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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.04.2018

PRONOUNCED ON : 20.04.2018

C O R A M

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A(MD)Nos.146 to 151 of 2018

and

C.M.P(MD)Nos.768 to 773 of 2018

W.A(MD)No.146 of 2018:

01.THE STATE OF TAMILNADU,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF SCHOOL EDUCATION,
FORT ST. GEORGE, CHENNAI - 600 009

02.THE DIRECTOR OF SCHOOL EDUCATION,
COLLEGE ROAD, CHENNAI - 600 006

03.THE CHIEF EDUCATIONAL OFFICER,
NAGERCOIL, KANYAKUMARI DISTRICT

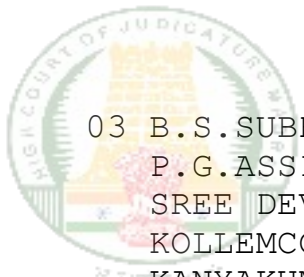
04.THE DISTRICT EDUCATIONAL OFFICER,
KUZHITHURAI EDUCATIONAL DISTRICT,
KUZHITHURAI, KANYAKUMARI DISTRICT.

... Appellants in all WAS

Vs.

01.V.SREE KALA,
P.G.ASSISTANT IN CHEMISTRY,
SREE DEVI GIRLS HIGHER SECONDARY SCHOOL,
KOLLEMCODE - 629 160,
KANYAKUMARI DISTRICT....1st Respondent in WA(MD).No.146/ 2018

02.SREE LATHA,
LAB ASSISTANT,
SREE DEVI GIRLS HIGHER SECONDARY SCHOOL,
KOLLEMCODE-629160,
KANYAKUMARI DISTRICT....1st Respondent in WA(MD).No.147/ 2018



03 B.S.SUBHA ,
P.G.ASSISTANT IN ZOOLOGY,
SREE DEVI GIRLS HIGHER SECONDARY SCHOOL,
KOLLEMCODE-629160,
KANYAKUMARI DISTRICT. ...1st Respondent in WA(MD).No.148/ 2018

04.B.V.YOGENDRAN PREETHA
P.G.ASSISTANT IN MALAYALAM,
SREE DEVI GIRLS HIGHER SECONDARY SCHOOL,
KOOLEMCODE-629 160,
KANYAKUMARI DISTRICT. ...1st Respondent in WA(MD).No.149/ 2018

05.S.R.RESMI,
B.T.ASSISTANT IN MALAYALAM SREE DEVI GIRLS HIGHER SECONDARY
SCHOOL, KOOLEMCODE-629 160,
KANYAKUMARI DISTRICT. ...1st Respondent in WA(MD).No.150/ 2018

06.B.U.USHAS,
P.G.ASSISTANT IN PHYSICS,
SREE DEVI GIRLS HIGHER SECONDARY SCHOOL,
KOLLEMCODE-160,
KANYAKUMARI DISTRICT. ...1st Respondent in WA(MD).No.151/ 2018

07.THE SECRETARY,
SREE DEVI GIRLS HIGHER SECONDARY SCHOOL,
KOLLEMCODE - 629 160,
KANYAKUMARI DISTRICT. ... 2nd Respondent in all WAs

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 30.11.2016 passed in W.P(MD)No.22930 of 2016.

Prayer in WA(MD).No.147 of 2018:-

Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 30.11.2016 passed in W.P(MD)No.22932 of 2016.

Prayer in WA(MD).No.148 of 2018:-

Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 30.11.2016 passed in W.P(MD)No.22933 of 2016.

Prayer in WA(MD).No.149 of 2018:-

Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 30.11.2016 passed in W.P(MD)No.22934 of 2016.



Prayer in WA(MD).No.150 of 2018:-

Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 30.11.2016 passed in W.P(MD)No.22935 of 2016.

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Prayer in WA(MD).No.151 of 2018:-

Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 30.11.2016 passed in W.P(MD)No.22936 of 2016.

