

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.08.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. Nos.30315 to 30322 of 2016 and

WMP Nos.26280 to 26287 of 2016

1.V.Balasubramaniam ...Petitioner in W.P.No.30315/2016
2.P.Sivakami ...Petitioner in W.P.No.30316/2016
3.M.Velmurugan ...Petitioner in W.P.No.30317/2016
4.C.Mugudeswaran ...Petitioner in W.P.No.30318/2016
5.R.Boopathy ...Petitioner in W.P.No.30319/2016
6.R.Radha Lakshmi ...Petitioner in W.P.No.30320/2016
7.N.R.Manokaran ...Petitioner in W.P.No.30321/2016
8.A.Shakila Banu ...Petitioner in W.P.No.30322/2016

Vs.

1. The State Tamilnadu
rep. By its Secretary to Government,
Education Department, Chennai - 9.
2. The Director of School Education,
D.P.I. Buildings, College Road,
Chennai - 6.
3. The Chief Educational Officer,
Erode.
4. The District Educational Officer,
Gobi, Erode District.
5. The Secretary,
Diamond Jubilee Higher Secondary School,
Gobichettypalayam - 638 452
Erode District. ... Respondents in all Writ Petitions

PRAYER in W.P.No.30315 and W.P.No.30316 of 2016: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned proceeding of the 4th respondent vide Na.Ka.No.750/Aa3/2016, and Na.Ka.No.751/Aa3/2016 respectively dated 01.07.2016, and quash the same and direct the respondents to approve the appointment of the petitioners as

Junior Assistant in the 5th respondent school w.e.f. 20.01.2016, and 21.01.2016 respectively with all consequential benefits, in the light of the order passed in W.A.(MD) No.928 of 2010 dated 11.01.2011.

Prayer in W.P.No.30317 of 2016: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to Call for the entire records connected with the impugned proceeding of the 4th respondent vide Na.Ka.No. 752/Aa3/2016 dated 28.06.2016 and quash the same and directing respondents to approve the appointment of the petitioner as Library Clerk (Junior Assistant Grade-I) in the 5th respondent school w.e.f. 20.01.2016 with all consequential benefits in the light of the order passed in W.A. (MD).No. 928/2010 dated 11.01.2011.

Prayer in W.P.No.30318 of 2016: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to Call for the entire records connected with the impugned proceeding of the 4th respondent vide Na.Ka.No. 755/Aa3/2016 dated 19.07.2016 and quash the same and directing respondents to approve the appointment of the petitioner as Scavanger (Full time) in the 5th respondent school w.e.f. 20.01.2016 with all consequential benefits in the light of the order passed in W.A. (MD).No. 928/2010 dated 11.01.2011

Common Prayer in W.P.Nos.30319 and 30321 of 2016: Writ Petitions has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to Call for the entire records connected with the impugned proceeding of the 4th respondent vide Na.Ka.No. 753/Aa3/2016 and Na.Ka.No.2873/Aa3/2016, dated 12.07.2016 and 19/07/2016 respectively and quash the same and directing the respondents to approve the appointment of the petitioners as Office Assistant in the 5th respondent school w.e.f. 20.01.2016 and 02/06/2016 respectively with all consequential benefits in the light of the order passed in W.A. (MD).No. 928/2010 dated 11.01.2011

Prayer in W.P.No.30320 of 2016: Writ Petitions has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to Call for the entire records connected with the impugned proceeding of the 4th respondent vide Na.Ka.No. 754/Aa3/2016 dated 19.07.2016 and quash the same and directing respondents to approve the appointment of the petitioner as Sweeper(Full Time) in the 5th respondent school w.e.f. 20.01.2016 with all consequential benefits in the light of the order passed in W.A. (MD).No. 928/2010 dated 11.01.2011

Prayer in W.P.No.30321 and 30322/2016:Writ Petitions has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to Call for the entire records connected with the impugned proceeding of the 4th respondent vide Na.Ka.No. 2872/Aa3/2016, Na.Ka.No. 2873/Aa3/2016 dated 19.07.2016 and quash the same and directing respondents to approve the appointment of the petitioner as Office Assistant and Lab Assistant in the 5th respondent school w.e.f.02.06.2016 with all consequential benefits in the light of the order passed in W.A. (MD).No. 928/2010 dated 11.01.2011

For Petitioners :Mr.S.N.Ravichandran

For Respondents :Mr.M.Digvijayapandian
Additional Government Pleader
for R1 to R4
Mr. R.D.Ashok Kumar for R5

C O M M O N O R D E R

By consent, the Writ Petitions are taken up for disposal at the stage of admission itself. Since the issue involved in all these petitions pertain to grant of approval of the petitioners, who are Non-teaching staff in the school, they are taken up together and a common order is passed.

