

(2012) 06 MAD CK 0154
In the Madras High Court
Case No : Writ Petition No. 19526 of 2008

Y. Mary

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 13-06-2012

Acts Referred:

Citation : (2012) 06 MAD CK 0154

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A.V. Bharathi, for the Appellant; P. Sanjai Gandhi, AGP (Edn.) for RR1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. This writ petition is filed by the petitioner seeking for a direction to respondents 1 and 2 to sanction and approve the post of Physical Education

Teacher in L.M.S. Girls Higher Secondary School, Marthandam under the control of the fourth respondent and to regularize the services of the

petitioner with effect from 01.12.1999 including the difference of pay from 02.06.2004. The writ petition was admitted on 13.05.2008. Pending the

writ petition, in the application for an interim direction, this court found that there was no prima facie case for the grant of interim direction and

hence, the direction application was dismissed. On notice from this court, the third respondent has filed a counter affidavit, dated 04.08.2008.

2. It is seen from the records that the petitioner was appointed as a Physical Education Teacher in the non sanctioned post on 01.12.1999. The

school has got no sanctioned post of the Physical Education Teacher. The C.S.I.

Corporate schools were taken as one unit. Hence the need and surplus P.E.T. posts were calculated as one unit. The surplus and vacant posts without persons were resumed by the Department. The management of the CSI has no power to transfer the vacant surplus posts to the needy schools. In paragraphs 6 and 9 of the counter, it was averred as follows :

6. It is submitted that the 4th respondent without any reference to the Chief Educational Officer, transferred two alleged surplus posts with

persons, one of the surplus posts with person was transferred to LMS (Girls) Higher Secondary School, Marthandan from L.M.S. Higher

Secondary school Mathicode and another from C.S.I. V.V.Higher Secondary School Irenipuram. It is submitted as per fixation of sanctioned post

vide the proceedings of the Chief Educational Officer in R.C.No.8018/A4/2000, dt: 30.12.2000 only one post of Physical Education Director

(Gr.II) was fixed to the LMS (Girls) Higher Secondary School, Marthandam. The 4th respondent management has no right to transfer and appoint

from any other school. If the post is found an excess, it is only the prerogative of the Chief Educational Officer and the Govt. to resume the post.

9....it is submitted that, the Corporate Manager of C.S.I. Schools, then appointed the petitioner as Physical Director (Grade -II) from 2.6.04 in the

retirement vacancy arose in the same school, and the appointment was approved on consolidated basis as per G.O.Ms.No.4 School Education

Department dt: 19.01.04 and it was on time scale with effect from, 1.6.2006 as per G.O.Ms.No.99 School Education Department dt: 27.6.06.

The period from 1.12.99 to 1.6.04, the petitioner is not eligible to draw salary, since she was appointed in an un-sanctioned post.

3. In the absence of the petitioner's school seeking for permission to fill up the post and there being no sanctioned post, it is not open to the

petitioner to seek for a direction to the respondents to approve her post, that too against the non sanctioned vacancy. Even assuming that the

school in which the petitioner is working is a minority school, it is also governed by the provisions of Rule 15(1) of the Tamil Nadu Recognised

Private Schools (Regulations) Rules, 1974.

4. The Supreme Court vide its judgment in State of Tamil Nadu and others Vs. Amala Annai Higher Secondary School reported in 2009 (9) SCC

386 dealt with a case in respect of a minority institution. In paragraphs 11 to 15 of the said judgment, the Supreme Court observed as follows:

11. Secondly, insofar as GOMs No.340 dated 1-4-1992 is concerned, it is not attracted at all. GOMs No.340 dated 1-4-1992 issued by the

Education Department mentions:

Accordingly, the following staffing pattern, was recommended by the Committee for deciding the eligibility for post for the schools in question

(opened in 1987-1988 and earlier)...

Thus, GOMs No.340 dated 1-4-1992 containing norms for sanction of posts is applicable to the High Schools opened in 1987-1988 and earlier.

In the present case, the School was upgraded to High School in 1988-1989.

12. Thirdly, the Division Bench as well as the Single Judge overlooked and ignored sub-rule (2) of Rule 6 of the Rules, 1977 which reads:

6.(2) Payment of monthly staff grant shall be made only in respect of qualified and admissible teachers actually employed in minority schools whose

appointments have been approved by the authorities concerned according to the number of posts sanctioned to the institution concerned.

Admittedly, in the present case, the management of the School appointed Ms. Rosary as Junior Assistant to a non-sanctioned post. The

explanation of the management that she was appointed in anticipation of orders from the competent authority hardly merits acceptance.

13. Fourthly, as per the norms issued in relevant GOMs the strength of the School during 1990- 1991 was only 300 and above while the students"

strength of the School during 1990-1991 was only 281. As a matter of fact, it is not even the case of the management that during 1990-1991, the

student strength was 300 or more. The student strength during 1993-1994 and subsequent years has no relevance. It is here that the High Court

fell into a grave error because what was important under the relevant GOMs was that the student strength must have been 300 or more during the

years 1988-1989, 1989-1990 and 1990-1991.

14. Fifthly, the reliance placed by the High Court on GOMs No.245/Education dated 21-2-1970 is misplaced inasmuch as the said G.O. applied

to clerks who were already employed in and around the year 1964 and has no application to a Junior Assistant appointed to a non-sanctioned

post in 1988- 1989.

15. Last but not the least, the High Court erred in directing the present Appellant 1 to sanction one post of Junior Assistant to Respondent 1,

AAHS School from 1-6-1994 overlooking and ignoring that creation and sanction of posts is the prerogative of the executive and the courts

cannot arrogate to themselves a purely executive power.

Therefore, the petitioner cannot demand as a matter of right approval and payment of salary.

5. Subsequently, a similar question also came up before the Supreme Court in Kolawana Gram Vikas Kendra Vs. State of Gujarat and Others, .

In paragraphs 6 to 8, the Supreme Court observed as follows:

6. In our considered view, we do not view this to be the interference in the selection process. It would be perfectly all right for a minority institution

to select the candidates without any interference from the Government. However, the requirement of this prior approval is necessitated because it

is for the Government to see as to whether there was actually posts available in the said institution as per the strength of students and secondly,

whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the

Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter affidavit. Para 3 of the said affidavit reads

as under:

Minority institutions are free to select their teaching and non-teaching staff. No Government Officer or the representative of the Board was

appointed in the selection committee of the minority institution. There is no interference by the Government in the administration of the schools.

However, N.O.C. is required to be obtained to verify whether there is a vacancy of a teacher of a particular subject as per the workload fixed by

the Gujarat Secondary and Higher Secondary Education Board specially when the government is providing grant-in-aid and that he possesses

minimum required qualification for the post he is appointed.

7. From the reading of aforementioned para 3, it is clear that all that the Government wants to examine is as to whether the proposed appointments

were within the frame work of the rules considering the workload and the availability of the post in that institution and, secondly, whether the

selected candidates had the necessary qualifications for the subjects in which the

said teachers were appointed. The same applies to the non-teaching staff also.

8. In view of this clear stand taken by the State Government, we cannot pursue ourselves to hold that the aforementioned circular amounts to any unconstitutional interference in the internal working of the minority institution. In that view, we would choose to dismiss these appeals. However,

Mr. Ahmadi raised another point saying that if the prior approval or the no objection certificate, as the case may be, is not awarded within seven days without any reason, then it would be hazardous for the minority institution to run itself. We do expect the competent authority to issue the no objection certificate within the time provided in the said circular which is of seven days. Of course, if there are any objections, the authority will be justified to take some more time within the reasonable limits.

In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs.