



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P. (MD) No.13799 of 2017

and

W.M.P. (MD) No.10753 of 2017

S.Muthu Kumar

... Petitioner

Vs.

1.The District Education Officer,
Thoothukudi,
Thoothukudi District.

2.T.D.T.A. Higher Secondary School,
Rep. by its Correspondent,
Christianagaram,
Udangudi-628 203,
Thoothukudi District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 1st respondent in O.Mu.No.2041/Aa4/2017, dated 13.06.2017, quash the same and consequently direct the 1st respondent to approve the petitioner's appointment as Sweeper in the 2nd respondent school from date of his appointment i.e. 01.06.2016 and pay all monetary and service benefits within the time frame fixed by this Court.

For Petitioner

: Mr.Arul Vadivel @ Sekar
for Mr.T.Ramesh Raja

For 1st Respondent

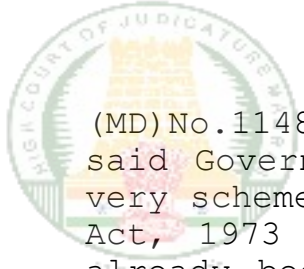
:K.Guru

Additional Government Pleader

ORDER

The petitioner was appointed as Sweeper on 01.06.2016 in the second respondent school in a vacancy caused due to the retirement of one V.Sankaravel, who was serving as Sweeper. Since the second respondent school is an aided minority school coming under TDTA Diocese of Thoothukudi-Nazareth, after appointing the petitioner in a sanctioned post caused due to the retirement of the then incumbent. The petitioner sent a proposal for approval of his appointment to the first respondent on 22.03.2017. But the first respondent/District Education Officer, Thoothukudi, has wrongly rejected the proposal sent by the second respondent school on the ground that permission should be obtained from the Director of School Education to fill up the posts of non teaching staff in the second respondent school, and that there is no need to lift the ban imposed in G.O.Ms.No.115 to fill up no-teaching posts.

2. The learned counsel appearing for the petitioner would submit that G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2017, imposing ban on appointment of non teaching staff in an aided minority school was already set aside by this Court in W.P.



(MD)No.11481 of 2008 and batch, dated 15.03.2016 holding that the said Government Order is without jurisdiction and violative of the very scheme of the TamilNadu Recognized Private Schools (Regulation) Act, 1973 and the Rules framed thereunder. While G.O.Ms.115 has already been set aside the District Education Officer, Thoothukudi, first respondent herein, ought not to have passed the impugned order which reflects a clear non application of mind on the part of the first respondent, hence, he pleaded, the impugned order is liable to be set aside.

3. This Court finds merits on the said submissions. When the second respondent school was appointed the petitioner in a vacancy caused due to the death of one V.Sankaravel, who was serving as an Sweeper, it is not known how the first respondent/ District Education Officer, Thoothukudi can reject the proposal of the second respondent seeking approval of appointment of the petitioner citing G.O.Ms.No.115, dated 30.05.2007, which has already been set aside by this Court, although he is unaware of the settled legal position. Therefore, this Court has no hesitation to set aside the impugned order, passed without any application of mind.

4. In the result the Writ Petition is allowed and the impugned order is set aside. The first respondent is hereby directed to approve the appointment of the petitioner as Sweeper in the second respondent School with effect from the date of his appointment, namely, 01.06.2016 with all consequential monetary and service benefits within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The District Education Officer,
Thoothukudi, Thoothukudi District.
+1cc to Mr.P.T.Ramesh Raja, Advocate, SR.69556

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