

(2017) 04 MAD CK 0212

In the Madras High Court

Case No : 213 of 2017 and C M P(MD)No 2178 of 2017

The Government of Tamil Nadu,

APPELLANT

Vs

Elsi Bai

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Citation : (2017) 04 MAD CK 0212

Hon'ble Judges : T.S.Sivagnanam, P.Velmurugan

Bench : DIVISION BENCH

Advocate : T.S.Sivagnanam, P.Velmurugan

Judgement

1. Heard Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.R.Subramani, learned Counsel for the first respondent/writ petitioner. There is no representation for the second respondent.

2. With the consent of either side, the writ appeal is taken up for disposal.

3. The Government filed this appeal against the order passed in W.P. (MD)No.3287 of 2012. The writ petition was allowed and the order passed by the 1st respondent dated 24.02.2012 was set aside with direction to the appellants 1 & 2 to sanction a post of Lab Attender to the 2nd respondent school and to consider the claim of the writ petitioner for all attendant benefits. This is the third round of litigation at the instance of the first respondent/writ petitioner. The first respondent/writ petitioner had filed the first writ petition in W.P.No.9046 of 1998 for considering her representation for sanction of one post of Laboratory Attender in the second respondent school. The said writ petition was disposed of by order dated 07.09.2001 to consider the representation within a time frame, after which, an order was passed on 05.04.2002. This order was challenged by the first respondent/writ petitioner in W.P.No.23075 of 2002. The said writ petition was allowed by order dated 22.02.2010 by referring to a decision of the Division Bench of this Court in G.Sahadevan Nair, Kanyakumari District v. Government of Tamil Nadu, represented by its Secretary, Education Department,

Chennai and others reported in 2008 (4) MLJ 289. In the said order, a direction was issued to the appellants to consider the claim of the writ petitioner. As against the said direction, the appellants filed the appeal in W.A.No.2120 of 2011, which was dismissed on 16.11.2011. However, in the typed set of papers, copy of the judgment dated 16.11.2011 has not been enclosed. As against the dismissal of the said appeal, the appellants preferred appeal to the Honourable Supreme Court in S.L.P(C)No.407 of 2012. The said appeal was disposed of by order dated 07.02.2012, which reads as follows:

"Taken on board.

This petition is directed against judgment dated 16.11.2011 of the Division Bench of the Madras High Court whereby the writ appeal preferred by the petitioners against the order of the learned Single Judge directing consideration of the application of the management for sanction of post and grant-in-aid was dismissed.

We have heard Shri L.N.Rao, learned senior counsel for the petitioners.

In our view, the direction given by the Division Bench of the High Court in G.Sahadevan Nair, Kanyakumari District vs. Government of Tamil Nadu, represented by its Secretary, Education Department, Chennai and others 2008 (4) MLJ 289 for consideration of the application of the institutions and/staff employed by such institutions does not mean that even though the particular institution may not be eligible or entitled to grant-in-aid, the Government is obliged to accept the application. The direction given by the High Court clearly implies that the Government is required to consider the application of the institutions and/staff employed by such institutions strictly in accordance with law and take appropriate decision.

With the above observation, the special leave petition is disposed of."

4. Pursuant to the observations/directions contained in the order passed by the Honourable Supreme Court, an order was passed by the first appellant on 24.02.2012, in and by which, the request of the first respondent/writ petitioner for sanction of a post and approval of her appointment was rejected. This was challenged by the petitioner in W.P.(MD)No.3287 of 2012. The said writ petition was allowed by the impugned order dated 22.04.2014.

5. The appellant's contention is that the Writ Court while allowing the writ petition has not gone into the validity of the impugned order dated 24.02.2012 and by merely referring to the directions issued by the Honourable Supreme Court, allowed the writ petition and directed to sanction the post of Lab Attender in the second respondent school.

6. We have heard the learned Counsel for the first respondent/writ petitioner on the above submissions.

7. On a perusal of the order passed in the writ petition, it is evidently clear that

the Writ Court did not go into the correctness of the order passed by the appellant on 24.02.2012. It is evident that the petitioner was accommodated in a post which was never sanctioned for the second respondent school. Therefore, the appointment of the first respondent/writ petitioner is not only irregular, but it is illegal. Presumably, the second respondent/School Management took advantage of the fact that in the year 1978, a post of Lab Attender was sanctioned for the school for a period of two years. However, this sanction was subject to various conditions and the post will lapse after the time period. The Management accepting the order as such, did not question the conditions imposed and after the incumbent who was functioning in the school had demitted the office, filled up and appointed the first respondent/writ petitioner in the year 1998.

8. The action of the Management in appointing the first respondent/writ petitioner in an unsanctioned post is illegal. The first respondent/writ petitioner appears to have continued in service and she attained the age of superannuation.

9. Thus, we are of the clear view that the reason assigned in the order dated 24.02.2012 passed by the second appellant is legal and valid. Therefore, the Writ Court ought not to have interfered with the said order. However, we add a caveat to this finding by observing that having held that the first respondent/writ petitioner was accommodated in an unsanctioned post, the Department should have endeavoured to consider as to whether the Management is entitled to such a post. This is so because the Honourable Supreme Court while disposing of the appeal filed by the Government, took note of the decision in *G.Sahadevan Nair, Kanyakumari District v. Government of Tamil Nadu*, represented by its Secretary, Education Department, Chennai and others reported in 2008 (4) MLJ 289 and observed that the direction given by the High Court clearly implies that the Government is required to consider the application of the institutions and/staff employed by such institutions strictly in accordance with law and take appropriate decision.

10. Therefore, to that extent, the appellants have not considered the claim of the Teacher/Management. Therefore, while interfering with the order passed in the writ petition, we are inclined to issue certain directions.

11. For the above reasons, this writ appeal is allowed and the order passed in the writ petition is set aside and there will be a direction to the second appellant and the officers subordinate to him, to consider as to whether the second respondent school is entitled for the post of Lab Attender in accordance with the relevant Government Orders and in accordance with law. The said direction shall be complied with by the second appellant and the officers subordinate to him, within a period of four months from the date of receipt of a copy of this judgment. No costs. Consequently, the connected civil miscellaneous petition is closed.