

S.Uma Vs. the Director of School Education.

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Court : Chennai

Decided On : Mar-09-2012

Judge : N.Paul Vasanthakumar, J.

Appeal No. : W.P(MD)No.14288 of 2011; W.P(MD)No.14289 of 2011; W.P(MD)No.14290 of 2011 and M.P(MD)Nos.1,1 and 1 of 2011

Appellant : S.UmA.

Respondent : The Director of School Education.

Advocate for Def. : Mr.K.S.Duraipandian, Adv.

Advocate for Pet/Ap. : Ms.M.Joseph Thatheus Jerome, Adv.

Judgement :

Prayer in W.P(MD)No.14288 of 2011 Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for all records relating to the impugned order of the second respondent made in R.Dis.No.11671/A2/04, dated 07.12.2004 and the consequential order in proceedings of the third respondent dated 29.12.2006 and to quash the same and consequently to direct the respondents 1 to 3 herein to approve the appointment of the petitioner as P.G.Assistant(English) in the third respondent school from 28.05.2003 in regular time scale of pay with all emoluments, benefits and privileges insofar as the petitioner is concerned.

Prayer in W.P(MD)No.14289 of 2011 Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for all records relating to the impugned order of the second respondent made in R.Dis.No.11672/A2/04, dated 07.12.2004 and the consequential order in proceedings of the third respondent dated 29.12.2006 and to quash the same and consequently to direct the respondents 1 to 3 herein to approve the appointment of the petitioner as Tamil Pandit in the third respondent school from 28.05.2003 in regular time scale of pay with all emoluments, benefits and privileges insofar as the petitioner is concerned.

Prayer in W.P(MD)No.14290 of 2011 Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for all records relating to the impugned order of the second respondent made in R.Dis.No.11670/A2/04, dated 07.12.2004 and the consequential order in proceedings of the third respondent dated 29.12.2006 and to quash the same and consequently to direct the respondents 1 to 3 herein to approve the appointment of the petitioner as B.T.Assistant (Maths) in the third respondent school from 28.05.2003 in regular time scale of pay with all emoluments, benefits and privileges insofar as the petitioner is concerned.

COMMON ORDER

1. These Writ Petitions have been filed challenging the G.O.Ms.No.4. School Education (M2)Department, dated 29.01.2004 of the first respondent and the consequential order of the third respondent in O.Mu.No.11384/A4/2003, dated 28.12.2004 and to quash the same.

2. The petitioner in W.P.No.14288 of 2011 is a Post Graduate Assistant (English) in the third respondent-School from 28.05.2003 in the vacancy that arose due to the death of one R.Sethuraman. To fill up the said vacancy, the school called for a list of eligible candidates from the Employment Exchange and the same was received on 21.04.2003. Based on the interview held by the school committee, on 28.05.2003 the petitioner was appointed as P.G.Assistant (English) and the petitioner assumed charge on the same day. As per Rule 15 of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, prior permission has to be

obtained by the third respondent school, and the Chief Educational Officer in his proceedings dated 06.03.2003 in MU.MU.No.1751/A3/03, dated 06.03.2003 granted such permission to fill up the said vacancy through open category for the academic year 2002-2003. Thereafter the petitioner was appointed and then the Management sent the Proposals for approval of petitioner's appointment. But the same was returned by the District educational Officer by his proceedings in O.Mu.No.11671/A2/4,dated 07.12.2004 stating that the appointment of the petitioner was contrary to the proceedings of the Director of School Education, dated 19.01.2004 and G.O.Ms.No.4,School Education(M2) Department, dated 19.01.2004. Now the petitioner challenges the letter of rejection of approval stating that the petitioner was appointed in a vacancy, which arose on 31.05.2002 and therefore, the proceedings of the Director of Higher Secondary School and the Government Order will not be applicable to the facts of the present case.

