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Court : Chennai

Decided On : Sep-26-2016

Judge : R. Subbiah

Appeal No. : W.P.No. 30495 of 2016

Appellant : P. Devakumar

Respondent : The State Tamilnadu, rep. by its Secretary to Government, Education Department, Chennai and Others

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned proceeding of the fourth respondent passed vide O.Mu.NO.1872/A4/2016, dated 22.04.2016 and quash the same and direct the respondents to approve the appointment of the petitioner as Waterman in the fifth respondent school w.e.f. 11.04.2016 with all consequential benefits, in the light of the order passed in W.A.(MD)No.509/2009 dated 21.10.2008 and W.A.No.1012/2009 dated 15.10.2014.)

The petitioner seeks for quashing of the proceedings of the fourth respondent in O.Mu.NO.1872/A4/2016, dated 22.04.2016 and for consequential direction to the

respondents 1 to 4 to approve the appointment of the petitioner as Waterman in the fifth respondent school w.e.f. 11.04.2016 with all consequential benefits.

2. The fifth respondent is a religious minority Higher Secondary School, which comes under the Vellore Diocese. The School is governed by the Tamil Nadu Recognised Private Schools Regulations Act 1973.

3. The averments made in the affidavit filed in support of the Writ Petition is that the petitioner was appointed in the fifth respondent School on 11.4.2016 in a permanent vacancy as Waterman. The fifth respondent school had submitted proposal dated 11.04.2016 to the fourth respondent for approval of the petitioner's appointment w.e.f. 11.04.2016. By proceeding dated 22.04.2016, the fourth respondent returned the proposal on the ground that no appointment can be made to a vacancy that arose due to promotion and that there is ban on the appointment. As per G.O.Ms.No.115 School Education (D2) Department, dated 30.05.2007, in the Government Aided Schools, all the vacancies of Junior Assistants can be filled up and 50% of the Watchman vacancies can be filled up. Subsequently, the Government issued G.O.Ms.No.203 dated 23.7.2010 granting permission to fill up the non-teaching post. The petitioner was appointed in a vacancy that arose after issuance of G.O.Ms.No.203 School Education (D1) Department, dated 23.7.2010, and therefore, there is no impediment in approving the petitioner's appointment as Waterman w.e.f. 11.04.2016. On the contrary, the fourth respondent rejected the approval sought for the appointment of the petitioner as Waterman by the impugned proceedings, which will not stand scrutiny of the Government Orders stated above. Therefore, the impugned proceedings is liable to be quashed and the petitioner is entitled for the consequential relief.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 4 and perused the impugned order.

5. It is not in dispute that the fifth respondent is a religious minority institution and the post of Waterman in the said School is a sanctioned post. As such, it is open to the fifth respondent institution to fill up the same and accordingly, it was filled up.

6. A similar issue arose for consideration in W.P.(MD) No.484/2007 which was allowed on 30.10.2007 and challenge made to the said order by the official respondents in W.A.(MD)No.308/2008 was also dismissed by a Division Bench of this Court on 4.8.2008 and no further challenge has been made to the said judgment. Following the aforesaid judgment, by order dated 15.10.2014, a Division Bench of this Court dismissed the appeal in W.A.No.1012 of 2009 preferred by the official respondents against the order of a learned single Judge allowing the similar relief sought for by the petitioner therein.

7. In the light of the above judgments and considering the facts of the case, the impugned proceedings is quashed. The fourth respondent is directed to approve the appointment of P.Devakumar, as Waterman, in the services of the fifth respondent School with effect from 11.04.2016 with conferment of all benefits and pass necessary orders within a period of one month from the date of receipt of a copy of this order and also pay the arrears of salary within a period of one month thereafter.

8. With the above direction, the Writ Petition is allowed. No costs.

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