2. According to the petitioners, all the posts held by them are sanctioned post. The vacancy arose right from the year 2009. The contention of the petitioners is that in view of the earlier ban, the concerned authority/3rd respondent has not appointed any persons in the vacancies arose, however, after lifting the ban also, they did not select any person for appointment to the sanctioned post and so far, they have not filled up the vacant posts. The further contention of the petitioners is that in view of the increase in the number of students in the school, the Management was unable to cope up with the work and hence, the authority/ 3rd respondent has appointed these petitioners according to the sanctioned strength. Hence, the appointment of the petitioners, sought to be approved by the concerned authority/3rd respondent on the side of the Management.

3. When the approval is sought for, by the Management/5th respondent for the appointment of the petitioners, the said approval has been returned by the 4th respondent vide proceedings dated 28.06.2016; 01.07.2016 and 19.07.2016 respectively seeking for a clarification with regard to the sanctioned post by the Government. It is pertinent to note that even as per

proceedings dated 30.09.2015 passed by the 3rd respondent, in respect of the very same school, the sanctioned strength, has been duly intimated. In spite of the same, the concerned authority / respondents have failed to consider the said request, hence the petitioners, being non-teaching staff, have approached this Court.

4. The learned counsel for the petitioners would point out that there is no need or necessity for the appropriate sanction as per the Judgment of a Hon'ble Division Bench of this Court in the case of The Director of School Education and others Vs. A.Shanmuga Sundari and others (W.A.(M.D.) No.928 of 2010).

5. The learned Additional Government Pleader, appearing for the respondents, on instructions submits that, as far as non-teaching staff is concerned, they are ready to outsource the said post, further, the impugned order is not a rejection, but the respondents have only asked for a clarification. He further submitted that at this stage, the petitioners prayer seeking for the present relief is premature.

6. The learned counsel for the petitioners also submitted that as per rule 15(4) of the Tamilnadu Recognised Private Schools (Regulations) Act, 1973, no prior permission is required to fill up the non-teaching post in the aided non-minority / minority school as held by the Division Bench of this Court as mentioned supra.

7. Heard the learned counsel for the petitioners, Mr.Digvijaypandian, learned Additional Government Pleader appearing for the respondent nos. 1 to 4 and Mr.R.D.Ashok Kumar, learned counsel appearing for Respondent No.5 and perused the materials available on record.

8. On a perusal of the materials placed before this Court, there is no doubt that the impugned order is not an order of rejection, but, it is only an order of return regarding approval of the petitioners. Further, it is sent only to the school. The petitioners herein, of course, are affected persons. Now the question is whether their appointment has got to be approved or not. The same is only to be considered by the 4th respondent that too when the application is represented by the school, in the light of the Judgment passed by the Hon'ble Division Bench of this court.

9. In view of all the above, these Writ Petitions are disposed of by directing the School/ 5th respondent to present the application with necessary enclosures within a period of two weeks from the date of receipt of copy of the order and on receipt of the same, the 4th respondent shall consider the same as expeditiously as possible, preferably within a period of eight weeks thereafter. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Government of TamilNadu,
Education Department, Chennai - 9
2. The Director of School Education,
D.P.I. Buildings, College Road,
Chennai - 6
3. The Chief Educational Officer,
Erode
4. The District Educational Officer,
Gobi, Erode District
5. The Secretary,
Diamond Jubilee Higher Secondary School,
Gobichettypalayam - 638 452
Erode District.

+1cc to Mr.S.N.Ravichandran, Advocate sr.11716 [29/09/2016]

W.P. Nos.30315 to 30322 of 2016 and
WMP Nos.26280 to 26287 of 2016

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srg 22/09/2016