

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.06.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.23950 of 2018 and
W.M.P.Nos.27894 & 27895 of 2018

K.Balamurugan

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
(Secondary)
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
III Floor, No.301
District Collectorate Complex
Salem - 636 001.

4.The District Educational Officer,
III Floor, No.306
District Collectorate Complex,
Salem - 636 001.

5.The Secretary
Gokulanatha Hindu Mahajana
Higher Secondary School
Bretts Road, Salem - 636 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 4th respondent District Educational Officer vide proceedings in Na.Ka.NO.3469/A2/2018 dated 24.07.2018 (as signed) quash the same and further direct the 4th respondent District Educational Officer to approve forthwith the appointment of the petitioner as Lab Assistant in the 5th respondent School and disburse the grant-in-aid towards his salary and allowances with effect from the date of his appointment viz., 26.02.2018.

For Petitioner : Mr.P.Godson Swaminathan
For M/s.ISAAC Chambers

For RR 1 to 4 : Mr.K.Karthikeyan
Government Advocate

For 5th Respondent : No appearance

ORDER

The petitioner is working as Lab Assistant in the 5th respondent School. The 5th respondent School is a recognised aided Educational Institution which is administered by Gokulanatha Hindu Mahajana Sabha Limited, which is a registered company under the Companies Act, 1882. The school is conducting standards VI to XII. It is an aided Institution by the State Government. The medium of instruction is both in Tamil as well as in English. There are 293 students studying in the School. The School also employs 18 teaching staff and apart from that, four non-teaching staff in the School. As far as the non-teaching staff are concerned, one post is earmarked for one Junior Assistant, one is for Lab Assistant and one for Record Clerk and another for Office Assistant. One post of Lab Assistant which was available in the School in the sanctioned category became vacant on 30.04.2014 due to the retirement of the then incumbent one Mr.D.Kannan. In that vacancy, the petitioner was appointed on 26.02.2018. The petitioner appears to have joined the post on the same day.

2.After being appointed, a copy of the petitioner's appointment order was forwarded to the 3rd respondent for approval and also for disbursement of grant-in-aid towards payment of salary to the petitioner. The proposal was also submitted to the District Educational Officer on 26.02.2018 itself with necessary enclosures.

3.The 4th respondent, to whom the proposal was submitted, returned the proposal on 13.04.2018 seeking for some compliance. Thereafter, the 5th respondent School vide its letter dated 03.07.2018 re-submitted the proposal, after duly complying with the requirements, seeking approval of the appointment of the petitioner. But, the School was informed that the authorities would not grant any approval for the petitioner's appointment on the ground that no prior permission was obtained by the School while appointing the petitioner. In this regard, the 4th respondent in his proceedings dated 24.07.2018, rejected the proposal forwarded by the School. The rejection order was on the basis of G.O.Ms.No.101, School Education (Budget - 1)

Department, dated 18.05.2018 wherein a requirement was made for obtaining prior permission from the Chief Educational Officer to make any appointment in the aided School in regard to non-teaching staff. The said proceeding is put to challenge in the present writ petition.

4.Mr.P.Godson Swaminathan, the learned counsel for the petitioner would submit that the impugned proceedings in rejecting the proposal forwarded by the petitioner for approval of appointment as Lab Assistant, cannot be countenanced both in law and on facts for atleast two reasons. Firstly, the proposal which was originally forwarded by the School was in February 2018 which was much earlier to coming into force of the G.O.Ms.No.101 on 18.05.2018. Secondly, even assuming the proposal re-submitted in July 2018 in which time, the G.O.Ms.No.101 has come into effect and the same would be applicable, he would submit that the G.O. cannot supplement what is not provided in the Tamil Nadu Private Schools (Regulations) Act/Rules and this Court consistently held that unless corresponding amendment is made to the Act, the G.O. cannot have any applicability. Therefore, he would submit that on both counts, the impugned proceedings need to be interfered with.

5.At this juncture, the learned Government Advocate for respondents 1 to 4 would submit that even prior to the issuance of G.O.Ms.No.101, dated 18.05.2018, there was a requirement of obtaining prior permission from the authority and therefore, the appointment of the petitioner without getting prior permission was illegal and cannot be sustained. In the absence of prior permission, the authority rightly rejected the proposal forwarded by the School. According to the learned Government Advocate, prior to 18.05.2018 a different authority was delegated with the power to grant prior permission. But, after 18.05.2018, it is the Chief Educational Officer who was delegated the powers of granting prior permission. Therefore, the requirement was already in place for obtaining prior permission. Hence, the argument put forth on behalf of the petitioner would not hold good.