Prayer in WP(MD). 22930/ 2016 :

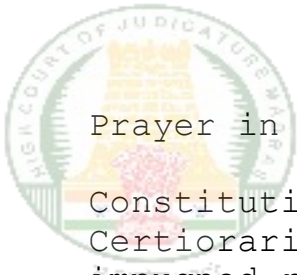
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 3rd respondent CEO in Na.Ka.No. 1398/Aa1/2016 dated 26.05.2016, quash the same, and further Direct the 3rd and 4th respondents to approve forthwith the appointment of the petitioner as P.G.Assistant in Chemistry in the 5th respondent School, namely Sree Devi Girls Higher Secondary School, Kollemcode, Kanyakumari District, and disburse the grant -in-aid towards her salary and allowances w.e.f the date of her appointment viz., 01.06.2011.

Prayer in WP(MD). 22932/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 3rd respondent CEO in Na.Ka.No. 1905/Aa1/2016 dated 26.05.2016, quash the same, and further Direct the 3rd and 4th respondents to approve forthwith the appointment of the petitioner as Lab Assistant in the 5th respondent School, namely Sree Devi Girls Higher Secondary School, Kollemcode, Kanyakumari District, and disburse the grant -in-aid towards her salary and allowances w.e.f the date of her appointment viz., 01.06.2014.

Prayer in WP(MD). 22933/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 3rd respondent CEO in Na.Ka.No. 1905/Aa1/2016 dated 26.05.2016, quash the same, and further Direct the 3rd and 4th respondents to approve forthwith the appointment of the petitioner as P.G.Assistant in Zoology in the 5th respondent School, namely Sree Devi Girls Higher Secondary School, Kollemcode, Kanyakumari District, and disburse the grant -in-aid towards her salary and allowances w.e.f the date of her appointment viz., 01.06.2011.



Prayer in WP(MD). 22934/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 3rd respondent CEO in Na.Ka.No. 1905/Aa1/2016 dated 26.05.2016, quash the same, and further Direct the 3rd and 4th respondents to approve forthwith the appointment of the petitioner as P.G. Assistant in Malayalam in the 5th respondent School, namely Sree Devi Girls Higher Secondary School, Kollemcode, Kanyakumari District, and disburse the grant -in-aid towards her salary and allowances w.e.f the date of her appointment viz., 01.06.2011.

Prayer in WP(MD). 22935/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 3rd respondent CEO in Na.Ka.No. 1905/Aa1/2016 dated 26.05.2016, quash the same, and further Direct the 3rd and 4th respondents to approve forthwith the appointment of the petitioner as B.T.Assistant in Malayalam in the 5th respondent School, namely Sree Devi Girls Higher Secondary School, Kollemcode, Kanyakumari District, and disburse the grant -in-aid towards her salary and allowances w.e.f the date of her appointment viz., 01.06.2011.

Prayer in WP(MD). 22936/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 3rd respondent CEO in Na.Ka.No. 1905/Aa1/2016 dated 26.05.2016, quash the same, and further Direct the 3rd and 4th respondents to approve forthwith the appointment of the petitioner as P.G.Assistant in Physics in the 5th respondent School, namely Sree Devi Girls Higher Secondary School, Kollemcode, Kanyakumari District, and disburse the grant -in-aid towards her salary and allowances w.e.f the date of her appointment viz., 01.06.2011.

For Appellants : Mr.V.R.Shanmuganathan,
Special Government Pleader
in All Wps.

For R-1 : Mr.Isaac Mohanlal, Senior Counsel
for Mr.T.Cibi Chakraborty
in All Wps.

For R-2 : Mr.L.Saji Bino
in All Wps.

**COMMON JUDGMENT**

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

This batch of six Writ Appeals is filed by the State of Tamil Nadu and three other appellants challenging orders passed by the learned single Judge dated 30.11.2016 allowing the Writ Petitions filed by five (5) Teaching and three (3) Non-Teaching staff praying for a quashing of proceedings of the Chief Educational Officer (in short 'CEO'), the third appellant in the present Writ Appeals dated 26.05.2016 and a direction to the CEO and the District Educational Officer (in short 'DEO') the fourth appellant in the present Writ Appeals to approve the appointments of the Teaching and Non-Teaching staff for various subjects/posts in the Sree Devi Girls Higher Secondary School, Kanniyakumari District, arrayed as the second respondent (in short 'school') in the present Writ Appeals. The individual Teaching/Non-Teaching members of staff, the original Writ Petitioners, are arrayed as the first respondent in the Writ Appeal.

