

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.30494 of 2016

A.Hercules

... petitioner

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,
Vellore, Vellore District.

4.The District Educational Officer,
Vellore, Vellore District.

5.The Correspondent,
Voorhees Higher Secondary School,
Vellore - 632 001.

... Respondents

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.101/A4/2012, dated Nil. 01.2013 and quash the same and direct the respondents to approve the appointment of the petitioner as Night Watchman in the fifth respondent school w.e.f. 04.10.2012 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.

For petitioner : Mr.S.N.Ravichandran

For respondents 1 to 4 : Mr.S.Gunasekaran,
Additional Government Pleader

ORDER

The petitioner seeks for quashing of the proceedings of the fourth respondent in O.Mu.No.101/A4/2012 dated Nil.01.2013 and quash the same and for a consequential direction to the respondents to approve the appointment of the petitioner as Night Watchman in the fifth respondent school w.e.f. 4.10.2012 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 joined in the fifth respondent School on 4.10.2012 in a permanent vacancy as Night Watchman. The fifth respondent school had submitted proposal dated 10.10.2012 to the fourth respondent for approval of the petitioner's appointment w.e.f. 4.10.2012. By proceeding dated Nil.1.2013, the fourth respondent returned the proposal on the ground that without prior permission of the department, the post of Night watchman was filled up by the fifth respondent. 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 minority school as has been held by this Court in a catena of decisions. 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 Night Watchman w.e.f. 4.10.2012. On the contrary, the fourth respondent rejected the approval sought for the appointment of the petitioner as Night Watchman 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. The impugned order came to be passed on the ground that a prior permission was not obtained in the matter of appointing the petitioner as Night Watchman. The question involved herein as to whether the minority aided institution is required to take prior approval of the appointment of an individual, particularly, in a case where the post has been already sanctioned came into consideration in the case of State of Tamil Nadu rep. by its Secretary to Government, Department of School Education, Secretariat Chennai and 2 others vs. SBM High School, rep. by its Correspondent, Trichy Road, Namakkal District [W.A.No.908 of 2013) dated 25.04.2013, wherein a Division Bench of this Court held as follows:-

"4. Rule 15(4) of the Tamil Nadu Private Schools Regulation Act 1973 (hereinafter referred to as "the Act") states that the School Committee shall get permission from the competent authority to fill up vacant posts. Section 15 of the said Act contemplates the constitution of School Committee in private schools. The said section is not applicable to minority schools. The said fact is reiterated in the decision in T.Sanjeeva Rao vs. The Director of School Education and another reported in 2012 WLR 463 which was rendered following the Judgment of a Division Bench made in W.A.Nos.1159 and 1160 of 2006 dated 12.1.2010 etc., (Madras Christian College Higher Secondary School vs. N.Ganapathi and others). The appellants are not disputing the fact about the minority character of the respondent school. ..."

6. It is not in dispute that the fifth respondent is a minority institution and the petitioner was appointed in a regular vacancy that arose due to promotion of one A. Samson, from the post of Night Watchman to Record Clerk.

7. In the light of the above said legal position and in view of G.O.Ms.No.203 School Education (D1) Department, dated 23.7.2010, the impugned proceedings is quashed. The fourth respondent is directed to approve the appointment of A.Hercules, as Night Watchman, in the services of the fifth respondent School with effect from 04.10.2012 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.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asvm

To

1.The Secretary to Government,
The State Tamilnadu,
Education Department, Chennai - 9.

2.The Director of School Education,
D.P.I.Buildings, College Road,
Chennai - 6.

3.The Chief Educational Officer,
Vellore, Vellore District.

4.The District Educational Officer,
Vellore, Vellore District.

5.The Correspondent,
Voorhees Higher Secondary School,
Vellore - 632 001.

+1cc to M/S.S.N.Ravichandran, Advocate Sr.54931
+1cc to the Government Pleader Sr.55401

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W.P.No.30494 of 2016

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