



RESERVED ON:17.07.2018
DELIVERED ON:27.07.2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A. (MD) No.748 of 2018

and

C.M.P. (MD) No.4455 of 2018

1. The Government of Tamil Nadu,
represented by the Principal Secretary,
School Education Department,
Fort St. George,
Chennai-600 009.
2. The Director of School Education,
D.P.I. Campus, College Road,
Nungabakkam,
Chennai-600 006.
3. The Chief Educational Officer,
Theni.
4. The District Educational Officer,
Uthamapalayam, Theni. ... Appellants/Respondents 1 to 4

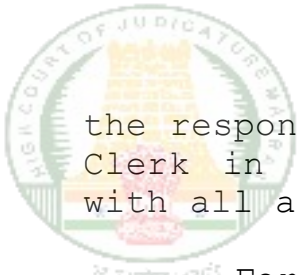
Vs.

1. G.Thangam ... 1st Respondent/Writ Petitioner
2. Pankajam Girls Higher Secondary School,
represented by its Secretary,
Bodinayakkanur,
Theni District. ... 2nd Respondent/5th Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order, passed by this Court in W.P.(MD)No.2920 of 2018, dated 27.02.2018.

Prayer in WP(MD)No. 2920 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari mandamus calling for the records pertaining to the impugned order passed by the 4th respondent in O.Mu.No.6613/A2/2017, dated 29.01.2018, quash the same and direct



the respondents to approve the appointment of petitioner as Record Clerk in the 5th respondent school with effect from 06.12.2017 with all attendant monetary benefits.

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For Appellant

: Mr.A.K.Baskara Pandian
Special Government Pleader

For Respondents

: Mr.R.Subramanian
for R.1

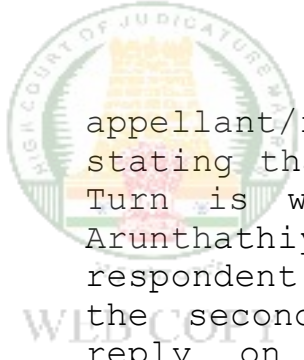
JUDGMENT

M. DURAISWAMY, J.

Challenging the order passed in W.P.(MD)No.2920 of 2018, the respondents 1 to 4 in the writ petition have filed the above Writ Appeal.

2. The first respondent/writ petitioner filed the writ petition to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the fourth respondent dated 29.01.2018 and to quash the same and direct the respondents to approve his appointment as Record Clerk in the fifth respondent school with effect from 06.12.2017 with all attendant monetary benefits.

3. According to the first respondent/writ petitioner, the second respondent/fifth respondent is a non-minority aided school established in the year 1957. The sanctioned staff strength of the school for the year 2017-2018 is 23 teaching posts and 8 non-teaching posts. One C.Chandrapraba, who was working as Record Clerk in the school was promoted as Lab Assistant on 29.06.2017 and the second respondent/fifth respondent school decided to fill up the said vacancy and on 11.10.2017 issued a notification in Dinamalar Tamil daily calling for application to one post of Record Clerk in OC category as per roster. Since the first respondent/writ petitioner was eligible to be appointed for the said post, he applied for the same. Further based on the request of the school, the District Employment Office, Theni, has sponsored candidates. The first respondent/writ petitioner and other candidates were called for to participate in the selection process. Based on the performance in the selection process, the second respondent/fifth respondent school has selected the first respondent/writ petitioner as Record Clerk and issued the appointment order on 05.12.2017. The first respondent/writ petitioner joined the services on 06.12.2017. By the proceedings dated 07.12.2017, the second respondent/fifth respondent school, ~~sent a proposal~~ ^{sent a proposal} for approval to the fourth appellant/fourth respondent. However, the proposal was rejected by the fourth



appellant/fourth respondent by the proceedings dated 29.01.2018 stating that the communal rotation fixed by the school as General Turn is wrong and they should have appointed Scheduled Caste Arunthathiyar (SCA) candidate. The fourth appellant/fourth respondent also issued similar proceedings, dated 11.10.2017 and the second respondent/fifth respondent school gave a suitable reply on 28.11.2017. However, the fourth appellant/fourth respondent passed the impugned order rejecting the proposal made by the second respondent/fifth respondent school.

