



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2016

CORAM:

THE HON'BLE Dr.JUSTICE S.VIMALA

W.P (MD) No.21977 of 2016

and WMP (MD) Nos.15726 & 15727 of 2016

S.Lathakumari

..Petitioner

-vs-

1.The State of Tamil Nadu,
rep.by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.

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

3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil - 629 001.

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

5.The Secretary,
Devaswom Higher Secondary School,
Mandaikadu - 629 262,
Kanyakumari District.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 4th respondent District Educational Officer in O.Mu.No. 4805/A2/2016 dated 22.08.2016 and quash the same and further Direct the 4th respondent District Educational Officer to approve forthwith the appointment of the petitioner as Lab Assistant in the 5th respondent school w.e.f 02.03.2016 with all attendant benefits including arrears of salary and allowances.

For Petitioner : Mr.S.Xavier Rajini

For Respondents : Mr.M.Murugan

Government Advocate

for R1 to R4

This writ petition has been filed, seeking to quash the order of the fourth respondent dated 22.08.2016 passed in



O.Mu.No.4805/A2/2016, vide which, the 4th respondent has returned the proposal stating that the school being a non-minority educational institution, has to obtain prior permission from the CEO to fill up the post of Lab Assistant.

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

3. The petitioner has been appointed as Lab Assistant with effect from 02.03.2016 in the fifth respondent school, which is a recognized and Aided private School. The fifth respondent herein forwarded the proposal of approval of appointment on 10.08.2016. The eligibility of the petitioner to the post of Lab Assistant is not in dispute. By the impugned order dated 22.08.2016, the proposal has been returned on the ground that the school being a non-minority educational institution, has to obtain prior permission from the CEO to fill up the post of Lab 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.

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 for the Government 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, 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 impugned order dated 22.08.2016 is liable to be set aside.

9. Accordingly, this Writ Petition is allowed. The impugned order dated 22.08.2016 of the fourth respondent herein, returning the proposal of the fifth respondent, amounting to refusal to approve the appointment of the petitioner as Lab Assistant, is set aside and the 4th respondent is directed to accord approval to the appointment of the petitioner as Lab Assistant in fifth respondent school (on the proposal of the fifth respondent being submitted / re-submitted) with effect from 02.03.2016 with all attendant benefits including arrears of salary and allowances, within a period of two weeks from the date on which the proposal is submitted / re-submitted by the fifth respondent. No costs. Consequently, WMP(MD)Nos.15726 & 15727 of 2016 are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.



To

1.The Secretary, State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai - 600 009.

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

3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil - 629 001.

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

+1cc to M/s.S.Xavier Rajini, Advocate in SR.70490

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and

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mj

PBK 10/01/2017 ::5P-6C: