



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) .No. 24304 of 2019

and

W.M.P. (MD) .Nos. 20924 & 20925 of 2019

P.K.N. Higher Secondary School,
Rep. By its Secretary,
Mr. P.A. Sakthivel,
No. 104, Madurai Road,
Thirumangalam,
Madurai District.

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai.

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

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

4.The District Educational Officer,
Usilampatti, Madurai District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O. Ms. No. 64, School Education (PaKa6(1)) Department, dated 03.04.2018 issued by the 1st respondent in so far as clause 4 (V) and the rejection order issued by the 4th respondent in Na.Ka.No. 1846/A4/2018, dated ... 05.2018 is illegal and quash the same and further direct the respondents 3 and 4 herein to grant approval for the appointment of Mr. Thangarajan as Gardener in the petitioner school w.e.f. 30.05.2018 with all attendant benefits including the arrears of salary and allowance within the time limit fixed by this Court.



For Petitioner : Mr. M. Dinesh
For Respondents : Mr. M. Karuppasamy,
Government Advocate

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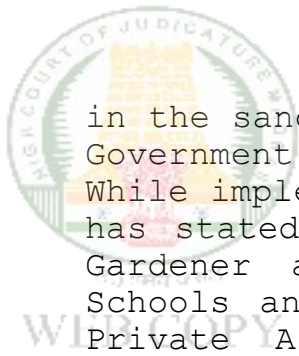
O R D E R

Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned G.O. Ms. No. 64, School Education (PaKa6(1)) Department, dated 03.04.2018 issued by the 1st respondent in so far as clause 4 (V) and the rejection order issued by the 4th respondent in Na.Ka.No. 1846/A4/2018, dated ...05.2018 is illegal and quash the same and further direct the respondents 3 and 4 herein to grant approval for the appointment of Thangarajan as Gardener in the petitioner school w.e.f. 30.05.2018 with all attendant benefits including the arrears of salary and allowance within the time limit fixed by this Court.

2. The petitioner School is recognized aided Private School. In the School, apart from the post of Teaching Staffs, Non-Teaching post including Gardener is also sanctioned. When the incumbent Gardener R. Pandi retired on 31.03.2018, on attaining the age of superannuation, the said sanctioned post fell vacant. The petitioner School after advertising in the newspaper and by interviewing the candidates who responded to the advertisement, appointed one J. Thangarajan as Gardener with effect from 30.05.2018. The petitioner School sent proposal on the same date to the 2nd respondent for approval of the appointment of J. Thangarajan as Gardener. The said proposal for appointment of J. Thangarajan was rejected by the 4th respondent on the ground that the Government by G.O. Ms. No. 64, School Education Department, dated 03.04.2018, did not grant permission even to Government Schools to appoint Librarian, Library Assistant, Gardener and Waterman, etc. Challenging the said order, the petitioner has filed the present Writ Petition.

3. Learned counsel appearing for the petitioner contended that when the 1st respondent by letter dated 26.05.2006, has stated that there is a ban on appointment of Non-Teaching Staff in aided Schools. The said letter was challenged before this Court in W.P. (MD). No. 2218 of 2009 and this Court by order dated 01.04.2009, quashed the said letter. The Government implemented the order of this Court. Learned counsel appearing for the petitioner further contended that the Government cannot take away the post which was already sanctioned to the School by issuing letter without amending the Act and Rules.

4. Learned counsel appearing for the petitioner further contended that this Court by order dated 15.03.2016 made in W.P. (MD). Nos. 11481 of 2008 and etc., batch, directed the department to grant approval for appointment of Non-Teaching Staffs



in the sanctioned post, including the post of Gardener. The impugned Government Order is passed for implementing the order of this Court. While implementing the said order, the 1st respondent in clause 4 (V) has stated that Non-Teaching post of Librarian, Library Assistant, Gardener and Waterman, etc., are not sanctioned to Government Schools and therefore, the said post must be taken back from the Private Aided Schools when the said post becomes vacant on retirement or promotion of incumbent. According to the learned counsel appearing for the petitioner, the said clause is invalid, discriminatory, arbitrary, illegal and erroneous as appointment of similarly placed persons were approved. The learned counsel appearing for the petitioner further contended that the post of Gardener is essential to the Schools for maintaining greenery in the Schools and prayed for allowing the Writ Petition.

5. Learned Government Advocate appearing for the respondents contended that the Government, after considering the letters of the 2nd respondent mentioned in the Government Order, has granted approval for appointment of persons in the sanctioned post concerned in W.P. (MD). Nos. 11481 of 2008 and etc., batch and other pending Writ Petitions. The Government considering the matter, has directed the respondents 2 to 4 to take back the sanctioned Non-Teaching post when the said post became vacant. The 1st respondent, by the Government Order, directed the respondents 2 to 4 to take back the Non-Teaching post of Librarian, Library Assistant, Gardener and Waterman, etc., on the ground that the said posts were not sanctioned to the Government Schools. The reason given by the 1st respondent is valid and legal. In view of the G.O. Ms. No. 64, School Education Department, dated 03.04.2018, the 4th respondent has rightly rejected the proposal sent by the petitioner. The same is valid and legal and prayed for dismissal of the Writ Petition.

