



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2016

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P (MD) No.19806 of 2016

T.Raju

: Petitioner

Vs.

1.The State of Tamil Nadu rep. by its
Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.

2.The Director of School Education,
College Road, Chennai.

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

4.The District Educational Officer,
Kuzhithurai, Kanyakumari District.

5.Malankara Syrian Catholic Schools
rep. by its Correspondent,
Kirathoor - 629 181,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to regularize the service of the petitioner as Watchman with effect from 04.05.2015 by considering the proposal resubmitted by the 5th respondent on 13.05.2016 and to grant service benefits and disburse all the monetary benefits consequent to the same.

For Petitioner

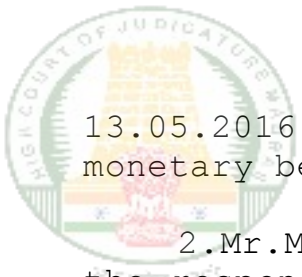
: Mr.T.Jeen Joseph

For Respondents 1 to 4

: Mr.M.Murugan,
Government Advocate.

O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus, directing the respondents to regularize the service of the petitioner as Watchman with effect from 04.05.2015 by considering the proposal resubmitted by the fifth respondent on



13.05.2016 and to grant service benefits and to disburse all the monetary benefits consequent to the same.

2.Mr.M.Murugan, learned Government Advocate, takes notice for the respondents 1 to 4. By consent, the writ petition itself is taken up for final disposal.

3.The case of the petitioner is that he completed S.S.L.C. during March, 1996. There was a vacancy arose in the fifth respondent school in the post of watchman, due to the retirement of one Mr.M.Pankaraj, who retired on 30.04.2015. The petitioner made an application and after considering his eligibility, the fifth respondent school appointed him as Watchman with effect from 04.05.2015. The fifth respondent school also sent a proposal in R.C.No.130/MS/2016 on 13.05.2016, to the fourth respondent for approval, stating that the petitioner has been appointed as a watchman in a substantive vacancy. As the proposal has not been considered so far, this writ petition has been filed.

4.The learned counsel for the petitioner would submit that the fifth respondent 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, 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 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:

"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 the writ petition is liable to be allowed.

9.Accordingly, this Writ Petition is allowed. The District Educational Officer, Kuzhithurai, Kanyakumari District / 4th respondent herein, is directed to accord approval to the appointment of the petitioner as Watchman in the fifth respondent school, namely, Malankara Syrian Catholic Schools, Kirathoor - 629 181, Kanyakumari District, with effect from 04.05.2015 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(CRL)



- 1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat, Chennai - 9.
- 2.The Director of School Education,
College Road, Chennai.
- 3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.
- 4.The District Educational Officer,
Kuzhithurai, Kanyakumari District.

+1cc to Spl.Government Pleader Sr.No.61403
+1cc to M/S.S.C.HEROLD SINGH,ADVOCATE SR.No. 61067

JAM/22.11.16/CK/5p-7c

ORDER MADE IN
W.P (MD) No.19806 of 2016
18.10.2016