



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.05.2017

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA

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W.P(MD) No.8897 of 2017 and
W.M.P. (MD) Nos.6811 and 6812 of 2017

V.Manikandan,

... Petitioner

Vs.

1. The District Educational Officer,
Trichy.

2. The Secretary,
E.R.Higher Secondary School,
Trichy.

... Respondents

Prayer:Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in his proceedings in O.Mu.No.2508/A4/2017 dated 27.04.2017 and quash the same and direct the respondents to approve the appointment of the petitioner as a Sweeper from the date of appointment with all the consequential benefits.

For Petitioner : Mr.V.Panneer Selvam
For R1 : Mr.C.Selvaraj
Spl. Govt. Pleader

O R D E R

This writ petition has been filed, seeking to quash the order of the first respondent dated 27.04.2017 passed in O.Mu.No.2508/A4/2017. The petitioner also sought a direction to the respondents to approve the appointment of the petitioner as a Sweeper from the date of appointment with all the consequential benefits.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for R1.

3. Learned counsel for the petitioner submitted that the petitioner has been selected and appointed as Sweeper with effect from 24.04.2017 in the 2nd respondent school and the said vacancy fell vacant on account of voluntary retirement of one R.Nagarajan. The second respondent herein forwarded the proposal of approval of appointment on 24.04.2017 and the same was rejected by the first respondent on the ground that the Government Order or the proceedings of the Director of School Education to fill up the non-teaching post was not enclosed and the prior permission of the Chief



Educational Officer and the Government Order for sanctioning the post are not enclosed. Learned counsel for the petitioner further submitted that since the petitioner has been appointed against the sanctioned post, there is no necessity to obtain permission from the concerned authority.

4. This Court posed a question to the learned Special Government Pleader as to whether the post in which the petitioner has been appointed is a sanctioned post or not? and the learned Special Government Pleader on instructions fairly conceded that it is a sanctioned post only.

5. At this juncture, it is appropriate for this Court to refer to the judgment of this Court, dealing with the similar issue in E.Prabhu vs. The Director of School Education, Chennai and others [W.P.(MD) No.15690 of 2016] decided on 01.09.2016, in which it has been held as under:

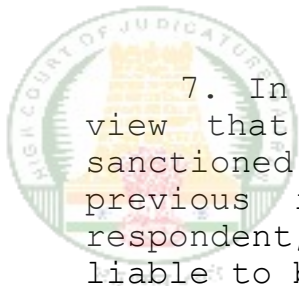
"5.A cursory reading of both the learned single Judge's order, dated 15.03.2016 in W.P.(MD) No.11481 of 2008 etc., batch and Paragraph No.20 of the aforementioned Honourable Division Bench judgment in (2013) 7 MLJ 641, clearly shows that the issue raised in the present Writ Petitions, is no longer res integra, because the Honourable Division Bench of this Court has also made it clear that there is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976 to seek prior permission to fill up any vacant post in an aided college, which has already been sanctioned for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules.

6. Therefore, the issue raised in the present writ petition having been settled repeatedly by this Court, I have no hesitation to accept the prayer made by the petitioner.

7. In the result,

- (i) The Writ Petition is allowed.
- (ii) Accordingly, the impugned order is set aside.
- (iii) The respondents 1 and 2 are directed to approve the appointment of non-teaching staff in the Private Aided School and to sanction grant, within a period of eight weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed."

6. Apart from the Single Judge's order, the Hon'ble Division Bench of this Court in W.A.(MD) No.462 of 2006 dated 01.12.2006 has also discussed all the factors with regard to the grant of approval to the non teaching staff and held that there is no requirement to seek prior permission to fill up any vacant post in an aided school, arisen against the sanctioned permanent vacancy for the academic year by the Competent Authority.



7. In view of the foregoing discussions, this Court is of the view that since the petitioner has been appointed against the sanctioned post, which fell vacant owing to the retirement of previous incumbent, the order of rejection passed by the 1st respondent, giving frivolous reasons has no legs to stand and is liable to be set aside.

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8. In the result,

(i) The Writ Petition is allowed, the impugned order dated 27.04.2017 is set aside.

(ii) The 1st respondent is directed to approve the appointment of the petitioner as a Sweeper from the date of appointment with all the consequential benefits, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Vacation Officer

/True Copy/

Sub Assistant Registrar

To:

The District Educational Officer,
Trichy.

+1cc to M/S. ,V. PANNEERSELVAM Advocate, SR.No.56512.

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SDS/JC/SAR 3/25.05.2017/3P/3C