6.The learned Government Advocate would further submit that in any event, the proposal was re-submitted by the School only on 03.07.2018 after coming into force of the G.O. on 18.05.2018 and therefore, for all practical purposes, the proposal, shall take effect only after 18.05.2018, in which event, the prior permission is mandatory as per G.O. Moreover, the learned Government Advocate would also submit that the Government has power to impose new guidelines in appointment of both teaching and non teaching staff in Schools which are receiving grant-in-aid from the Government and there is nothing wrong in Government issuing the orders providing for obtaining prior permission

towards appointments by the aided Institution.

7. At this, the learned counsel for the petitioner would submit that unless the Government provides for such requirement in the Act, it cannot be insisted upon by the authority on the basis of mere Government Orders. In support of his contention, he would rely on a decision in *Deva Asir V. The Secretary to Government, School Educational Department, Chennai and others*, reported 2016-3-L.W.152, wherein at paragraph 32.8, which is extracted hereunder:

"32.8. In my view, G.O.Ms.No.115, dated 30.05.2007, G.O.Ms.No.203, dated 23.07.2010, and the Government Letter dated 09.07.2012 are without jurisdiction and violative of the very scheme of the Act and nowhere the Act contemplates that the Private Aided Schools should take prior permission before making appointment against sanctioned posts, whenever vacancies arose against those sanctioned posts."

In the above decision, similar Government Orders issued mandating certain requirements, which the learned Judge has held that the same cannot be sustained as it would not be pressed into service to the Schools governed by the Tamil Nadu recognised Private Schools (Regulation) Act/Rules.

8. The learned counsel for the petitioner would rely on a Division Bench Judgment of this Court reported in 2009 (2) TLNJ 101 (Civil), *The Director of School Education, Chennai V. Golden Wifred Viola and others*, wherein at paragraph No.5, it is, *inter alia*, held as follows:

"5..... It is well settled in law that the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and rules made thereunder are alone made applicable to the second respondent-School and the qualifications are prescribed under the rules framed in exercise of the powers conferred under Section 56 of the Act. Any prescription of the qualification by way of the Government Order without amendment to the rules cannot be given effect to bind the private schools and the appointments, conditions of service, qualification are all governed by the provisions of the Act and the rules made thereunder. The Government Order G.O.Ms.361 Education Department dated 31.12.1999 which is questioned though has been issued in exercise of the power under Article 309 of the Constitution of India, in our opinion, that would be made applicable only to the Government Servants viz., the teachers who are employed in the Government Schools and not to the teachers in private schools, as those teachers are governed only by the provisions of

the Act and the rules made thereunder."

The above decision has held that the Government Order without amendment to the Rules, cannot be given effect to.

9.The learned counsel for the petitioner would also rely on the decision of this Court reported in (2007) 4 MLJ 561 (A.Murugesan V. State of Tamil Nadu, rep. By its Secretary, Department of School Education, Chennai and others), wherein the learned counsel would draw the attention of this Court to the following passage in support of his contention that for non-teaching staff, there is no provision in the Act or Rules for getting prior permission which is extracted hereunder:

"6. ... As far as non-teaching staff are concerned, as rightly contended by the learned counsel for the petitioner, there is no provision for seeking prior permission for making an appointment cannot be held as not in conformity with the provisions of the Private Schools Regulation Act."

10.This Court has considered the submissions made on behalf of the petitioner as well as the learned Government Advocate for respondents 1 to 4.

11.From the facts as mentioned above and also the legal principle as relied on by the learned counsel for the petitioner, it becomes very clear that as far as the appointment of the non-teaching staff is concerned, either the Tamil Nadu Recognised Private Schools (Regulation) Act or Rules provide for any such requirement and therefore, the rejection order stating that the School has not obtained prior permission, would be per se illegal and cannot be sustained in law.

12.Moreover, as far as the facts of this case are concerned, the original proposal was forwarded by the School on 26.02.2018 itself i.e., much prior to the coming into force the G.O.Ms.No.101 dated 18.05.2018. Therefore, even assuming for the sake of argument that the requirement is mandatory, such requirement cannot be pressed into service as far as the present appointment of the petitioner is concerned. Therefore, on facts, this Court is of the view that the appointment of the petitioner prior to coming into force of G.O.Ms.No.101 dated 18.05.2018 cannot be unsettled only on the basis of requirement which is made mandatory subsequent to the proposal. This Court when enquired with the Government Advocate as to what was the prevailing situation before 18.05.2018 that whether any such requirement was there in any Government Orders, there was no specific answer or material produced except stating that there was such requirement prior to 18.05.2018.

