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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2016

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.18916 of 2016

and

W.M.P (MD) No.13665 of 2016

A.Nelson

... Petitioner

vs.

1)The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

2)The Director of School Education,
College Road, Chennai-600 009.

3)The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.

4)The District Educational Officer,
Nagercoil-629 001,
Kanyakumari District.

5)The Correspondent,
Ringle Taube Higher Secondary School,
Mylaudy-629 403,
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 District Educational officer to approve forthwith the appointment of the petitioner as Watchman cum Sweeper in the 5th respondent school w.e.f. 04.08.2008 with all attendant benefits including arrears of salary and allowances.

For Petitioner : Ms.S.Xavier Rajini

For R1 to R4 : Mr.S.Kumar,
Additional Government Pleader

ORDER

This writ petition has been filed, seeking for issuance of a Writ of Mandamus, directing the 4th respondent District Educational officer to approve forthwith the appointment of the petitioner as Watchman cum Sweeper in the 5th respondent school w.e.f. 04.08.2008 with all attendant benefits including arrears of salary and allowances.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

3. The petitioner has been appointed as Watchman cum Sweeper with effect from 04.08.2008 in the 5th respondent school, which is a Christian Aided Minority School. The fifth respondent herein forwarded the proposal of approval of appointment on 25.03.2009. The eligibility of the petitioner to the post of Watchman cum Sweeper is not in dispute.

4. The learned counsel for the petitioner would submit that the school is governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules 1974 framed thereunder. Section 19 stipulates the qualifications and the conditions of service of employees in private schools. Section 20 speaks about the conditions of appointment. In addition to that, the Tamil Nadu Minority Aided Schools (Recognition and Payment of Grant) Rules, 1977 also stipulates the rules in respect of **Administration of Aided Minority School**. Annexure - III of Rule 8 provides for the **sanctioning and appointment of** Library Clerk, Record Clerk and Laboratory and Library Assistants, Peons, Watchman, Waterman, Gardener, Sweeper and Scavenger in the Minority Aided Schools.

5. It is seen that the Government of Tamil Nadu vide G.O.Ms.212 dated 29.11.2001 imposed ban on appointment of different categories of post, excepting Police, Doctors and Teachers. The ban was lifted vide G.O.14 dated 07.02.2006 enabling the fulfillment of non-teaching staff. G.O.Ms.115 dated 30.05.2007, directed filling up of certain categories of non-teaching staff by appointment and the remaining categories of non-teaching staff by outsourcing. Vide G.O.Ms.No.189 dated 29.07.2009, the vacancies of Junior Assistant and Office Assistant are to be filled upon on a priority basis. Subsequently, G.O.203 dated 23.07.2010 mandated that certain categories of non-teaching staff like Junior Assistant, Librarian, Laboratory Assistant, Record Clerk and Office Assistant are to be approved from the date of appointment.

6. The learned counsel for the petitioner submitted that once the post is sanctioned by the Director under Rule 15(1) of the



Rules, sanction ought to have been given as per Rule 11(2) of the Rules and there is no need to get prior permission from any authority to fill the vacancies that would arise in the sanctioned post. Unless the State Government suitably amends the provisions of the Act and the Rules making it mandatory to obtain prior 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 Appeal."

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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 the petitioner as Watchman cum Sweeper in the 5th respondent school w.e.f. 04.08.2008 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. Consequently, W.M.P(MD)No.13665 of 2016 is closed.

Sd/-

Assistant Registrar(CRL)

/True Copy/

Sub Assistant Registrar

nbi

To

1)The Secretary,
Department of School Education,
State of Tamil Nadu
Fort St.George, Chennai-600 009.



2)The Director of School Education,
College Road, Chennai-600 009.

3)The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.

4)The District Educational Officer,
Nagercoil-629 001,
Kanyakumari District.

+1cc to Mr.Xavier Rajini Advocate Sr.No. 58404

+1cc to Spl.Government Pleader Sr.No. 58279

JAM/25.11.16/SKS-RR/5p-7c

W.P (MD) No.18916 of 2016
03.10.2016