

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.No.1292 of 2020
and WMP No.1554 of 2020

M.C.N.Higher Secondary School,
134, Habibulla Road,
T.Nagar, Chennai 600 017,
Rep. by its Secretary,
M.Gajendran,
S/o.Thiru M.N.Sahi Gopal Naidu ... Petitioner

-Vs-

1. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
2. The Chief Educational Officer,
Chennai District, Egmore, Chennai - 600 008.
3. The District Educational Officer,
South Chennai Education District,
Egmore, Chennai 600 008 ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the original impugned communication issued by the 2nd respondent in Mu.Mu.No.3378 /A4/2019 dated 09.12.2019 and the consequent impugned communication issued by the 3rd respondent in O.Mu.No.1502/A4/2018 dated 09.01.2020 and to quash the same and consequently, direct the respondents to pass orders for granting permission to the petitioner school to fill up the post of Lab Assistant in the regular sanctioned post lying vacant from 01.12.2016 based on the proposal submitted by the petitioner school dated 25.05.2018, within a time frame fixed by this Court.

For Petitioner : Mr.G.Sankaran
For Respondents : Mrs.V.Annalakshmi,
Government Advocate

ORDER

By consent, this writ petition is taken up for final disposal.

2. This Writ Petition has been filed challenging the rejection of the proposal submitted by the petitioner school to fill up the post of Lab Assistant.

3. The case of the petitioner is that the petitioner school is an aided school governed by the provisions of Tamil Nadu Recognised Private Schools (Regulations) Act 1973 and rules therein. The post of Lab became vacant on 01.12.2016 due to the retirement of the incumbent. This post is a sanctioned post and it was included in the staff fixation order for the year 2017 - 2018.

4. The petitioner school therefore submitted a proposal to the 3rd respondent to grant permission to fill up the post of Lab Assistant. The proposal sent by the petitioner school has been returned on the ground that the post can be filled up only by deployment of surplus staff working in other schools and the Government has already issued a Government Order in this regard. Aggrieved by the same, the present writ petition has been filed before this Court.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents..

6. The issue involved in the present writ petition is squarely covered by the judgment of this Court in WP Nos.101, 103 and 105 of 2020 in [Kothandaraman High School Vs.The Director of School Education and others]. The relevant portions in the judgment is extracted hereunder :-

6. Per contra, Mrs.V.Annalakshmi, learned Government Advocate, appearing on behalf of the respondents submitted that the present appointment is governed by G.O.Ms.No.238 dated 13.11.2018. Learned Counsel submitted that as per the said G.O., the appointment can be made only after accommodating the surplus staff who are available in other aided schools. Learned counsel submitted that as on today, there are surplus staff, who are available, to be accommodated in the

other aided schools where there is vacancy. Learned counsel submitted that the approval for the appointment was rejected by the second respondent only based on this G.O.Ms.238 dated 13.11.2018 and therefore, the order passed by the second respondent does not require any interference.

7. This Court has carefully considered the submissions made by either side and perused the entire materials available on record.

8. Before this Court ventures into considering the merits of the case, it will be beneficial to rely upon the judgment that has been cited by the learned counsel for the petitioner in K.Balamurugan Vs. The State of Tamil Nadu and four others in W.P.No.23950 of 2018, dated 25.06.2019, referred supra.

The relevant paragraphs of the judgment are extracted hereunder:

"...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 in 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 of 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."

9. It is clear from the above judgment that in so far as non teaching staff are concerned, there is no requirement for seeking prior permission for making any appointment. In order to come to such a conclusion, the learned Single Judge has relied upon the judgment of the Division Bench. The learned Single Judge had also recorded that a similar order was passed and had directed the authority to grant approval to the appointment of non teaching staff in the concerned school.

10. In the considered view of this Court, the above judgment will squarely apply to the facts of the present case. In fact, the petitioner school is placed in a better footing in the present case. The petitioner school has approached the second respondent even before proceeding further with the appointment and had sought for permission to fill up the posts. The second respondent had granted permission to fill up the post of non-teaching staff by his proceedings dated 27.09.2018, 04.10.2018 and 22.10.2018 respectively. Only after obtaining such a permission, the petitioner school had proceeded to call for applications and thereafter, it has appointed a Junior Assistant, Watchman and Sweeper on 26.11.2018. Therefore, the approval for the appointment only becomes a formality since even before the appointment, approval was granted by the second respondent. Even on this ground, the impugned proceedings of the second respondent is liable to be interfered with.