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

7. From the materials on record, it is seen that the letter of the 1st respondent dated 26.05.2006, stating that there is a ban on appointment of Non-Teaching post in the Aided Schools, was quashed by this Court by order dated 01.04.2009 in W.P. (MD). No. 2218 of 2009. This Court held that the appointment of Non-Teaching Staff is covered by Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and there is no specific provision under the statute to get prior permission for making an appointment in any category of Non-Teaching Staff. At the time of hearing, the learned Additional Government Pleader appearing for the respondents in W.P. (MD). No. 2218 of 2009 contended that the issue was covered by earlier order of this Court. Paragraph Nos. 5 and 6, which are the relevant portions, are extracted hereunder:



"5. Insofar as appointment of non teaching staff is concerned, it is covered by the Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Therefore, there is no specific provision under the statute to get a prior permission for making an appointment in any category of non teaching staff. As such, the reason cited in the impugned orders are contrary to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

6. Further, on this day, when the matter came up for hearing, Mr.K.Balasubramanian, learned Additional Government Pleader appearing for the respondents submitted that the issue involved in this writ petition is already covered by a decision of this Court reported in 2007(4) MLJ 561 (A.Murugesan Vs. State of Tamil Nadu, rep.by its Secretary, Department of School Education, Chennai and others). His submission is placed on record."

8. Again, by the order dated 15.03.2016, made in W.P. (MD). Nos. 11481 of 2008 and etc. batch, this Court allowed the batch of Writ Petitions and directed the department to grant approval for Non-Teaching Staff in the sanctioned post, including the post of Gardener. This Court considering all the aspects in this respect, Rules, Regulations, Government Orders and judgment, held that the Rules framed under Article 302 of the Constitution of India overrides the executive orders issued under Article 162 of the Constitution of India. This Court held that a sanctioned post either in Teaching or Non-Teaching category cannot be subsequently cancelled. After elaborately considering all the materials, this Court quashed the impugned proceedings and issued directions in paragraph 38 of the said order, which are extracted hereunder:

"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 the appointments of the non-teaching staff in the



Private Aided Schools concerned in these writ petitions and to sanction grant.

(iv) Wherever writ of Mandamus is sought for, a direction is issued to the respondents to approve of the appointments of the non-teaching staff in the Private Aided Schools and to sanction grant.

(v) The official respondents are directed to comply with the aforesaid directions within a period of six weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed."

9. As per the orders of this Court, the Government passed G.O. Ms. No. 64, School Education Department, dated 03.04.2018 and based on the said Government Order, all the Non-Teaching posts filled in the private aided Schools were granted approval. In the said Government Order, clause 4 (V) states that when the post of Librarian, Library Assistant, Gardener and Waterman, etc. were not granted approval to the Government Schools, the same cannot be granted to aided School. In the said clause, it is stated when the said post becomes vacant on retirement of incumbent or being promoted, the sanction granted to the said post must be taken from the said school. The said clause is invalid and contrary to the order of this Court dated 01.04.2009 made in W.P. (MD). No. 2218 of 2009 and order of this Court dated 15.03.2016 made in W.P. (MD). Nos. 11481 of 2008 etc. batch. This Court by the above said orders, directed the department to grant approval for the Non-Teaching Staff in the sanctioned post, including the post of Gardener. It cannot be said that Non-Teaching post of Gardener is not necessary for running a School. The School premises must be greenery and must be kept clean and for the said purpose, a Gardener is necessary. The Government, having implemented the order of this Court dated 01.04.2009 in W.P. (MD). No. 2218 of 2009 and dated 15.03.2016 in W.P. (MD). Nos. 11481 of 2008 and etc. batch, erred in imposing the condition contained in clause 4 (V) of the Government Order. As rightly pointed out by the learned counsel for the petitioner, the said clause is discriminatory when the appointment of similarly placed persons were approved by the department.

10. For the above reasons, clause 4(V) of G.O. Ms. No. 64, School Education Department, dated 03.04.2018 and order of the 4th respondent in Na.Ka.No. 1846/A4/2018, dated ...05.2018, rejecting the proposal for appointment of J. Thangaraj are set aside and the petitioner School is directed to submit the proposal within a period of two weeks from the date of receipt of a copy of this order. The respondents 3 and 4 are directed to consider the proposal of the petitioner School and approve the appointment of J. Thangaraj, if it



is otherwise in order, as Gardener, within a period of four weeks thereafter.

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

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai.

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

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

4.The District Educational Officer,
Usilampatti, Madurai District.

+1 CC to M/s.M. DINESH, Advocate (SR-101855[F] dated 27/11/2019)

+1 CC to M/s.SPL GP (SR-101970[F] dated 27/11/2019)

W.P.(MD).No. 24304 of 2019
26.11.2019

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