

(2013) 02 MAD CK 0020
In the Madras High Court
Case No : W.A. (MD) No. 1314 of 2011

The Manager and The Correspondent Concordia High and Higher Secondary Schools, Lutheran Primary and Middle Schools, MELIM Primary Schools APPELLANT

Vs

Smt. S. Christy, The Chief Educational Officer and The District Educational Officer RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2013) WritLR 691

Hon'ble Judges : S. Vimala, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : C.K.M. appaji, for the Appellant; Isaac Mohanlal for R1 and Mr. B. Pugalenth, Special Government Pleader for R2 and R3, for the Respondent

Judgement

Chitra Venkataraman, J.—This writ appeal is against the order of the learned single Judge dated 25.07.2011 passed in W.P.(MD) No.

3772 of 2008. The third and fourth respondents in the writ petition, viz. the Manager and the Correspondent of Concordia High and Higher

Secondary School, representing the Management, have filed the present writ appeal. The writ petitioner was appointed as Post Graduate Assistant

(Chemistry) in the appellant-School, which is a recognised aided minority institution under the Tamil Nadu Private School Regulation Act. The

appointment of the writ petitioner/the first respondent herein on 20.12.2006 came on account of the voluntary retirement of one Post Graduate

Assistant (Chemistry) (Mrs. T. Annie Nirmala). It is evidenced by the proceedings dated 19.12.2006 that the appointment of the writ petitioner is

effective from the forenoon of 20.12.2006.

2. It is seen from the proceedings dated 22.03.2007 issued by the Chief Educational Officer, Kanyakumari District at Nagercoil, that for the academic year 2006-2007, the school was originally to have two P.G. Assistants in Chemistry. The Proceedings however contained a note that the appointment to the post of P.G. Assistant (Mathematics) and P.G. Assistant (Chemistry) should be made only after getting permission from the Department. Evidently the Management had not gone for prior approval of the appointment of the writ petitioner. The writ petitioner made representations before the District Educational Officer on 05.02.2007, 12.04.2007, 10.07.2007 and 04.12.2007 seeking approval of her appointment. The writ petitioner is stated to have met the District Educational Officer personally too. The District Educational Officer, however rejected the said claim. For the subsequent academic year 2007-2008, proceedings recognised the availability of one post of P.G. Assistant (Chemistry) only. In the background of the above facts, the writ petitioner was not paid the salary right from the time of appointment for want of approval by the District Educational Officer. Hence, the first respondent filed W.P. (MD) No. 3772 of 2008 for a Writ of Mandamus to direct the District Educational Officer and the appellant-School Management to approve the appointment of the writ petitioner as Post Graduate Assistant in Chemistry in the appellant-School with effect from 20.12.2006 and disburse the salary within a reasonable time as may be fixed by this Court.

3. In considering the contentions as put forth in the writ petition, learned single Judge pointed out to the judgment passed by this Court in W.A. Nos. 93 and 94 of 2009 decided on 06.01.2010 that for any sanctioned post, no prior approval is necessary. In respect of proceedings noting the availability of posts, the learned single Judge pointed out that there is no necessity for prior approval. In any event, the appointment without getting approval could not be a ground for not considering the writ petitioner's plea. Accordingly, this Court allowed the writ petition directing the respondents therein to forthwith grant approval for appointment, within a period of two months from the date of receipt of certified copy of the order of the writ Court.

4. Admittedly, the State Educational Authorities are not on appeal as against the order of the writ Court questioning the directions of this Court to

grant approval on the appointment of the writ petitioner. On the other hand, the Management is on appeal as against the order of the learned single

Judge.

5. We fail to understand the logic of the Management in challenging the order, particularly when the Management does not dispute the appointment

of the first respondent in the place of the retired teacher and there is a specific direction to the respondents in the writ petition to approve the

appointment of the writ petitioner for granting further service benefits including the salary. The appellants also admit the fact that according to the

Chief Educational Officer, for the academic year 2006-07, two posts were granted for P.G. Assistant (Chemistry) and the only condition in the

proceedings of the Chief Educational Officer was that the filling up of the posts should be made after getting necessary approval from the authority

concerned. When the appointment was made as early as 19.12.2006 on the vacancy caused by the voluntary retirement of one of the teachers,

and that fixing the number of posts had come towards the close of the academic year, the failure of the Management to get the approval, per se

before appointment cannot, in any manner, affect the teacher's appointment. Thus the responsibility for getting the approval rests on the school.

The appellants do not deny that it is not as though the proceedings of the Chief Educational Officer in fixing the teachers' strength was made for the

first time to say that they had no knowledge about the proceeding. Under the circumstances, when there is full knowledge that the appointment has

to go through the proceedings which is normally contemplated, we do not find any justifiable ground to admit this writ appeal. Under the

circumstances, we confirm the order of the learned single Judge by dismissing the writ appeal. Considering the directions given by the learned

single Judge directing the Educational Authorities to grant approval as regards the appointment of the writ petitioner/first respondent herein, if so far

no order has been passed on the approval of the appointment of the first respondent, it is time that respondents 2 and 3 take immediate steps to

grant the approval within a period of two months from today. In view of the dismissal of the writ appeal, M.P.(MD) No. 2 of 2011 is closed.

However, there shall be no order as to costs.