

**(2014) 03 MAD CK 0027**

**Madras High Court**

**Case No:** Writ Appeal No. 762 of 2013 and M.P. No. 1 of 2013

R. Keerthivarman

APPELLANT

Vs

The District Education Officer

RESPONDENT

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**Date of Decision:** March 19, 2014

**Citation:** (2014) 2 LLN 750 : (2014) 3 LW 132 : (2014) 4 MLJ 600

**Hon'ble Judges:** N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

**Bench:** Division Bench

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### **Judgement**

N. Paul Vasanthakumar, J.

This appeal is filed against the order made in W.P. No. 22286 of 2012 dated 27.2.2013 wherein the appellant herein has challenged the order of the 2nd respondent-Management dated 13.7.2012, terminating the services of the appellant. Case of the appellant before the learned Single Judge was that appellant passed Post-graduate in History and also possessed M.Phil in History and B.Ed. Degree. He registered his name in the District Employment Exchange at Thiruvannamalai and pursuant to an advertisement issued by the 2nd respondent calling for applications for the post of B.T. Assistant in Social Science, he applied for the same in May, 2008. In the interview conducted by the Management, about 20 candidates including the appellant appeared and the appellant was selected and appointed by an order dated 02.7.2008 as B.T. Assistant (Social Science). The appellant performed his duties as a Social Science Teacher and handled Classes for Standards VI to X. The 2nd respondent is a partly aided and recognised private school. The post in which the appellant was appointed is not a sanctioned post. No Government grant was paid and the appellant was paid salary from the funds of the Management. His appointment was not approved by the Department. Due to fall in strength, the appellant was terminated by an order dated 13.7.2012 by the 2nd respondent. The said order was challenged before the learned Single Judge and the same was dismissed.

2. The learned counsel appearing for the appellant contended that the appellant having been appointed in the 2nd respondent's recognised private school, though in an unaided vacancy, as per Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, prior permission from the competent authority to terminate the services of the appellant ought to be obtained, but in this case, no prior approval was obtained. Hence, the termination is illegal. The learned Single Judge dismissed the writ petition on the ground that the appellant having been appointed in an un-sanctioned post, the service condition prescribed for aided school teachers in Chapter V of the Act is not applicable. The learned Special Government Pleader and the learned counsel for the Management supported the order of the learned single Judge and prayed for dismissal of the writ appeal.

3. The issue arising for consideration is whether before terminating a teacher from the private school, appointed in an unsanctioned post, the Management is bound to get prior approval in terms of Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

4. In the objects and reasons of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, it is stated that the Committee appointed by Government suggested to codify various questions relating to aided elementary and secondary schools including service conditions of teachers. As per the Act, every teacher or other persons appointed in a private school must enter into an agreement in Form VIIA or Form VIIB namely permanent and temporary staff respectively, which is prescribed under Rule 15(2). Rule 15(1) states that the number of teachers appointed in a private school shall not exceed the number of posts sanctioned by the Department. In Form VIIA agreement Clause 6, it is stated that the said teacher and the School Committee shall conform to all the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Chapter V of the Act deals with terms and conditions of service of teachers and other persons employed in private schools. Section 22 of the Act is coming within the said Chapter, which only mandated getting prior approval from the competent authority before terminating the teachers and other persons employed in private schools.

5. The appellant has not executed any agreement in terms of Form VIIA, as he was not appointed in an aided post. The appellant's appointment was in an unsanctioned post and temporary. Hence, his appointment can be treated only as contractual appointment. Further, Section 26 of the Act contemplates absorption of teachers found surplus in needy schools of the Management or in Government schools. That provision is also applicable only to teachers appointed in sanctioned posts and not in unsanctioned posts. Thus, the appellant cannot compare his case with the teachers appointed in sanctioned posts.

6. Similar issue was considered by the Division Bench of this Court in the decision reported in [The Correspondent, M.M. Higher Secondary School Vs. K. Mathur Kumar,](#)

[The Director of School Education and The District Educational Officer,](#) with regard to the claim of the salary of a teacher appointed in an un-sanctioned post. In Paragraph (9) of the said decision, the Division Bench held thus:-

9. It is settled law that if a person has been appointed against a post not sanctioned by the State Government, he cannot claim salary against such unsanctioned post. There is nothing on record to suggest that the post of PG Assistant (Economics) was required to be sanctioned for the school, in absence of which the teaching in the school would have been affected. In absence of such averment and other details, according to us, no relief could have been granted in the manner granted by the learned Single Judge and in the manner as was sought for by the writ petitioner. If the petitioner was appointed against a post created by the school management, but not sanctioned by the State Government, the petitioner, at best, could claim for wages from the school management, which was paid to him at the rate of Rs. 1000 per month for taking classes for two hours per day. In such a situation, the impugned order dated 29.9.2004 passed by the learned Single Judge in W.P. No. 18900 of 2001 cannot be upheld.

7. The appellant having been appointed in an un-sanctioned post, he cannot plead that the procedure contemplated under Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 should have been followed before terminating the service. If the argument of the appellant is to be accepted, as per the said Act, the appellant is not entitled to file writ petition and his remedy is to file an appeal against the order of termination before the competent authority and thereafter, further appeal was provided before the Tribunal for Education cases and then only, he can approach this Court by filing writ petition. Hence, the issue raised by the appellant is answered against the appellant. The writ appeal is dismissed. No costs. The concept of appointing teachers in non-sanctioned post in aided schools is of recent development, the State is bound to look into the issue and consider the plight of teachers appointed in non-sanctioned post in recognised aided schools.