their counter. Further, in the Judgment dated 30.11.2010, made in W.A.(MD) No. 813 of 2010, it has been held that prior approval for appointment of non-teaching staff in minority Educational Institutions is not necessary. For the above reasons, the learned counsel for the first respondent prayed for dismissal of the writ appeal.

8. We have heard the learned counsel appearing for the parties and perused the materials on record.

9. From the materials on record and pleadings, it is seen that the appellants have rejected the proposal for approval of appointment of the first respondent, on the ground that prior approval is not obtained and subsequently, as per G.O.(Ms) No. 115, School Education (D2) Department, dated 30.05.2007, the Government must permit the appointment of non-teaching staff. This Court in the Judgment, dated 30.11.2010, made in W.A.(MD) No. 813 of 2010 [The District Educational Officer, Paramakudi, Ramanathapuram District v. I. Michaelammal and another] held that prior approval is not necessary.

10. The contention of the first respondent that G.O.(Ms) No. 115, School Education (D2) Department, dated 30.05.2007, is not applicable to the appointment of the first respondent as Library Clerk, has considerable force. The appellants themselves have admitted in paragraph 5 of the counter filed in the writ petition that G.O.(Ms) No. 115, School Education (D2) Department, dated 30.05.2007, is not applicable to the post of Library Clerk. The appellants have not rejected the proposal, for approval of appointment of the first respondent, on the ground of ban order or take a stand that the appointment of the first respondent can be approved only from lifting the ban order, dated 07.02.2006. Therefore, the appellants cannot be allowed to improve their case in appeal, by relying on various Judgments of this Court, including the Judgment of this Court, dated 24.03.2014, made in Review Application (MD) No. 101 of 2013, to which, one of us [V.M. VELUMANI, J.] was a party, wherein it has been held that the appointment of non-teaching staff should be approved only from the date of lifting of the ban order, i.e., 07.02.2006.

11. In all these Judgments, the proposal for approval of appointment of non-teaching staff was rejected on the ground of ban order. In the present case, the proposal to approve the appointment of the first respondent was rejected on the ground of no prior permission was obtained for approval.

12. For the reasons stated above, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.