11. For the above stated reasons, this Court is of the considered opinion that the impugned proceedings of the second respondent dated 04.11.2019 is liable to be quashed and accordingly, the same is quashed. The second respondent is directed to grant approval to the appointments made by the petitioner school to the post of Junior Assistant, Watchman and Sweeper and disburse the grant-in-aid towards salary and allowances with effect from the date of appointment. The consequential orders shall be passed within a period of four weeks from the date of receipt of a copy of this order.

7. In the present case, the post in question was a sanctioned post and it became vacant in the year 2016. Therefore, a proposal was sent for filling up the post. It is clear from the above judgment that there is no provision for seeking prior permission for making appointment of a non-

teaching staff. The respondents have already sanctioned the post and therefore, what remains is only to make necessary appointment and seek for sanction.

8. The respondents have relied upon G.O.Ms.No.238 dated 13.11.2018, to reject the permission that was sought for by the petitioner school. This Government Order cannot be pressed into service insofar as the past vacancies are concerned. The Government Order cannot wipe away the rights that are available to the petitioner school under the Act and Rules. The facts of the present case is squarely covered by the above judgment referred supra.

9. For the above stated reasons, this Court is of the considered opinion that the impugned order passed by the 3rd respondent in O.Mu.No.1502 /A4/2018 dated 09.01.2020, is liable to be quashed and accordingly, the same is quashed. The 2nd respondent is directed to grant approval to the appointment made by the petitioner school to the post of Lab Assistant, as and when the same is filled up, after satisfying the other requirements provided under the relevant enactment and disburse the grant-in-aid towards salary and allowances with effect from the date of appointment. The Consequential orders shall be passed within a period of four weeks from the date of receipt of copy of this order.

10. This writ petition is allowed with the above directions. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2. The Chief Educational Officer,
Chennai District, Egmore, Chennai - 600 008.

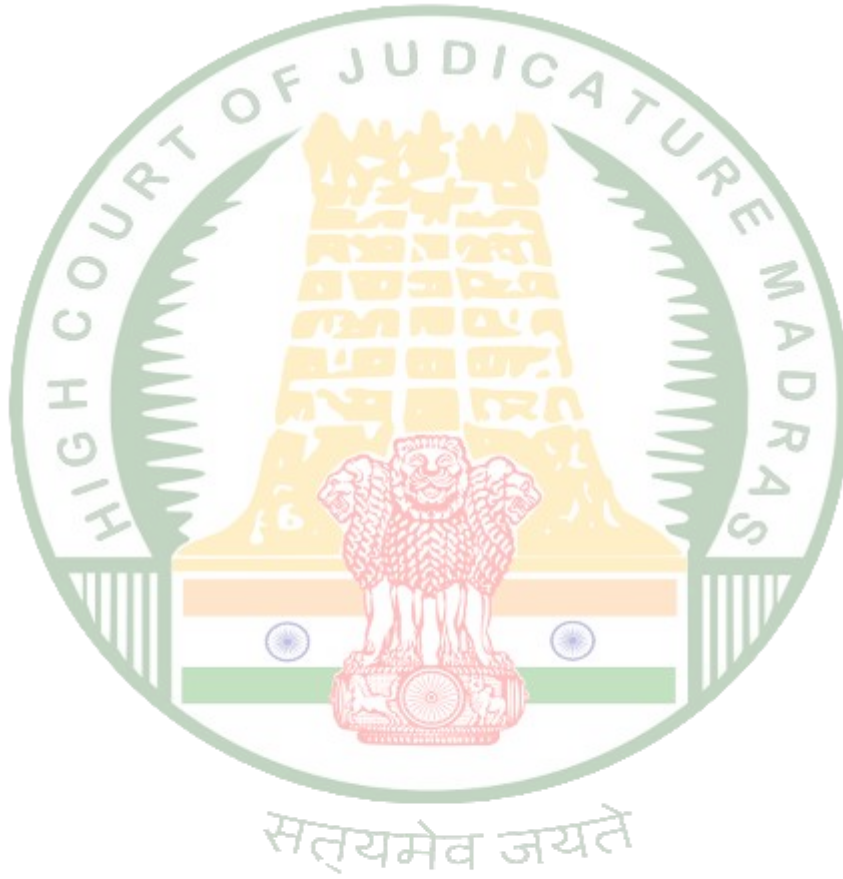
3. The District Educational Officer,
South Chennai Education District,
Egmore, Chennai 600 008

+1cc to Mr.G.Sankaran, Advocate SR.No.10203

+1cc to Government Pleader, High Court, Madras SR.No.10859

W.P.NO.1292 of 2020

MP (CO)
GMY (23/03/2020)



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