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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.21656 of 2016

and

W.M.P (MD) No.15473 of 2016

R.Ramachandran

: Petitioner

Vs.

1.The District Educational Officer,
Tenkasi, Tirunelveli District.

2.The Secretary,
Sivagiri Senaithalaivar Higher Secondary School,
Sivagiri - 627 757,
Tirunelveli District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the first respondent in his proceedings in O.Mu.No.4491/A1/2016 dated 02.11.2016 and quash the same and direct the respondents to approve the appointment of the petitioner as a Night Watchman from the date of appointment i.e., 16.09.2016 with all the consequential benefits.

For Petitioner : Mr.V.Panneer Selvam

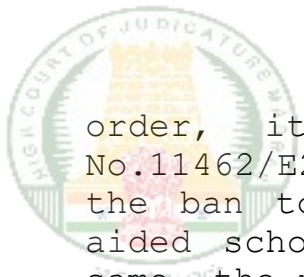
For Respondent No.1 : Mr.M.Murugan,
Government Advocate.

O R D E R

This Writ Petition has been filed praying to quash the orders passed by the first respondent dated 02.11.2016 and consequently direct the first respondent to approve forthwith the appointment of the petitioner as a Night Watchman in the second respondent school with effect from 16.09.2016.

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

3.The case of the petitioner is that he was appointed as Night Watchman w.e.f. 16.09.2016 in the second respondent school. The second respondent school has sent a proposal dated 21.09.2016 to the first respondent to approve the appointment of the petitioner as Night Watchman. But, the first respondent has rejected the said proposal. The petitioner has filed this writ petition, dated 02.11.2016, on the ground that no prior permission was obtained to fill up the post. In the impugned



order, it is also stated that as per Government Letter No.11462/E2/2006-1, dated 26.05.2006 there is no necessity to lift the ban to fill up the non-teaching staff, from 01.06.2009, in aided schools, till final order is passed. Aggrieved over the same, the present writ petition has been filed.

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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 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 to be outsourced. 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 first 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 impugned proceedings of the first respondent refusing to approve the appointment of the petitioner as Night Watchman is 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:

<https://hccourts.org/propose/>

"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 Deva Asir v. Secretary to Government, School Education Department, State of Tamil nadu, Secretariat, Chennai - 9 and

Others reported in 2016-III-LLJ-49(Mad) (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) Impose 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 Deva Asir v. Secretary to Government, School Education Department, State of Tamil Nadu, Secretariat, Chennai - 9 and Others reported in 2016-III-LLJ-49 (Mad) (W.P(MD) Nos.11481 of 2008 etc. batch) (stated supra), this Court is of the view that the impugned order dated 02.11.2016 is liable to be set aside.

9. Accordingly, this Writ Petition is allowed. The impugned order dated 02.11.2016 of the District Educational Officer, Tenkasi, Tiruenvleli District / first respondent herein, refusing to approve the appointment of the petitioner as Night Watchman in the second respondent school is set aside and the first respondent is directed to accord approval to the appointment of the petitioner as Night Watchman in the second respondent school, namely, Sivagiri Senaithalaivar Higher Secondary School, Sivagiri - 625 757, Tirunelveli District, on the proposal being submitted by second respondent, with effect from 16.09.2016 with all monetary and other service benefits, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl Side)

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Sub Assistant Registrar

To

The District Educational Officer,
Tenkasi, Tirunelveli District.

+1 cc to MR.V.Panneer Selvam, ADVOCATE, SR NO: 69112

+1 CC to M/S.SPL.GOV.T.PLEADER, SR NO: 68625

Smn

AAM PM SAR2 03.02.2017 4P 4C

ORDER MADE IN

W.P (MD) No.21656 of 2016

and

W.M.P (MD) No.15473 of 2016

11.11.2016



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