



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.22605 of 2016

WEB COPY

Enose Jebarson

: Petitioner

Vs.

1.The Secretary,

Department of School Education,
State of Tamil Nadu,
Secretariat, Fort St. George,
Chennai - 9.

2.The Director of School Education,

DPI Campus,
Chennai - 6.

3.The District Educational Officer,
Thoothukudi.

4.The Correspondent,

T.D.T.A. P.S.periyanagayam Higher Secondary School,
Pudukottai - 628 103,
Thoothukudi District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to approve the petitioner's appointment as Office Assistant in fourth respondent school from the date of joining on 21.09.2015 and to pay all the service and monetary benefits within stipulated time on the proposal submitted by the fourth respondent on 28.07.2016.

For Petitioner : Mr.T.A.Ebenezer

For Respondents 1 to 3 : Mr.A.Muthukaruppan,
Additional Government Pleader.

O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to approve the petitioner's appointment as Office Assistant in the fourth respondent school from the date of joining i.e., on 21.09.2015 and to pay all the service and monetary benefits within a stipulated time on the proposal submitted by the fourth respondent on 28.07.2016.



2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who took notice for the respondents 1 to 3. By consent, the writ petition itself is taken up for final disposal.

3. The case of the petitioner is that the fourth respondent school is an Aided Minority School. The school has appointed the petitioner as Office Assistant in the sanctioned post on 21.09.2015, in the vacancy, which arose on account of the retirement of one Mr. R. Muthusamy. The fourth respondent school has sent a proposal dated 28.07.2016 to the third respondent seeking to approve the appointment. But, the proposal has not been considered so far. 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. The learned counsel for the petitioner further submitted that this proposition is covered by the Judgment of this Court dated 15.03.2016 passed in W.P. (MD) Nos. 11481 of 2008, etc. batch.

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 third 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), the writ petition is allowed and the third respondent is directed to accord approval to the appointment of the petitioner as Office Assistant in the fourth respondent school, namely, T.D.T.A. P.S.Periyanagayam Higher Secondary School, Pudukottai - 628 103, Thoothukudi District, with effect from 21.09.2015 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 ()

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai - 9.



2.The Director of School Education,
DPI Campus,
Chennai - 6.

3.The District Educational Officer,
Thoothukudi.

+1 cc to Mr.T.A.Ebenezer,Advocate, Sr.No:22605

+1 cc to M/S Special Government Pleader, Sr No.72683

ORDER MADE IN
W.P (MD) No.22605 of 2016

smn

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