13. Even otherwise, as far as the above cited decisions are concerned, the ratio laid down thereon and the observations made by the Division Bench of this Court as well as the learned Single Judge, it emerges that unless the Act or Rules are amended correspondingly in line with the Government Orders, the same cannot be insisted upon by the authorities. In fact, the learned Judge of this Court, in one of the aforesaid decisions, has held that such requirement cannot be insisted upon for appointment of the non-teaching staff, since nothing has been provided in the Act or Rules for complying with such requirement. Therefore, in all fours, the petitioner has made out a clear case for grant of relief. The objection of the official respondents has no legs to stand and the same has to be rejected as without any merits or substance.

14. For the above said reasons, this Court is of the considered view that the impugned proceeding is liable to be quashed and therefore, the order of the 4th respondent in Na.Ka.No.3469/A2/ 2018 dated 24.07.2018 is hereby set aside. The 4th respondent is directed to grant approval to the appointment of the petitioner as Lab Assistant in the 5th respondent School and disburse the grant-in-aid towards salary and allowances with effect from the date of his appointment i.e. 26.02.2018. The consequential order is to be passed by the authorities within a period of four weeks from the date of receipt of a copy of this order.

15. With the above direction, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS-III)

True Copy

सहायक न्यायाधीश
Sub-Assistant Registrar

Sgl

To

1. The Secretary,
The State of Tamil Nadu
Department of School Education,
Fort St. George, Chennai - 600 009.

2. The Director of School Education,
(Secondary)
College Road, Chennai - 600 006.

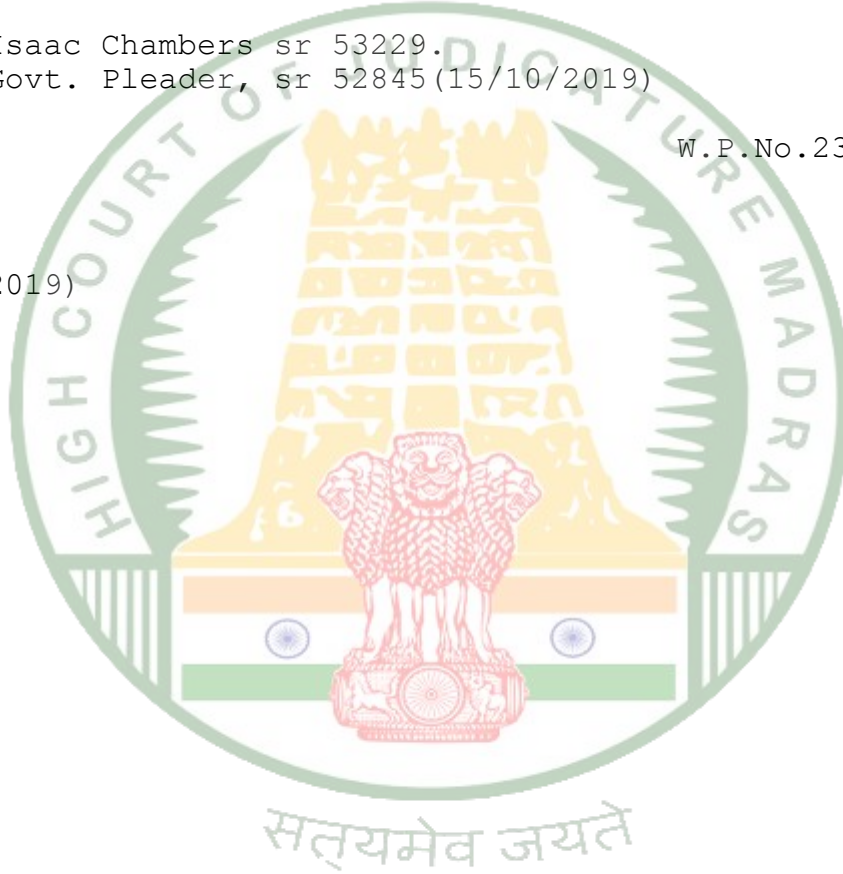
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+1 CC to Isaac Chambers sr 53229.
+1 CC to Govt. Pleader, sr 52845 (15/10/2019)

W.P.No.23950 of 2018

JP (CO)
SP (27/07/2019)



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