



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.19677 of 2019

and

W.M.P. (MD) No.16146 of 2019

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The Correspondent,
St.Lasalle Higher Secondary School,
Thoothukudi-628 001, Thoothukudi District. ... Petitioner

-Vs-

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

2.The Director of School Education,
College Road, Chennai-600 009.

3.The Chief Educational Officer,
Thoothukudi, Thoothukudi District.

4.The District Educational Officer,
Thoothukudi, Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to approve forthwith the appointment of P.Pal Pandi as Scavenger cum Sweeper in the petitioner's school w.e.f., the date of his appointment on 01.06.2018 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Ms.A.Amala
For Respondents : Mr.A.Thiagarajan,
Government Advocate.

ORDER

This Writ Petition is filed for a direction to the respondents to approve forthwith the appointment of P.Pal Pandi as Scavenger cum Sweeper in the petitioner's school w.e.f., the date of his appointment on 01.06.2018 with all attendant benefits, including the arrears of salary and allowance.

2.According to the petitioner, one post of Scavenger cum Sweeper fell vacant on 01.04.2018, in the petitioner's school, due



to the retirement of the then incumbent, namely, Thangaraj on 31.03.2018. The petitioner's school appointed one P.Pal Pandi as Scavenger cum Sweeper with effect from 01.06.2018. The petitioner's school has submitted a proposal to the fourth respondent on 07.06.2018 for approval of the said appointment with effect from 01.06.2018 and disburse grant-in-aid towards salary. However, the fourth respondent has not passed any order. The post of Scavenger cum Sweeper is a sanctioned one and the same is very much available in the staff fixation fixed by the third respondent / Chief Educational Officer. The said appointment is made as per the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules, 1974.

3.The learned counsel appearing for the petitioner contended that the post of Scavenger cum Sweeper was sanctioned by the Government long back in order to maintain the cleanliness and to provide healthy atmosphere to the students and staff. Without having the post of Scavenger cum Sweeper in the school, it is highly impossible for the school to maintain hygiene.

4.The learned counsel appearing for the petitioner further contended that there is no provision in the rules to obtain prior permission from the fourth respondent for the appointment in a sanctioned post. The fourth respondent, without any reason, has not passed any order on the proposal sent by the petitioner's school for more than one year. Because of the inaction of the fourth respondent, the petitioner's school is not getting aid. The post of Scavenger cum Sweeper is necessary to keep the school in hygiene. The Government, by issuing G.O.Ms.No.238, School Education (Pa.Ka.6 (1) Department, dated 13.11.2018, has restricted the school from appointing Scavenger cum Sweeper, without application of mind. This Court in a batch of Writ Petitions, has quashed the said Government Order, preventing the school from appointing non-teaching staff and prayed for allowing this Writ Petition.

5.The learned Government Advocate appearing for the respondents submitted that by issuing G.O.Ms.No.238, School Education (Pa.Ka.6(1) Department, dated 13.11.2018, the Government has ordered not to fill up the post, which fell vacant on the retirement of incumbent, except the post of Junior Assistant, Record Clerk, Office Assistant, Watchman. In view of the same, the petitioner's school is not entitled to appoint Scavenger cum Sweeper and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents and perused the materials available on record carefully.

7.From the materials on record, it is seen that one P.Pal Pandi was appointed as Scavenger cum Sweeper on 01.06.2018, after the said post fell vacant on 01.04.2018. The petitioner's school



sent a proposal for approval of the said appointment. The fourth respondent has not passed any order on the proposal sent by the petitioner's school for more than one year. The learned counsel appearing for the petitioner has stated that this Court, by the order dated 15.03.2016, reported in **2016 (3) LW 152, (Deva Asir Vs. The Secretary to Government, School Education Department, State of Tamil Nadu, Secretariat, Fort St. George, Chennai-9 and others)**, has quashed the earlier Government Orders, preventing the school from appointing non-teaching staff, viz., Scavenger cum Sweeper, which is necessary in a school to keep the school clean and hygiene, especially toilets. The contention of the learned Government Advocate that in view of G.O.Ms.No.238, dated 13.11.2018, the petitioner's school is not entitled for appointing any person, is not tenable. The Government Order in G.O.Ms.No.238 is issued on 13.11.2018, whereas the post is fell vacant on 01.04.2018 and the petitioner appointed one P.Pal Pandi on 01.06.2018 as Scavenger cum Sweeper, i.e., even before passing of the Government Order in G.O.Ms.No.238, dated 13.11.2018.

8.For the above reason, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 009.
- 3.The Chief Educational Officer,
Thoothukudi, Thoothukudi District.



4.The District Educational Officer,
Thoothukudi, Thoothukudi District.

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+1CC TO MR.A.AMALA, Advocate Sr. No. 91319

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 91919

W.P. (MD) No.19677 of 2019

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MA (CO)

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