2. Appellants 1 to 4 are referred to hereinafter as the 'State', Director of School Education (in short 'DSE'), 'CEO' and 'DEO' respectively and the two respondents, being the original Writ Petitioner and the School, by name and as 'school' respectively.

3. Writ Petitions were originally filed by five Teaching staff and three Non-Teaching staff. The appellants appear to have accepted the order of the learned single Judge as regards two Non-Teaching members of staff and appeals have been filed only in respect of five Teaching staff and one Non-Teaching member of staff.

4. Since the facts and circumstances in relation to the five Teaching staff are substantially similar across writ appeals in all material aspects, the details relating to the petitioner in W.A(MD)No.146 of 2018, Mrs.V.Sree Kala, are taken as illustrative of all Appeals.

5. The brief facts in issue are as follows:

(i) The school was set up in the year 1977. Over the years, there appear to have been disputes that had arisen within the management and after protracted litigation the minority status originally granted to the School was cancelled.

(ii) As a result, the School is, as on today, an aided, private, recognized, non-minority School. The disputes *inter se* the management reached a partial settlement on 02.01.2011.



(iii) Thereafter, a new School Educational Agency was selected and appointed and Form VII registered on 14.02.2011 by the Sub-Registrar, Marthandam.

(iv) While this was so, vacancies arose for various sanctioned posts of P.G Assistants in Chemistry, Zoology, Malayalam and Physics, BT assistant in Malayalam and for the posts of Lab Assistant and Office Assistant.

(v) Upon issuance of vacancy notification dated 19.05.2011 by the school, a Staff Fixation order was issued by the CEO on 02.09.2011. The order is specific to appointments to be made for the year 2011-2012 and provides for four(4) positions of P.G Assistants for the subjects of Chemistry, Zoology, Malayalam and Physics and one(1) B.T Assistant in Malayalam.

(vi) Mrs.Sree Kala was appointed as PG Assistant in Chemistry with effect from 01.06.2011. Appointments were made to fill the vacancies for the remaining positions/posts as well. According to the respondents, the procedure set out in Rule 14 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (in short 'Rules') have been adhered to in making the appointments.

(vii) On 31.12.2013, a vacancy notification was issued by the school calling for the filling up of vacancies for Non-Teaching posts as well.

(viii) The approval of the new Educational Agency came to be made by the DEO, vide proceedings dated 19.03.2014. Specifically, the DEO refers therein to the Form VII filed before the Sub-Registrar, Marthandam on 14.02.2011 appointing Mr.V.Ramachandran Nair as President and Mr.V.Mohan Kumar as Secretary.

(ix) Upon formal approval of the Educational Agency on 19.03.2014 by the DEO, the management submitted requests on 07.08.2014 and 11.08.2014 for the approval of the appointments of the teaching and non-teaching staff and seeking a grant-in-aid towards the expenditures, including the salaries, in connection thereof.

(x) The requests were returned by the DEO on 10.11.2014 for want of certain particulars and were duly re-submitted on 24.11.2014. They were again returned on 19.01.2015 and re-submitted on 24.01.2015.

(xi) The DEO thereafter recommended the approval of the appointments to the CEO on 04.02.2015.

(xii) However, on 19.05.2015, the DEO rejected the approvals sought on the ground that the appointments had been made by an unapproved Educational Agency. A representation was thereafter



made before the CEO on 29.05.2015 reiterating the request for approval of appointments and furnishing explanations to the objections raised in the rejection order.

(xiii) Since there was no response to the representation filed on 29.05.2015, a Writ Petition was filed in W.P(MD)No.2186 of 2016 and an interim direction obtained on 29.01.2016 directing the CEO to pass appropriate orders on letter dated 29.05.2015 within a period of six weeks.

(xiv) The representations were rejected on 26.05.2016 on the ground that prior permission had not been obtained by the school while making the appointments.

(xv) The orders of rejection were the subject matter of Writ Petitions that were allowed by the learned single Judge on 30.11.2016. The impugned order dated 26.09.16 was set aside and the matter remitted to the respondents in writ petition with a direction to consider the same in the light of the decision of this Court in the case of *S.Christy vs. The Chief Educational Officer, Kanyakumari District at Nagercoil* (2011 (5) CTC 532).

