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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2016

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) No.23086 of 2016

and

W.M.P (MD) Nos.16560 and 16561 of 2016

The Secretary,
A.V.D, Higher Secondary School,
Ganapathipuram 629 502,
Kanyakumari District

.... 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.

3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

4.The District Educational Officer,
Thuckalay 629 175,
Kanyakumari District.

.... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to impugned proceeding issued by the 4th respondent District Educational Officer in A.Thi.Mu.No.2344/A2/2013 dated 00.06.2013 Quash the same and further direct the DEO to approve forthwith the appointment of T.Chellasivalingam as Watchman in the petitioners school w.e.f. 02.05.2011 with all attendant benefits including arrears of salary and allowances.

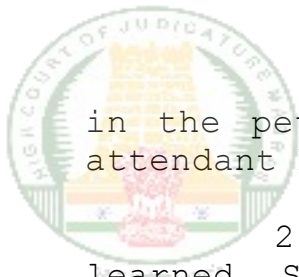
For Petitioner :Mr.T.Cibi Chakraborty

For Respondents : Mr.V.R.Shanmuganathan

Special Government Pleader.

ORDER

This writ petition has been filed, seeking to quash the order of the fourth respondent dated 00.06.2013 passed in A.Thi.Mu.No.2344/A2/2013, under which, the 4th respondent has returned the proposal stating that the appointment of Watchman ought to have been made only after getting prior permission from the Director of School Education/second respondent herein. The petitioner also sought a direction to the respondents to accord approval to the appointment of one T.Chellasivalingam as Watchman



in the petitioner's school with effect from 02.05.2011 with all attendant benefits including arrears of salary and allowances.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents. By consent, the writ petition itself is taken up for final disposal at the stage of admission.

3. The petitioner school appointed one T. Chellasivalingam as Night Watchman with effect from 02.05.2011 in the petitioner school which is a private aided school. The petitioner school forwarded the proposal for approval of the said appointment to the fourth respondent. The eligibility of the incumbent to the post of watchman is not in dispute. By the impugned order dated 00.06.2013, the proposal has been returned on the ground that appointment of watchman ought to have been made only after getting prior permission from the Director of School Education, the second respondent herein.

4. The learned counsel for the petitioner would submit that the petitioner school is governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules 1974 framed thereunder.

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 to obtain prior permission for filling up of those sanctioned non-teaching posts, the Government could not issue impugned Government

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

fourth respondent refusing to approve the appointment of 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:

"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), this Court is of the view that the impugned order dated 00.06.2013 is liable to be set aside.

9. Accordingly, this Writ Petition is allowed. The impugned order dated 00.06.2013 of the fourth respondent herein, returning the proposal of the petitioner school, amounting to refusal to approve the appointment of T.Chellasivalingam, as Night Watchman in the petitioner's school, is set aside and the 4th respondent is directed to accord approval to the appointment of T.Chellasivalingam as Night Watchman in the petitioner school (on the proposal of the petitioner being submitted / re-submitted) with effect from 02.05.2011 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 petitioner. No costs. Consequently, the connected WMPs are closed.

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.

3. The Chief Educational Officer,
Nagercoil, Kanyakumari District.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The District Educational Officer,
Thuckalay 629 175,
Kanyakumari District.



+1cc to Mr.T.CibiChakrabaorthy, Advocate, (SR.79203)

+1cc to Special Government pleader. (SR.78139)

mj

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