



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.22029 of 2016

and

W.M.P. (MD) No.15733 and 15734 of 2016

S.P.Sutharsanakumari

: Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.

2.The District Educational Officer,
Thuckalay & Post,
Kanyakumari District.

3.The Secretary / Deputy Commissioner,
Devaswam Board,
Suseendram Post,
Kanyakumari District.

4.The Head Master,
Devaswam Higher Secondary School,
Mondaikadu and Post,
Kanyakumari 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 relating to the impugned order of the second respondent in O.Mu.No.1347/A2/2016, dated 13.04.2016 and quash the same and directing the respondents 1 and 2 to approve the petitioner's appointment as Record Clerk in the fourth respondent school by order of the third respondent in No.89/2016/C1, dated 02.03.2016.

For Petitioner

: Mr.A.Rajkumar Sen

For Respondents 1 to 3

: Mr.A.Muthukaruppan,
Additional Government Pleader.

**ORDER**

This writ petition has been filed for issuance of a Writ of Certiorari Mandamus praying to quash the impugned order of the second respondent in O.Mu.No.1347/A2/2016, dated 13.04.2016 and to direct the respondents 1 and 2 to approve the petitioner's appointment as Record Clerk in the fourth respondent school.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The facts leading to the filing of this writ petition are as follows:

The fourth respondent school is a Government Aided School. Her father namely D.Santhakumaran was appointed as Record Clerk in the fourth respondent school on 09.05.1963 and he died in harness on 11.07.1993 during his service. The petitioner preferred writ petition in W.P(MD)No.12099 of 2014, seeking appointment on compassionate ground, before this Court and this Court allowed the same by the order dated 20.11.2015. Thereafter, she was appointed as Record Clerk in the fourth respondent school on 02.03.2016, by the order issued by the third respondent dated 02.03.2016. Thereafter, the third respondent sent proposal to the second respondent for approval. But, the second respondent, by the impugned order dated 13.04.2016, rejected the same on the ground that the fourth respondent school is a non-minority educational institution and prior permission is required. According to the petitioner, as per the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Rules, no prior permission is required to fill up the post of Record Clerk. Therefore, this writ petition has been filed.

4. The learned counsel for the petitioner would submit that the fourth respondent 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.

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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 impugned proceedings of the second respondent refusing to approve the appointment of petitioner as Record Clerk 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:

"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.1265 of 2001, dated 22.1.2004. In the said Judgment, it is held that if a person is appointed in a

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"38. In the result, for the details reasons mentioned above,

(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.

concerned in these writ petitions and to sanction grant."

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order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (Writs)

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Sub Assistant Registrar

smn

To

- 1.The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.
- 2.The District Educational Officer,
Thuckalay & Post,
Kanyakumari District.
- 3.The Secretary / Deputy Commissioner,
Devaswam Board,
Suseendram Post,
Kanyakumari District.

+1CC to Mr.A.Rajkumar Sen, Advocate Sr.No.71260

+1CC to Spl.Government Pleader Sr.No.71648

GJM/BS/MR/6.2.17-5p-6c

ORDER MADE IN
W.P (MD) No.22029 of 2016
and
W.M.P. (MD) No.15733 and 15734 of 2016
22.11.2016