(xvi) Aggrieved by the same, the State, DSE, CEO and DEO have preferred the present Writ Appeals.

6. Heard the detailed submissions of Mr.V.R.Shanmuganathan, learned Special Government Pleader for the appellants, Mr.Isaac Mohanlal, learned Senior Counsel for Mr.T.Cibi Chakraborty, learned counsel for the first respondent and Mr.L.Saji Bino, learned counsel for the second respondent.

7. The submissions of Mr.Shanmuganathan centre around the fact that no prior permissions had been obtained by the school for the appointments in question. This, according to him, violates the provisions of Rule 15(4) of the Rules and vitiate the appointments. However, in the light of the fact that the teaching and non-teaching staff, admittedly, possess the requisite qualifications for the positions/post and have been discharging their duties since the date of appointment, he would fairly state that the appellants are quite willing to approve the appointments of Mrs.Sree Kala, Mrs.B.S.Subha, Mrs.B.V.Yogendran Preetha, Mrs.B.U.Ushas for the positions of PG Assistants in Chemistry, Zoology, Malayalam, Physics respectively, Mrs.S.R.Resmi for the position of B.T.Assistant in Malayalam and Mrs. L.Sree Latha for the post of Lab Assistant, w.e.f 07.08.2014, being the dates of the applications filed by the school seeking approval of their appointments. Mr.Mohanlal, however, seeks approval from the date of their appointments being 01.06.2011 and 01.06.2014 respectively.



8. The larger issue that has also been addressed by both learned senior counsel and the learned counsel is whether prior permission under Rule 15(4) of the Rules is in itself, a mandatory pre-condition that has to be satisfied in the matter of appointments as in the present case.

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9. The legal issues that thus arise for consideration before us are formulated as under:

(i) *Whether prior permission is mandatory in regard to the appointments made to non-minority private Institutions and*

(ii) *The impact of such prescription on the appointments made in the facts and circumstances of the present case.*

10. The main argument of Mr. Shanmuganathan against the grant of approval from date of application is that prior permission is a mandate as per the provisions of Rule 15(4) of the Rules and as such permissions have admittedly not been obtained in the present case, the appointments are clearly contrary to law. There is thus no question, according to the learned counsel, of according approval from the date of appointment.

11. While Mr. Mohanlal supports the position that the provisions of Rule 15(4) are mandatory, his argument is to the effect that the Rule has been substantially satisfied in the present case and the fact that permissions could not be sought and obtained in 2011 itself was only on account of the peculiar facts and circumstances of the present case.

12. As far as the issue of prior permission in terms of Rule 15(4) is concerned, the question is no longer *res integra*. Several benches of this Court have settled the position that as far as non-minority Institutions are concerned, the prescription in Rule 15 of the Rules is mandatory. Mr. Mohanlal, in all fairness, does not dispute this position.

13. He would however urge us to take a purposive view of the application of the Rule itself on the facts and circumstances of the present case, drawing comparison with a series of decisions rendered in the context of conversion of posts (*DSE and others vs. S. Vanitha and others* in W.A(MD) Nos. 828 of 2014 and 129 to 132 of 2015, dated 22.04.2016 and *State of Tamil Nadu and others vs. K. Jayasanti and another* in W.A(MD) No. 1046 of 2014, dated 26.04.2014) settling the position that in the case of conversion of posts, approval has to be granted from the date of appointment of the appointees and not from the date on which permission for conversion was granted.



14. The provisions of Rule 15(4) read thus:

'...'

(4) (i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

[(ii) Appointments to the various categories of Teachers shall be made by the following methods:-

[(i) Promotion from among the qualified Teachers in that school; or

(ii) Promotion from among the qualified Vocational Instructions in that School;

[(iii) If no qualified and suitable candidate is available by method (i) above, -

(a) Appointment of other persons employed in that school, provided they are qualified to hold the post of Teachers;

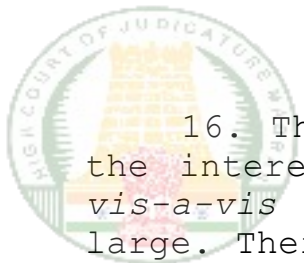
(b) Appointment of teachers from any other school;

(c) Direct recruitment.

