

C.R. Arunkumar Vs. the Director of School Education,

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Court : Chennai

Decided On : Mar-31-2006

Reported in : (2006)2MLJ308

Judge : N. Paul Vasanthakumar, J.

Appeal No. : Writ Petition No. 24993 of 2005 and W.P.M.P. No. 27368 of 2005

Appellant : C.R. Arunkumar

Respondent : The Director of School Education, ;The Chief Educational Officer,
;The District Educational Officer

Advocate for Def. : R. Lakshminarayan, Govt. Adv.

Advocate for Pet/Ap. : S.N. Ravichandran, Adv.

Disposition : Petition allowed

Judgement :
ORDER

N. Paul Vasanthakumar, J.

1. Prayer in the writ petition is to quash the order of the first respondent dated 22.3.2005 rejecting the approval of appointing the petitioner as junior Assistant from 3.7.2001 in the 4th respondent Hindu Higher Secondary School, Karumbur,

Vellore District.

2. Petitioner is qualified with B.Sc., Mathematics degree and he has also passed English Typewriting higher grade. He registered his name in the Employment Exchange. In the 4th respondent school, one Junior Assistant retired on 31.5.2001 and the management sought permission from the 3rd respondent on 19.5.2001 to fill up the post. The 3rd respondent also granted permission on 4.1.2002. Even prior to this, the School sought a list of candidates from the District Employment Exchange on 22.5.2001. The management also called for applications vide notification in the Notice Board of the School. Petitioner applied for the said post pursuant to the notification made in the notice board and after interview, petitioner was appointed as Junior Assistant on 3.7.2001.

3. Subsequently, the papers were sent to the second respondent, who is the approving authority, for approval of petitioner's appointment. Second respondent, by his proceedings dated 8.9.2003, returned the proposal raising some queries. The queries were replied by the School on 29.9.2003. Thereafter, the first respondent passed the order dated 22.3.2005, which is impugned in this writ petition.

4. The reasons stated for not approving the petitioner's appointment are that,

(a) The petitioner's name was not sponsored through the Employment Exchange;

(b) Chief Educational Officer granted permission only on 4.1.2002, whereas the appointment was made as early as on 3.7.2001; and that

(c) By G.O.Ms. No. 212 P&AR; Department, dated 29.11.2001, the Government imposed ban on appointments and during the said ban period, petitioner having been appointed, permission granted by the Chief Educational Officer itself is unsustainable.

5. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate.

6. As pointed out by the learned counsel for the petitioner the management of the School requested the District Employment Officer to sent a list of candidates as early as on 22.5.2001 and also invited applications through Notice Board of the School. A Division Bench of this Court in 2003 WLR 31 Nehru Memorial College v. The State of Tamil Nadu and Ors., held that the teaching and non-teaching staff in a private school can be appointed from getting list from the Employment Exchange and also through notification issued in the newspaper or in the Notice Board. In this case, the petitioner having applied pursuant to the notification made in the Notice Board of the School and the Employment Exchange also having been approached by the school, rejection of approval on the ground that petitioner's name was not sponsored by the Employment Exchange is not sustainable.

7. The second reason stated in the impugned order that permission was granted by the Chief Educational Officer only on 4.1.2002, whereas the appointment was made as early as on 3.7.2001 is also unsustainable in view of the decision of this Court in W.P. No. 7767 of 2003 dated 10.11.2003 The Secretary, Thiruvalluvar Aided Elementary School, Kadapperikuppam, Villupuram District v. The Secretary to Government, Education Department, Chennai and 3 Ors. In para 5 of the said order, the learned Judge repelled similar contention raised by the department and for proper appreciation, para 5 is extracted hereunder,

5. Insofar as the first ground for rejection is concerned, it is seen that the petitioner school passed a resolution on 01.06.1995 to appoint a Headmistress, since the vacancy arose on 31.05.1995 due to the retirement of Tmt.D.Saraswathi and the said resolution was also forwarded to the concerned Educational Officer. Though the appointment was made in anticipation of permission on 02.06.1995, appropriate permission was granted on 11.01.1996. This permission granted for appointment is not disputed by the respondents. Consequently, the said Tmt.Mahalakshmi was allowed to function as Headmistress. When the question of approval of appointment came up for consideration, the third respondent found fault with the petitioner school for failing to get prior permission. In my considered view, once the request of the petitioner management was considered and permission was granted, it relates back of the date of the appointment. Hence the impugned order cannot be sustained.

8. The third objection raised by the department is that there was a ban on appointment issued in G.O.Ms. No. 212 dated 29.11.2001 and during the ban period, petitioner was appointed. The appointment order was given to the petitioner pursuant to the selection made as early as on 3.7.2001 i.e., nearly four months prior to the issuance of ban order in G.O.Ms. No. 212 dated 29.11.2001. Petitioner having been appointed in a permanently sanctioned and approved post in the 4th respondent school and the petitioner having the requisite qualification for the post and he having worked from the date of his appointment - 3.7.2001, respondents cannot deny salary to the petitioner.

7. In view of the above finding, the impugned order is set aside and the writ petition is allowed. The respondents are directed to approve the appointment of petitioner as Junior Assistant with effect from 3.7.2001. Petitioner is entitled to service and all other benefits as applicable under the rules. Petitioner shall be paid with entire arrears of salary within a period of six weeks from the date of receipt of copy of this order.

The writ petition is allowed with the above directions. No costs. Connected WPMP No. 27368 of 2005 is closed.

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