



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2016

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.17581 of 2016

L.M.S.High School For Girls.
Santhapuram, Kanyakumari District,
Rep.by its Correspondent,
Mr.V.Christopher Daniel

... Petitioner

vs.

1)The State of Tamilnadu,
Rep by its Principal Secretary to the Government,
Department of School Education,
Fort St.George,
Chennai-9.

2)The Director of School Education(Secondary)
College Road, Chennai-6.

3)The Chief Educational Officer,
Kanyakumari,
Kanyakumari District.

4)The District Educational Officer,
Thuckalay,
Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 4th respondent to approve the appointment of Mr.D.Kanagaraj as Office Assistant in the petitioner school w.e.f. 21.06.2007 (F.N) with all consequential monetary benefits and arrears of salary as per proposal submitted by the school dated 16.8.2016 within the time limit fixed by this Hon'ble Court.

For Petitioner : Mr.S.Manikandan
For Respondents : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader

ORDER



permission for filling up of those sanctioned non- teaching posts, the Government could not issue Government Orders.

6.1. This Court is in entire agreement with the said submission. Since there is no such provision in the Act and the Rules to seek prior permission, the authorities could not rely on the Government Orders/Government Letters imposing condition seeking permission of the State Government or the Director or any authority to fill up the sanctioned posts for approving of the same for the purpose of grant.

6.2. The Hon'ble Division Bench of this Court in **The Manager, Concordia High and Higher Secondary Schools V. Tmt.S.Christy and Others**, reported in **2013 Writ L.R. 691** held as under:

"4. In considering the contentions as put forth in the writ petition, learned single Judge pointed out to the judgment passed by this Court in W.A.Nos.93 and 94 of 2009 decided on 06.01.2010 that for any sanctioned post, no prior approval is necessary. In respect of proceedings noting the availability of posts, the learned single Judge pointed out that there is no necessity for prior approval. In any event, the appointment without getting approval could not be a ground for not considering the writ petitioner's plea"

6.3. A similar question arose for consideration in the case of **S.Rasheetha Banu V. State of Tamil Nadu, rep. by its Secretary to Government, Chennai and others**, reported in **(2012) 4 MLJ 198** wherein this Court has categorically held that "if a person is appointed in a sanctioned post in the Private Aided Minority School, the approval cannot be rejected for the purpose of grant on the ground that no prior permission was obtained before appointment". It is useful to extract paragraph 7 of the said order in this regard :

"7. The issue involved in this Writ Petition was already considered by a Division Bench of this Court in W.A.No.1263 of 2001, dated 22.1.2004. In the said Judgment, it is held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred/deployed to a needy school. The said Judgment of the Division Bench was followed in W.P.(MD)No.11353 of 2008, dated 11.9.2009. As against the said order dated 11.9.2009, the department preferred W.A.(MD)No.703 of 2009. A Division Bench of this Court, by Judgment dated 1.2.2011, dismissed the said Writ



7. The question of approval to the appointment of non-teaching staff in the sanctioned post after the introduction of G.O.Ms.No.115 and G.O.203 came to be considered by this Court and the Madurai Bench of Madras High Court quashed G.O.Ms.115 dated 30.05.2007 and G.O.203 dated 23.07.2010 vide order dated 15.03.2016 passed in W.P.(MD) Nos.11481 of 2008, etc. batch. It will be appropriate to extract the operative portion of the order as under:

"38. In the result, for the details reasons mentioned above,

(i) All these writ petitions are allowed.

(ii) Impugned G.Os., namely, G.O.Ms.No.115, School Education Department, dated 30.05.2007 and G.O.Ms.No.203, School Education Department, dated 23.07.2010 and Government Letter No.8884/D1/2011-2, dated 09.07.2012, are quashed.

(iii) The impugned orders of the DEOs/DEEOs refusing to approve of the appointments of various non-teaching posts in these writ petitions are set aside and the official respondents are directed to approve of those appointments of the non-teaching staff in the Private Aided Schools concerned in these writ petitions and to sanction grant."

9. Accordingly, this Writ Petition is disposed of. The 4th respondent is directed to accord approval to the appointment of D.Kanagaraj as Office Assistant in the petitioner school w.e.f. 21.06.2007 with all monetary and other service benefits, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

/True Copy/

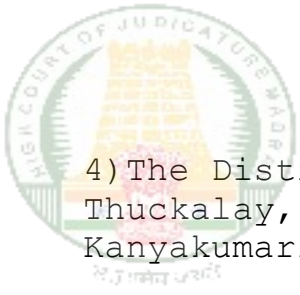
Sub Assistant Registrar

To

1)The Principal Secretary to the Government,
State of Tamilnadu,
Department of School Education,
Fort St.George,
Chennai-9.

2)The Director of School Education(Secondary)
College Road, Chennai-6.

<https://hcservices.courts.gov.in/hcservices/>
3)The Chief Educational Officer,
Kanyakumari,
Kanyakumari District.



4) The District Educational Officer,
Thuckalay,
Kanyakumari District.

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+1 cc to MR.S.MANIKANDAN, Advocate SR.No.53354

+1 cc to Special Government Pleader Sr.No.53194

W.P (MD) No.17581 of 2016
19.09.2016

SMA/SKS-RR/25.11.2016:5P/7C