In the case of appointment from any other school or by direct recruitment the School Committee shall obtain prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teachers' Training Institutions setting out the reasons for such appointment. In respect of Corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this Rule.]

....'

15. Clearly, the Rule provides for a scheme designed to protect the interests of faculty resources, available in-house. Rules 15(1) and (2) mandate that in case of vacancies that arise, attempts should first be made to locate appropriate individuals from within the same Institution. It is only in their absence that the Institution is permitted to seek appropriate resources from outside the Institution for which prior permission is to be sought from the DEO/CEO.



16. The necessity of prior permission is thus to ensure that the interests of faculty working within the school is protected vis-a-vis appointments that are made from among the public at large. There is no quarrel on this position and the first issue is thus unambiguously decided to state that the provisions of Rule 15 (4) are mandatory and are to be scrupulously followed in the matter of appointments for non-minority Institutions. In fact, this court has, in the case of *Chief Educational Officer, Kanyakumari District at Nagercoil, Kanyakumari District and others vs. S.Christy and others* (2016(1) CWC 481) held that the satisfaction of the Rule is mandatory even in the case of minority Institutions in so far as post-facto approval would have to be taken in such cases.

17. In holding as above, we respectfully endorse the conclusions of the Division Benches of this Court in the case of *Chief Educational Officer and another vs. Nadar Saraswathi Higher Secondary School* (2017 (2) CWC 521), *R.Balavadivel vs. Chief Educational Officer and others* (2005 4 MLJ 679) and *Secretary, Saliar Mahajana Higher Secondary Schools, Aruppukottai, Virudhunagar District vs. G.Subburaj and others* (2005 (1) CTC 8), to the same effect.

18. Coming to the second issue, we are, in the present case, faced with a unique set of facts. Admittedly, Mrs.Sree Kala has been discharging her functions as P.G Assistant in Chemistry from the date of her appointment, being 01.06.2011, till date. We are conscious of the fact that adequacy of qualification and ability of the candidate, call for a subjective recording of satisfaction that fall outside the domain of this Court. However, such satisfaction can well be seen from the statement of the learned SGP to the effect that the appellants are willing to approve the appointments in question, though from 07.08.2014. This obviously reveals the mind of the appellants regarding their satisfaction as to the qualification, merit and ability of the appointees.

19. Mr.Shanmuganathan would only insist that since the requirement of prior permission has not been followed, there is no question of regularising their services prior to the dates of application. We think otherwise.

20. The delay between 01.06.2011 and 07.08.2014 when the school submitted a request for approval of the appointments has been explained by Mr.Mohanlal, referring to the difficulties that had arisen inter se the management of the school. These difficulties are not disputed by Mr.Shanmuganathan and are a matter of record.

21. Though the registration of Form VII seeking approval of the new Educational Agency was made as early as on 14.02.2011, it was approved only on 19.03.2014 by the DEO also ratifying the

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23. The provisions of Rule 15(4) of the Rules have been inserted with the laudable object of protecting the interests of faculty and staff of an Educational Institution. It should not, in our view, be used as a tool to militate against their interests. We have noticed elsewhere that the Teachers and non-teaching staff in question have been discharging their duties without receiving any salary from 2011 till date. They have not seen the colour of the coin as far as emoluments are concerned, pending formal approval of their appointment. This is indeed unfortunate, particularly, given the paucity of dedicated teachers in the system today.

25. The discussions and conclusions above would equally apply to the sole case of the Non-Teaching Staff before us in W.A(MD) No.147 of 2018, Mrs.L.Sree Latha, who was appointed to the post of Lab Assistant. Her appointment is also consequently directed to be approved from the date of such appointment, being 01.06.2014.



26. In fine, all the Writ Appeals are dismissed. No Costs. Consequently, connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(T&P)

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Sub Assistant Registrar

+ 1 cc TO M/S.Isaac Chambers , Advocate in SR No.62804
+ 1 cc TO The Special Government Pleader in SR No.63039

PM

VB/SV MMS/SAR4/22.05.2018/12P/3C

JUDGMENT MADE IN

W.A(MD)Nos.146 to 151 of 2018

20.04.2018