



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2016

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

W.P(MD)Nos.19464 to 19466 of 2016

J.S.Christopher Sunder Raj .. Petitioner in WP(MD)No.19464/2016
P.Rajamanickam .. Petitioner in WP(MD)No.19465/2016
R.Andrews .. Petitioner in WP(MD)No.19466/2016

-vs-

1. The Government of Tamil Nadu,
rep.by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.
 2. The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
 3. The Chief Educational Officer,
Madurai,
Madurai District.
 4. The District Educational Officer,
Madurai.
 5. The Correspondent,
Pasumalai Higher Secondary School,
Pasumalai,
Madurai.
- .. Respondents in all W.Ps.

WP (MD) No.19464/2016 filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 4 to approve the petitioner's appointment for the post of Lab Assistant in the 5th respondent school with effect from 07.10.2013 with all consequential benefits by considering the proposal submitted by the 5th respondent dated 30.08.2016.

WP (MD) No.19465/2016 filed to issue a Mandamus directing the respondents 1 to 4 to approve the petitioner's appointment for the post of Waterman in the 5th respondent school with effect from 01.04.2016 with all consequential benefits by considering the proposal submitted by the 5th respondent dated 22.07.2016.



WP (MD) No.19466/2016 filed to issue a Mandamus directing the respondents 1 to 4 to approve the petitioner's appointment for the post of office Assistant in the 5th respondent school with effect from 01.04.2016 with all consequential benefits by considering the proposal submitted by the 5th respondent dated 22.07.2016.

For Petitioners : Mr.T.Antony Arul Raj
(all W.Ps.)
For RR - 1 to 4 : Mr.S.Chandrasekar
Government Advocate
(all W.Ps.)
For R - 5 : No appearance
(all W.Ps.)

COMMON ORDER

These Writ Petitions have been filed, seeking a direction to the respondents 1 to 4 to approve the appointment of the petitioners for the posts of Lab Assistant, Waterman and Office Assistant with effect from 07.10.2013 and 22.07.2016 respectively with all consequential benefits by considering the proposals submitted by the fifth respondent dated 30.08.2016 and 22.07.2016.

2.Heard the learned counsel for the petitioners and the learned Government Advocate who takes notice for the respondents 1 to 4. By consent, the writ petitions are taken up for final disposal at the admission stage.

3.The case of the petitioners is that the petitioners were appointed as Lab Assistant, Waterman and Office Assistant in the fifth respondent school, which is a minority educational institution. The fifth respondent has sent proposals to the fourth respondent to approve the appointments of the petitioners. The eligibility of the petitioners to the post of Lab Assistant, Waterman and Office Assistant is not in dispute. But the fourth respondent has not considered the proposals and the same are still pending. Hence, these Writ petitions have been filed.

4.The learned counsel for the petitioners 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 petitioners submitted that once the post is sanctioned by the Director under Rule 15(1) of the Rules, the 4th 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.

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 4th respondent could not rely on the impugned 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 and therefore, the impugned Government Orders and the consequential proceedings refusing to approve of the non-teaching posts for the purpose of grant are issued in gross violation of the provisions of Sections 19 and 20 of the Act read with Rule 15 of the Rules.

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 regarding 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:

"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."



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 these Writ Petitions are liable to be allowed.

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9. Accordingly, these Writ Petitions are allowed. The 4th respondent is directed to accord approval to the appointment of the petitioners as Lab Assistant, Waterman and Office Assistant with effect from 07.10.2013 and 01.04.2016 respectively with all consequential benefits by considering the proposals submitted by the fifth respondent, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, WMP(MD) Nos.14025 to 14027 of 2016 are closed.

Sd/

Assistant Registrar(C.S-II)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary to Government, Government of Tamil Nadu, School Education Department, Secretariat, Chennai - 9.
2. The Director of School Education, DPI Campus, College Road, Chennai - 600 006.
3. The Chief Educational Officer, Madurai, Madurai District.
4. The District Educational Officer, Madurai.

+1cc to M/s.T.Antony Arul Raj, Advocate, in SR No.60033.

+1cc to Special Government Pleader in SR.No.60118.

W.P(MD) Nos.19464 to 19466 of 2016
06.10.2016

mj

msm/sk-skn/sar1/28.11.16/p5/7c