3. The petitioner in W.P.No.14289 of 2011 is a Tamil Pandit in the third respondent-School from 28.05.2003, appointed in the vacancy that arose due to the retirement of one Sundaram. Based on the interview held by the school committee, on 28.05.2003 the petitioner was appointed as Tamil Pandit and the petitioner assumed charge on the same day. As per Rule 15 of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, prior permission has to be obtained by the third respondent school, and the Chief Educational Officer in his proceedings in MU.MU.No.1753/A1/03, dated 06.03.2003 granted such permission to fill up the said vacancy through open category for the academic year 2002-2003. Thereafter the petitioner was appointed and then the Management sent the Proposals for approval of petitioner's appointment. But the same was returned by the District educational Officer by his proceedings in O.Mu.No.11672/A2/04,dated 07.12.2004 stating that the appointment of the petitioner was contrary to the proceedings of the Director of School Education, dated 19.01.2004 and G.O.Ms.No.4,School Education(M2) Department, dated 19.01.2004. Now the petitioner challenges the letter of rejection of approval stating that the petitioner was appointed on a vacancy, which arose on 31.05.2002 and therefore, the proceedings of the Director of Higher Secondary School and the Government Order will not be applicable to the facts of the present case.

4. The petitioner in W.P.No.14290 of 2011 is a B.T.Assistant in the third respondent-School from 28.05.2003 in the vacancy that arose due to resignation of one T.K.Jeyaseelan, based on the interview held by the school committee, on 27.05.2003. As per Rule 15 of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, prior permission has to be obtained by the third respondent school and the Chief Educational Officer in his proceedings in Na.Ka.No.1752/A3/03, dated 31.03.2003 granted such permission to fill up the said vacancy through open category for the academic year 2002-2003. Thereafter the petitioner was appointed and then the Management sent the Proposals for approval of the petitioner's appointment. But the same was returned by the District educational Officer by his proceedings in R.Dis.No.11670/A2/04,dated 07.12.2004 stating that the appointment of the petitioner was contrary to the proceedings of the Director of School Education, dated 19.01.2004 and G.O.Ms.No.4,School Education(M2) Department, dated 19.01.2004. Now the petitioner challenges the letter of rejection of approval stating that the petitioner was appointed in a vacancy, which arose on 01.10.2002 and therefore, the proceedings of the Director of Higher Secondary School and the Government Order will not be applicable to the facts of the present case.

5. A counter affidavit has been filed by the respondents. The stand taken by the Department is that contrary to the proceedings of the authorities, appointment was made on 28.5.2003, when the school was on summer vacation and therefore, approval cannot be granted and, in any event, the school was directed to send a revised proposal for approving the appointment from 19.01.2004, the date on which the ban order was lifted.

6. G.O.Ms.No.4, School Education (M2) Department, dated 19.01.2004 relates to filling up of the vacancies available as on 1.6.2003 in aided school, on a consolidated pay for a period of five years. In the present cases, the vacancy arose on different dates i.e.,31.05.2002 and 1.1.2002 respectively. As per G.O.Ms.No.4, dated 19.01.2004, the vacancies available, as stated therein, as on 1.6.2003 have to be filled up. Therefore, in respect of appoint made prior to the date mentioned in G.O.Ms.No.4, dated 19.1.2004, the appointment of the petitioners cannot be found fault with and the respondents are bound to accept the

proposals and approve the appointments.

7. Insofar as the proceedings of the Director of School Education stating that no appointment shall be made during summer vacation is concerned, no provision of law has been cited to say that such appointment will be irregular or improper. On the contrary, it is always better that a school should have the full strength of teachers and fully equipped before the start of the academic year. It is not clear why such direction was issued by the school Authorities which will not sub-serve the cause of proper school education. It belies common sense.

8. Similar issue was considered by this Court in W.P.6314 of 2005 dated 11.11.2009. The very same contention raised in these writ petitions were canvassed before the learned single Judge of this Court and the same was accepted by this Court. The said order was also implemented by the Government by issuing G.O.Ms.No.ID 343, Education Department, dated 01.11.2010 and granted approval of appointment from the date of joining in service.

9. Applying the said judgment to the facts of this case, the writ petitions are allowed and the impugned orders of the second respondent, dated 07.12.2004 and the 3rd respondent 29.12.2006 are set aside. The respondents are directed to approve the appointment of the petitioners as P.G.Assistant (English), Tamil Pandit and B.T.Assistant respectively, in the third respondent school from the date of their appointment in regular time scale of pay with all emoluments and other benefits, within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs.

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