4. The reservation for communities was first introduced on 21.10.1978. As far as the first respondent/writ petitioner's post of Record Clerk is concerned, the first appointment was made on 07.01.1974 by appointing one D.Karpagavalli. At that time, the rules of reservation was not even made applicable to private schools. Subsequently, on 15.03.2002, the said Karpagavalli was promoted as Junior Assistant. Hence, the first roster point in 100 point roster, which was in vogue at that time, i.e., General Turn has opened on that date and the same was filled by a general candidate by name Chandrapraba on 19.01.2011. Subsequently, on 15.09.2007, the Government scraped 100 point roster system and introduced 200 point roster system and further directed all the departments to follow the 200 point roster system to all vacancies arising from that date. Since Chandrapraba was promoted as Lab Assistant on 29.06.2017, the first roster point in 200 point roster system i.e., General Turn has opened and the first respondent/writ petitioner was selected and appointed in the said post. The fourth appellant/fourth respondent informed the second respondent/fifth respondent school that in view of the issuance of G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007, they are not in a position to approve the appointment.

5. According to the appellants, when C.Chandrapraba was promoted as Lab Assistant on 29.06.2017, the second respondent/fifth respondent school Management submitted proposals seeking for prior permission to fill up the post of Record Clerk under turn 1 Open Competition. The proposals were returned to the school stating that the post which became vacant is the second turn after G.O.Ms.No.241, dated 29.10.2007 came into existence. As per the Government Letter dated 29.10.2007, the vacancies arising on and from 15-September-2007 shall be filled up as per the 200 point roster and all selections for appointment shall be started afresh from serial No.1 of the 200 point roster with effect on and from the said date. Therefore, according to the appellants/respondents 1 to 4, the second respondent/fifth respondent school should have recruited a candidate from out of turn 2 Scheduled Caste Arunthathiyar.

<https://hcservices.ecourts.gov.in/Hcservices> 6. Therefore according to the appellants/respondents 1 to 4, the school management has appointed under the same turn 1 which has already been utilised by them. On and from 15.09.2007, the



vacancy shall be filled up from 200 point roster starting afresh from Serial No.1 Open Competition. Accordingly, the vacancy as on 19.01.2011 was filled up against Serial No.1 Open Competition and the appointment made by the second respondent/fifth respondent school against Serial No.1 Open Competition was approved.

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7. The learned Single Judge, after taking into consideration the case of both sides, set aside the order passed by the fourth appellant and allowed the writ petition. Aggrieved over the same, the appellants/the respondents 1 to 4 have filed the above Writ Appeal.

8. Heard the learned Special Government Pleader appearing for the appellants/respondents 1 to 4 and the learned Counsel appearing for the first respondent/writ petitioner and perused the materials available on record.

9. It is pertinent to note that the reservation for communities was first introduced on 21.10.1978. The first appointment for the writ petitioner's post was made on 07.01.1974 by appointing one D.Karpagavalli. Subsequently on 15.03.2002, the said Karpagavalli was promoted as Junior Assistant and hence, the first roster point in 100 point roster, which was in vogue at that time, ie., General Turn has opened on that date and the same was filled by a general candidate by name Chandrapraba on 19.01.2011. Subsequently on 15.09.2007, the Government scraped 100 point roster system and introduced 200 point roster system and further directed all the departments to follow the 200 point roster system to all vacancies arising from that date. Chandrapraba was promoted as Lab Assistant on 29.06.2017 and after coming into force the 200 point roster system, the first respondent/writ petitioner was selected and appointed in the said post. Following the 100 point roster, the first roster point i.e., General Turn, C.Chandrabha was appointed for the vacancy that arisen on 15.03.2002. Subsequently, the petitioner was appointed under the first roster point in 200 point roster ie., General Turn on 06.12.2017 for the vacancy that arisen on 29.06.2017.

10. It is settled position that prior permission to fill up the vacancy in the sanctioned post is not required. So far as the Government Orders in G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007 and G.O.Ms.No.203, dated 23.07.2010 are concerned, the said Government Orders were quashed by this Court by order dated 15.03.2016 in W.P.(MD)No.11481 of 2008 etc., batch. In the said judgment, this Court held that whenever vacancies arise in a sanctioned post, the schools can fill up the same by following the procedures and there is no need to obtain prior permission from the educational authorities.

