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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.10.2016
CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P(MD)No.19071 of 2016
and WMP(MD) No.13772 of 2016

P.Saravanarajan

... Petitioner

vs.

- 1.The Secretary to Government,
School Education Department,
State of TamilNadu, Fort St. George,
Chennai - 600 009.
- 2.The Director of School Education,
College Road, Nungambakkam,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Tallakulam,
Madurai - 625 002.
- 4.The District Educational Officer,
Tallakulam,
Madurai - 625 002.
- 5.The Correspondent,
K.A.C.A. Arunachalam Higher Secondary School,
Bharath Nagar,
Jaihindpuram,
Madurai - 625 011.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records Na.Ka.3956/A5/2016 dated 24.08.2016 on the file of the 4th Respondent and to quash the same as illegal, ultravires and against the principles of natural justice and to direct the Respondents to give approval for the appointment of the petitioner as Junior Assistant in the 5th Respondent School from his date of appointment i.e., 01.07.2016, within time frame fixed by this Hon'ble Court.

For Petitioner	: Mr.S.Manohar
For Respondents 1 to 4	: Mr.M.Alagadevan
	Special Government Pleader
For Respondents 5	: No Appearance

ORDER

This writ petition has been filed, seeking to quash the order of the fourth respondent dated 24.08.2016 passed in Na.Ka.3956/A5/2016, by which, the fourth respondent has returned the proposal, on the ground that the fifth respondent school has not obtained prior permission from the second respondent. The petitioner



also sought direction to the respondents to accord approval to the appointment of the petitioner as Junior Assistant in the 5th respondent school namely K.A.C.A. Arunachalam Higher Secondary School, Bharath Nagar, Jaihindpuram, Madurai - 625 011 with all consequential monetary benefits and salary with effect from 01.07.2016.

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

3. The petitioner has been appointed as Junior Assistant with effect from 01.07.2016 in the fifth respondent school, which is a private aided school. The fourth respondent herein forwarded the proposal of approval of appointment on 12.07.2016. The eligibility of the petitioner to the post of Junior Assistant is not in dispute. By the impugned order dated 24.08.2016, the proposal has been returned on the ground that prior permission has not been from the second respondent.

4. The learned counsel for the petitioner would submit that the petitioner school is governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules 1974 framed thereunder and as per Rule 11(2) of the said Rules, no prior permission is required from any authority to fill up the vacancy of a non teaching staff, which would arise in a sanctioned post.

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, the third respondent is bound to sanction grant 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 impugned Government Orders.

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6.1. This Court is in entire agreement with the said submission.



Since there is no such provision in the Act and Rules to seek prior permission, the proceedings of the fourth respondent refusing to approve the appointment of the petitioner as Junior Assistant is in gross violation of the provisions of Sections 19 and 20 of the Act read with Rule 15 of the Rules.

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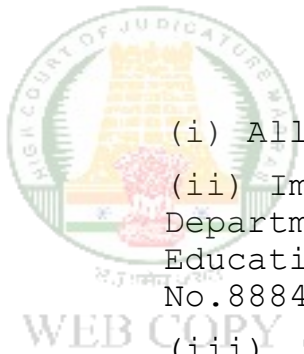
6.2. The Hon'ble Division Bench of this Court in **The Manager, Concordia High and Higher Secondary Schools V. Tmt.S.Christy and Others**, reported in **2013 Writ L.R. 691** held as under:

"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."

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:



(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."

8. In view of the above stated position and also in the light of the judgment of this Court in W.P.(MD) Nos.11481 of 2008, etc. batch (stated supra), this Court is of the view that the impugned order dated 24.08.2016 is liable to be set aside.

9. Accordingly, this Writ Petition is allowed. The impugned order dated 24.08.2016 of the District Educational Officer, Madurai / fourth respondent herein, refusing to approve the appointment of the petitioner as Junior Assistant is set aside and the fourth respondent is directed to accord approval to the appointment of the petitioner as Junior Assistant in the fifth respondent school with effect from 01.07.2016 with all consequential monetary benefits and salary with effect from 01.07.2016, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, WMP(MD)No.13772 of 2016 is closed.

Sd/-

Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Secretary to Government,
School Education Department,
State of TamilNadu, Fort St. George,
Chennai - 600 009.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai - 600 006.

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3.The Chief Educational Officer,
Tallakulam,
Madurai - 625 002.



4.The District Educational Officer,
Tallakulam,
Madurai - 625 002.

+1cc to THE SPECIAL GOVERNMENT PLEADER, SR NO:59839
+1cc to M/S. S.MANO HAR, ADVOCATE SR.No. 59611

sj
MKV-PM/03.02.2017/5p-7c

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