



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.5880 of 2016

D.Devaraj

... Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Educational Department,
Secretariat, Chennai-9.

2. The Director of School Education,
College Road, Chennai.

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

4. The District Educational Officer,
Kuzhithurai, Kanyakumari District.

5. The Correspondent,
St.John Vianney's Girls High School,
Palliady, Kanyakumari District.

... Respondents

Prayer: Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 4th respondent to regularize the service of the petitioner from the date of original appointment, that is from 13.12.2002 and disburse all monitory benefits from the date of the petitioner's appointment by considering the representation of the petitioner dated 03.02.2016 within a stipulated time that may be fixed by this Hon'ble Court.

For petitioner

: Mr.S.C.Herold Singh

For R1 to R4

: Mr.M.Rajarajan

Govt. Advocate

O R D E R

This writ petition has been filed, seeking to direct the 4th respondent to regularize the service of the petitioner from the date of original appointment, that is from 13.12.2002 and disburse all monitory benefits from the date of the petitioner's appointment by considering the representation of the petitioner



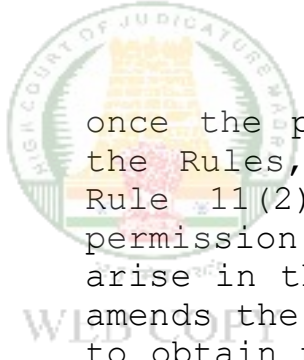
2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4.

3. The 5th respondent school (in short "the school") appointed the petitioner as Watchman on 13.12.2002 against the vacancy, which arose on account of resignation of one R.Paul Edward Joseph. The school has forwarded the proposal of approval of appointment to the 4th respondent, which was kept pending due to ban in the employment and the same was subsequently lifted on 26.01.2006. Therefore, the 4th respondent approved his appointment only with effect from 07.02.2006 and not from the date of his original appointment, i.e., 13.12.2002. According to the petitioner, the school is a Minority Instituted aided by the Government and his appointment was against the sanctioned strength and therefore, no prior approval is required to fill up the said post. Since the 4th respondent has not considered his representation for approval of his appointment from 13.12.2002 despite several representations made, he is before this Court with the above prayer.

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.

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 Orders.

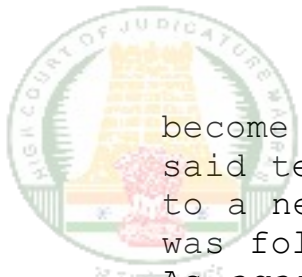
6.1. This Court is in entire agreement with the said submission. Since there is no such provision in the Act and the Rules to seek prior permission, the 4th respondent could not rely on the impugned Government Orders/Government Letters imposing condition seeking permission of the State Government or 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 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 Writ Petition is disposed of with a direction to the fourth respondent herein to approve the appointment of the petitioner forthwith, if he is otherwise eligible with effect from 13.12.2002 with all monetary and other service benefits and pay the arrears, if any, within a period of four 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 to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai-9.

2. The Director of School Education,
College Road, Chennai.

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

4. The District Educational Officer,
Kuzhithurai, Kanyakumari District.

5. The Correspondent,
St. John Vianney's Girls High School,
Palliady, Kanyakumari District.

+1cc to Mr.S.C.Herold Singh, Advocate, SR.11240

+1cc to M/S.Special Government Pleader, SR.11169

W.P. (MD) No.5880 of 2016
27.02.2017

AR

KK/JC/SAR4-13.04.2017-5P-8C