<https://hcservices.ecourts.gov.in/hcservices/>

11. Paragraph No.3 of G.O.Ms.No.241, dated 29.10.2007 reads as follows:



"3. In pursuance of the above ordinance, the Government direct that the existing 100 point roster prescribed in Schedule-III to the General Rules for Tamil Nadu State and Subordinate Services be revised into 200 point roster as in the annexure to this Government order so as to provide reservation for the Backward Class Christians and the Backward Class Muslims at three and one-half percent and three and one-half percent respectively, within the thirty percent reservation available for Backward Classes. The Government also direct that the above 200 point roster shall be given effect from 15.09.2007 and the vacancies arising on and from the 15th September 2007 shall be filled up as per the 200 point roster and all selections for appointment shall be started afresh from serial number one of the 200 point roster and all selections for appointment shall be started afresh from serial number one of the 200 point roster with effect on and from the said date."

12. From a reading of the above Government Order, it is clear that the 200 point roster system shall be given effect from 15.09.2007 and the vacancies arising on and from 15th September 2007 shall be filled as per the 200 point roster and all selections for appointments shall be started afresh from serial number 1 of the 200 point roster with effect on and from the said date.

13. Subsequently after revising the 100 point roster prescribed in Schedule-III to the General Rules for the Tamil Nadu State and Subordinate Services into 200 point roster provided reservation for the the Backward Class Christians and the Backward Class Muslims at three and one-half percent and three and one-half percent respectively, within the thirty percent reservation available for Backward Classes.

14. The Government passed another Government Order in G.O.Ms.No.65, dated 27.05.2009 further modifying the roster. The G.O.Ms.No.65, dated 27.05.2009 reads as follows:

"Order:

In the Government Order first read above, the Government issued orders revising the 100 point roster prescribed in Schedule-III to the General Rules for the Tamil Nadu State and Subordinate Services into 200 point roster providing reservation for the Backward Class Christians and the Backward Class Muslims at three and one-half percent and three and one-half percent respectively, within the thirty percent reservation available for Backward



Classes. In the Government Order second read above, the aforesaid roster was revised so as to ensure adequate representation to the Backward Class Christians and the Backward Class Muslims. Consequent on the withdrawal of the 3.5 percent reservation provided for the Backward Class Christians, in the Government Order third read above, the said roster was further revised so as to enable the Backward Class Christians to compete within the reservation provided for the Backward Classes.

2. Now the Government of Tamil Nadu has enacted Act No.4 of 2009, thereby offering reservation to Arunthathiyars on preferential basis within the reservation available for Scheduled Castes and the said Act came into force with effect from 29.04.2009. In pursuance of the above Act, the roster prescribed in the Government Order third read above is revised as in the Annexure to this order. The Government direct that even after filling up of the required appointments or posts reserved for Arunthathiyars on preferential basis, if more number of qualified Arunthathiyars are available, such excess number of candidates of Arunthathiyars shall be entitled to complete with the Scheduled Castes other than Arunthathiyars in the inter-se merit among them and if any appointments or posts reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars.

3. The Government further direct that the roster prescribed in this order shall be made applicable in respect of those selections made by the recruiting agencies and appointments made on or after 29.04.2009. However, the recruiting agencies/appointing authorities are informed that the selections/appointments, if any, already made with reference to the 200 point roster prescribed in the Government Orders first, second and third read above need not be reopened and for further selections/appointments, the revised roster prescribed in this Government Order shall be continued by the recruiting agencies/appointing authorities from the last turn upto which the selection was already made.

4. The rotations/turns earmarked in respect of Women, Destitute Widows and Ex-servicemen in this regard shall be issued separately.

5. Necessary amendments to the Tamil Nadu Subordinate Services Rules shall be issued separately.



(BY ORDER OF THE GOVERNOR) "

