



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2016

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THE HON'BLE Dr.JUSTICE S.VIMALA

W.P (MD) No.20110 of 2016

and

W.M.P (MD) No.14415 of 2016

Muslim Higher Secondary School,
Abiramam - 623 601,
Ramanathapuram District,
rep. by its Correspondent
Alhaj S.A.Mohideen Ariff

.. Petitioner

Vs.

1. The Principal Secretary to Government,
Education Department,
St. George Fort, Chennai - 600 009.
2. The Director of School Education (Higher Secondary),
College Road, Chennai - 600 006.
2. The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
4. The District Educational Officer,
Paramakudi Educational District,
Paramakudi,
Ramanathapuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to order of the 4th respondent dated 28.08.2015 in A.Thi.Mu.No.4368/Aa1/2015, quash the same and consequently direct the 4th respondent to approve the proposal made by the petitioner school appointing one S.N.Shahubar Sathik as Office Assistant in the sanctioned post with effect from 01.04.2015 and direct the respondents to pay salary to the said S.N.Shahubar Sathik through the petitioner school with all attendant benefits, by considering the proposals of the petitioner school, dated 08.08.2015.

ORDER

This Writ Petition has been filed to quash the orders passed by the fourth respondent dated 28.08.2015 and consequently direct the fourth respondent to approve forthwith the appointment of Mr.S.N.Shahubar Sathik as Office Assistant in the petitioner's school with effect from 01.04.2015.

2.Heard the learned counsel for the petitioner and the learned Government Advocate, who takes notice for the respondents. By consent, the writ petition is taken up for final disposal at the admission stage.

3.The case of the petitioner is that the petitioner appointed Mr.S.N.Shahubar Sathik as Office Assistant w.e.f. 01.04.2015 in their school. The petitioner has sent a proposal dated 08.08.2015 to the fourth respondent to approve the appointment of the said Mr.S.N.Shahubar Sathik as Office Assistant. But, the fourth respondent has returned the proposal vide order dated 28.08.2015, directing to resubmit the same after issuing orders by the Government. According to the petitioner, as per Tamil Nadu Recognized Private Schools (Regulation Act), no prior permission is required to fill up the post of Office Assistant.

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 up 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

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7.The question of approval to the appointment of non-
hiring staff in the sanctioned post after the introduction of
Ms.No.115 and G.O.203 came to be considered by this Court and
Madurai Bench of Madras High Court quashed G.O.Ms.115, dated
5.2007 and G.O.203, dated 23.07.2010, vide order, dated
3.2016 passed in W.P.(MD)Nos.11481 of 2008, etc. batch. It
be appropriate to extract the operative portion of the order
nder:

(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.

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, batch (stated supra), this Court is of the view that the impugned order dated 28.08.2015 is liable to be set aside.

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petitioner's school is set aside and the 4th respondent is directed to accord approval to the appointment of Mr.S.N.Shahubar Sathik as Office Assistant in the petitioner's school, namely, Muslim Higher Secondary School, Abiramam - 623 601, Ramanathapuram District, with effect from 01.04.2015 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. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Education Department,
St. George Fort, Chennai - 600 009.
2. The Director of School Education (Higher Secondary),
College Road, Chennai - 600 006.
2. The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
4. The District Educational Officer,
Paramakudi Educational District,
Paramakudi, Ramanathapuram District.

+ 1 CC TO Mr.J.PAREKHKUMAR, ADVOCATE IN SR No. 62077
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 62304

SMN

TE/GSV-PM : 23/11/2016 : 5P/7C

ORDER MADE IN
W.P (MD) No.20110 of 2016
and
W.M.P (MD) No.14415 of 2016
19.10.2016