

(2015) 11 MAD CK 0076
In the Madras High Court
Case No : W.P.(MD) No. 18696 of 2015

T.N. Pudukudi, Hindu Nadar Uravinmurai Committee Higher Secondary School APPELLANT

Vs

The Secretary to the Government, Education Department, State of Tamil Nadu and Others RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Citation : (2015) 11 MAD CK 0076

Hon'ble Judges : D. Hari Paranthaman, J.

Bench : Single Bench

Advocate : S. Chellapandian, for the Appellant; V. Muruganandam, AGP, for the Respondent

Final Decision : Allowed

Judgement

D. Hari Paranthaman, J.—The petitioner is an aided Higher Secondary School governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. It was established in 1960 at T.N. Pudukudi, Puliyangudy in Tirunelveli District.

2. One Anburaj was employed in the sanctioned post of Lab Assistant and on reaching superannuation, he was retired from service on 31.05.2014. Hence the said post became vacant.

3. The petitioner School sent a representation dated 02.08.2015 to the third respondent, the competent authority, to permit the School to fill up the Lab Assistant post that became vacant from 31.05.2014. While so, the third respondent passed the impugned order in O.Mu. No. 4280/4/2015, dated 03.09.2015, refusing to grant permission to fill up the post relying on the government letter No. 11462/2/2006, dated 26.05.2006. Hence, the petitioner has filed this writ petition seeking to quash the aforesaid order and for a direction to the third respondent to permit him to appoint the petitioner as Lab Assistant in the vacant post.

4. Since the matter is governed by various decisions of this Court and more particularly my judgment dated 29.07.2010 made in W.P. Nos. 4221 of 2009 batch and also the judgment of the Division Bench dated 10.04.2015 made in W.A.(MD) No. 2 of 2015, the matter is taken up for final disposal at the stage of admission itself.

5. Heard both sides.

6. The impugned order refers to G.O. Ms. No. 212, Personnel and Administrative Reforms Department, dated 29.11.2001 and G.O. Ms. No. 14, Personnel, and Administrative Reforms Department dated 07.02.2006 and also the government letter No. 11462/2/2006, dated 26.05.2006.

7. The Government imposed ban on recruitment in G.O. Ms. No. 212, Personnel and Administrative Reforms Department, dated 29.11.2001 for all the posts other than Teachers, Doctors and Police Personnel.

8. Thereafter, the Government thought fit to lift the ban and issued G.O. Ms. No. 14, Personnel, and Administrative Reforms Department dated 07.02.2006. Thus, the ban imposed in G.O. Ms. No. 212 was lifted on 07.02.2006 by issuance of G.O. Ms. No. 14. While so, the letter No. 11462/2/2006, dated 26.05.2006 was issued by the Government stating that the non teaching post in the aided Schools cannot be filled though ban was lifted till a final order is issued by the Government. Placing reliance on the said government letter, the impugned order was passed.

9. It is useful to extract the entire impugned order.

Therefore, the third respondent passed the impugned order solely by placing reliance on the letter dated 26.05.2006 of the Education Department of the Government.

10. In fact, after the issuance of the government letter dated 26.05.2006, the Government issued G.O. Ms. No. 115, School Education (D2) Department, dated 30.05.2007. As far as G.O. Ms. No. 115 is concerned, there is no restriction as to the posts of Lab Assistant, Laboratory Clerk and Home Science Attender.

11. In these circumstances, I had an occasion to consider the effect of Government letter dated 26.05.2006 referred to above and also G.O. Ms. No. 115, in my judgment dated 29.07.2010 in W.P. Nos. 4221 of 2009 batch. In the said case also, the authorities refused to approve the appointment of the persons appointed to the post of Lab Assistants/Library Clerks/Home Science Attenders. Para 25 of the said judgment is relevant to extract herein:

"25. Reading of G.O. Ms. No. 14 makes it very clear that the ban imposed in G.O. Ms. No. 212 was lifted in total. While lifting the ban, the Government did not say that G.O. Ms. No. 212 would still continue to operate as against the recruitment of non-teaching staff in the schools. When G.O. Ms. No. 14 makes it very clear that the ban is lifted, the letter dated 26.05.2006 referred to in the impugned

orders could not impose ban on recruitment of non-teaching staff. Hence, I am of the considered view that the reasons given in the impugned orders have no basis and the impugned orders are illegal."

12. That is, I made it clear that once the Government issued G.O. Ms. No. 14, the same cannot be interdicted by way of a letter by the Government. It is well settled principle that the Government Order would prevail over the letters or instructions. Hence, I held that the government letter dated 26.05.2006 cannot interdict G.O. Ms. No. 14. I held categorically that when Government thought fit to lift the ban, the letter cannot be issued by an official stating a contrary view to the government order. Hence, on the said ground, the impugned order could be interfered with.

13. As stated above, the government issued G.O. Ms. No. 115 dated 30.05.2007 relating to the filling up of vacancies in non teaching post in the aided Schools. That is G.O. Ms. No. 115 could be read as continuation of the aforesaid letter dated 26.05.2006 of the Government. The Government issued G.O. Ms. No. 115 regarding filling up of vacancies in non teaching post.

14. As stated above, G.O. Ms. No. 115 does not place any restriction relating to Library Clerk, Lab Assistant and Home Science Attender posts in the Higher Secondary Schools. The reason is obvious. Those posts are, though classified as non teaching posts, in fact, the same are teaching posts. It is useful to extract para 31 of my judgment referred to above.

"31. After G.O. Ms. No. 115, the school was permitted to fill the vacancy of Junior Assistant. In fact, there was some restriction in the matter of appointment of Junior Assistant as per G.O. Ms. No. 115. But there is no restriction as to the appointment of Library Clerk, Lab Assistant and Home Science Attender in Higher Secondary Schools. In my considered view those posts are very essential like teacher posts. Though they are classified as non-teaching posts, the students cannot be taught in higher secondary schools without these posts. Without a Lab Assistant and without a Home Science Attender, it is difficult for the school to impart education in science. Likewise, the Library Clerk is the only person who handles the entire Library and no other person is provided in the Library. I am stated that in Central Board schools there are more persons provided to handle Library as per the CBSE regulations. There are 1400 students studying in the petitioner's school and the school also has a Library for a long time and the post was sanctioned from 1966. Hence, the respondents cannot now state that they could not approve the above three posts. Since, as stated above, G.O. Ms. No. 115 is not referred to in the impugned orders, the fourth respondent cannot improve by advancing an argument now to sustain the impugned order by importing G.O. Ms. No. 115 to sustain the same."

15. In view of para 31, the respondents have no option to permit the petitioner to fill up the post and grant sanction. The Division Bench also in W.A.(MD) No. 2 of 2015 took a similar view. The relevant paragraph Nos. 9 and 10 are extracted

herein:

"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."

16. In view of the same, the writ petition is allowed and the impugned order is quashed. The petitioner is at liberty to fill up the vacant post of Lab Assistant. Of course, it is made clear that the person appointed to the post should possess the requisite qualification prescribed for the post. On such appointment, the respondents are directed to approve the same and to grant sanction within a period of eight weeks from the date of sending the proposal with regard to the same. No costs.