



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 28.03.2017

Coram

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THE HON'BLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD)No.17744 of 2014
and
M.P.(MD)No.1 of 2014

M.Jayasekar

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
represented by its Secretary,
School Education Department,
Fort St. Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The District Educational Officer,
Kuzhithurai and Post,
Kanyakumari District.
4. The Correspondent,
M.M.K.M.High School,
Varuthattu, Methukumal Post,
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the third respondent in his proceedings in O.Mu.No.2111/A4/2014 dated 16.05.2014 and quash the same and direct the respondents 1 to 3 to approve the appointment of the petitioner as Office Assistant in the fourth respondent school from his date of appointment that is 01.10.2013 and pay all the attained benefits from 01.10.2013 onwards.

For Petitioner
For R1 to R3

: Mr.D.Anbarasu
: Mr.N.S.Karthikeyan
Additional Government Pleader

O R D E R

This writ petition has been filed for a writ of Certiorarified Mandamus to call for the records relating to the order passed by the third respondent in his proceedings in O.Mu.No.2111/A4/2014, dated 16.05.2014 and quash the same and direct the respondents 1 to 3 to approve the appointment of the petitioner as Office Assistant in the fourth respondent school



from his date of appointment ie., on 01.10.2013 and pay all the attendant benefits from 01.10.2013 onwards.

2. The facts in brief are as follows:

The petitioner was appointed as an Office Assistant in the fourth respondent school on 01.10.2013, in the place of one T.Rajan. It is the contention of the petitioner that the post is a sanctioned post. The third respondent also at the time of inspecting the fourth respondent School, accepted the students strength and the sanctioned strength of teaching and non-teaching staff by the proceedings dated 03.09.2013.

3. Though the fourth respondent sent the proposal to the respondents 1 to 3 to approve the petitioner's appointment as Office Assistant from the date of his appointment, the respondents 1 to 3 did not pass orders for a long time. However, by proceedings dated 16.05.2014, the third respondent has passed an order stating that the fourth respondent has to get prior permission from the Director of School Education. It is not in dispute that the fourth respondent school is an aided private school. It is also not in dispute that the post in which the petitioner was appointed is a sanctioned post even as per the proceedings of respondents 1 to 3.

4. According to the respondents, the only question is whether prior permission is required before appointing the non-teaching staff in a private aided institution in respect of sanctioned post.

5. The issue is no more *res-integra* and this Court in number of occasions, had settled the position that no prior approval is necessary, when the appointments are made against sanctioned post.

6. After elaborately discussing the issue, this Court has earlier in *W.P.(MD).Nos.11481 of 2008 and batch of cases by judgment, dated 15.03.2016*, held as follows:

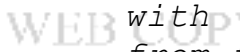
38. In the result, for the detail reasons mentioned above,

(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

and to sanction grant.



7. It is brought to the notice of this Court that G.O.Ms.No.115, School Education dated 30.05.2007 is restricted the private aided schools to make appointment by out-source. Similarly, other G.O.Ms.No.203 dated 23.07.2010 and the Government Letter dated 09.07.2012 are also in the same line preventing the private aided school from making appointment on their own in respect of posts which are sanctioned. It is also brought to the notice of this Court that the Act does not provide for any prior approval while making appointment to the non- teaching staff against the sanctioned post.

8. The learned counsel for the petitioner also relied upon another judgment of this Court in W.P.(MD).No.6287 of 2014, dated 03.01.2017. In the said case, this Court, after following the judgment in the case of *S.Rasheetha Banu v. State of Tamil Nadu*, represented by its Secretary to Government, Chennai and others reported in 2012 (4) MLJ 198, has allowed the writ petition filed by persons, who were similarly placed as that of the petitioner.

9. Hence, the writ petition is allowed and the impugned order passed by the third respondent, dated 16.05.2014, refusing to approve the appointment of the petitioner is set aside. The third respondent is directed to accord approval to the appointment of the petitioner as Office Assistant with effect from 01.10.2013 with all other service and monetary benefits within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Assistant Registrar (C)

Sub-Assistant Registrar

1. The Secretary,
School Education Department, Fort St.Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The District Educational Officer,
Kuzhithurai and Post, Kanyakumari District.

+One cc to Mr.D.Anbarasu, Advocate, SR.No.18669
+One cc to Mr.D.Anbarasu, Advocate, SR.No.18883

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