15. From the above it is clear that the roster prescribed in the said order shall be made applicable in respect of those selections made by the recruiting agencies and appointments made on or after 29.04.2009. Further it was observed that if any selections/appointments were already made with reference to the 200 point roster prescribed in G.O.Ms.No.241, dated 29.10.2007, G.O.Ms.No.101, dated 30.05.2008 and G.O.Ms.No.206, dated 06.11.2008 need not reopened and for the further selections/appointments, the revised roster prescribed in G.O.Ms.No.65, dated 27.05.2009 shall be continued by the recruiting agencies / appointing authorities from the last turn upto which the selection was already made. Therefore, it is clear that the second respondent School has selected and appointed the first respondent/writ petitioner without following the Government Orders viz., G.O.Ms.No.241, dated 29.10.2007 and G.O.Ms.No.65, dated 27.05.2009. That apart, the vacancy was filled on 19.01.2011 when the 200 point roster was in vogue and it was started afresh. Tmt.C.Chandrapraba was promoted as Lab Assistant on 29.06.2017 and the second respondent School submitted proposals as seeking for prior permission to fill up the post of Record Clerk under turn 1 Open Competition. The proposals were rightly returned to the school mentioning that the post which became vacant is the second turn after G.O.Ms.No.241, dated 29.10.2007 came into existence. When G.O.Ms.No.241, dated 29.10.2007 clearly says that on and from 15th September 2007, the vacancies should be filled up as per the 200 point roster from serial No.1 of the 200 point roster, the appointment of the first respondent/writ petitioner is not legally sustainable. The post was vacant as on the date of Government Order and it was filled up after the issuance of the Government Order viz., G.O.Ms.No.241, dated 29.10.2007. Hence, the vacancy became the first turn and it was also ordered by the second appellant while approving the appointment on 19.01.2011. Since the turn I has been exhausted, the turn remained to be filled up was No.II SC (Arunthathiyar). However, the second respondent School has appointed the first respondent/writ petitioner under the same turn on 29.06.2017, which has already been utilised. The appointment of the first respondent/writ petitioner by the second respondent School is irregular.

16. In the unreported judgment dated 09.11.2009 made by the Division Bench of this Court in W.P.No.7933 of 2009, the Division Bench of this Court held as follows:

" 12. In that view of the matter, it was incumbent on the part of the first respondent to consider the case of the petitioner, whose name was forwarded on 14.09.2007, along with others for appointment to the post of Xerox Operator on the basis of 100 point roster prescribed as



selection on the basis of G.O.Ms.No.241, dated 29.10.2007, which is not applicable for the vacancies which fell vacant prior to 15.09.2007, we hold that the selection of respondents 3 and 4 as illegal.

13. Accordingly, the first respondent is directed to fill up the posts of Xerox Operators, which were created by G.O.Ms.No.978, dated 27.06.2007, on the basis of the names were forwarded by the Employment Exchange on 14.09.2007. The case of only those whose names were forwarded on 14.09.2007, including the petitioner and the third respondent, can be considered for the post of Xerox Operator on the basis of 100 point roster, without taking into consideration G.O.Ms.No.241, dated 29.10.2007. The selection procedure has to be completed within a period of three months. In the meantime, respondents 3 and 4 may be allowed to continue till the regular appointment is made out of the said selection. So far as the fourth respondent is concerned, he being a physically handicapped, the first respondent may consider his case against any other vacancy, if any or if fall vacant in future.

The writ petition is allowed with the aforesaid observations and directions. There shall be no order as to costs. Consequently, M.P.No.1 of 2009 is closed."

17. It is pertinent to note that the existence of G.O.Ms.No.65, dated 27.05.2009 was not brought to the notice of the Division Bench of this Court while deciding the writ petition in W.P.No.7933 of 2009. Therefore, the Division Bench had no occasion to deal with the said Government Order. In such circumstances, the Division Bench had observed that G.O.Ms.No.241, dated 29.10.2007 is not applicable for the vacancies which fell vacant prior to 15.09.2007. Therefore, the said judgment is not applicable to the present case.

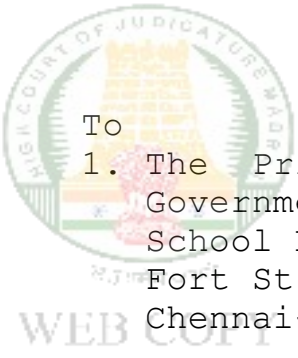
18. As already stated, since the first respondent/writ petitioner was appointed by the second respondent School, without following the Government Order in G.O.Ms.No.241 and G.O.Ms.NO.65, his appointment is irregular and cannot be approved.

19. In these circumstances, the order passed by the learned Single Judge is liable to be set aside. Accordingly, the same is set aside. The Writ Appeal is allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

1. The Principal Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai-600 009.
2. The Director of School Education,
D.P.I. Campus, College Road,
Nungabakkam,
Chennai-600 006.
3. The Chief Educational Officer,
Theni.
4. The District Educational Officer,
Uthamapalayam.
Theni.

+1cc to Mr.R.Subramanian, Advocate SR.No.75465
+1cc to The Spl. Government Pleader Sr.No.75550

SSL

VB/KAK/SAR4/10.08.2018/9P/7C

JUDGMENT MADE IN
W.A. (MD) No. 748 of 2018
and
C.M.P. (MD) No. 4455 of 2018
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