

(2010) 10 MAD CK 0077

In the Madras High Court

Case No : Writ Appeal (MD) No. 213 of 2010

The Director of School Education (Higher Secondary) and The
District Educational Officer

APPELLANT

Vs

K.S. Vivekandan and The Devanger Higher Secondary School

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0077

Hon'ble Judges : S. Nagamuthu, J;P. Jyothimani, J

Bench : Division Bench

Advocate : K. Balasubramaniam, Additional Government Pleader, for the Appellant; M. Thirunavukkarasu, for 1st Respondent and M. Ashok Kumar, for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ appeal is filed against the order of the learned single Judge, dated 30.01.2009 made in W.P. No. 827 of 2009

by the first and second Respondents in the writ petition.

2. In the writ petition filed by the first Respondent herein challenging the order of the District Educational Officer, dated 26.09.2008 by which the

appointment of the writ Petitioner as a Record Clerk in the third Respondent school which is a private aided school came to be not approved.

3. The learned single Judge while setting aside the order by allowing the writ petition has directed the second Respondent to grant approval of the

appointment of the writ Petitioner as Record Clerk from the date of his appointment namely, from 20.02.2008 in the third Respondent school with

all consequential monetary and other benefits.

4. The main ground on which the order of the learned single Judge is assailed is

that the appointment was made during the ban period without getting approval from the Government and without following the guidelines stipulated in G.O. Ms. No. 91 P & AR Department, dated 06.07.2006 and that the permission to make appointment during the ban period was only in respect of the Government schools as per G.O.(ID) No. 37, dated 08.02.2007 and that the recruitment is a policy decision in which the Court cannot interfere, apart from taking the ground that as per the instruction of the Government the post of Record Clerk is not recognised as stated even under the impugned order passed by the second Respondent in the writ petition refusing to approve the appointment of the writ Petitioner. It was the stand of the second Respondent in the writ petition that as per G.O. Ms. No. 115, dated 30.05.2007, there was no indication about the filling up of the post of Record Clerk in the aided private schools and that for filling up of the vacant post, there is no Government Order issued.

5. It is not in dispute that in the third Respondent school which is an aided private school, the post of Record Clerk was a sanctioned post and it was because of the incumbent J. Rajendran holding the post of Record Clerk was promoted as lab assistant and in the said vacancy, by following the procedure and conducting interview, held on 20.02.2008, the third Respondent has found the writ Petitioner eligible to hold the post and therefore, appointed the writ Petitioner on 20.02.2008 and thereafter, a proposal was sent on 04.04.2008 by the third Respondent school to the second Respondent for approval. The appointment in the third Respondent school is governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules made thereunder which does not contemplate any prior permission from the authority to fill up the post which is within the sanctioned strength.

6. In fact, the learned single Judge has relied upon the earlier judgment passed by this Court in W.P. No. 484 of 2007, dated 30.10.2007 which itself was passed based on the earlier order of this Court in W.P. No. 10237 of 1994 directing the educational authorities to approve the appointment of Record Clerk and Lab Assistant in the said schools. It was following the similar orders only, the learned single Judge passed the abovesaid order. It is also stated that on an appeal filed by the educational authorities against the abovesaid order, writ appeal Nos. 332 and 438

of 2008, came to be dismissed by the Division Bench of this Court on 04.08.2008.

7. The learned single Judge has also referred to another Division Bench of this Court passed in W.A. No. 558 of 2008, dated 16.09.2008 which

has considered the very effect of the G.O. Ms. No. 115, dated 30.05.2007 wherein it was held that the Government order cannot be given effect

to in cases where the vacancy arose before the issuance of the said Government Order and when appointment was made in an existing vacancy,

the same cannot be denied. It was also held by the Division Bench that after the ban on employment was lifted as per Government order on

07.02.2006, there was no impediment for the private management to make appointment.

8. It was in those circumstances, the learned single Judge, in our view, has correctly, allowed the writ petition and issued direction for approval of

the appointment of the writ Petitioner. We do not see any infirmity in the order passed by the learned single Judge. Accordingly, the writ appeal

stands dismissed. No costs.

Consequently, M.P.(MD) No. 1 of 2009 is closed.