

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.No.1441 of 2020

M.C.N.Higher Secondary School,
134, Habibulla Road,
T.Nagar, Chennai-600 017.
Rep. by its Secretary M.Gajendran

... 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 Mandamus directing the respondents to pass orders for granting permission to the petitioner school to fill up the post of Record Clerk in the regular sanctioned post lying vacant from 27.09.2010 based on the proposal submitted by the petitioner school dated 25.05.2018, without reference to the Government Order in G.O.Ms.No.238, School Education Department dated 13.11.2018, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mrs.V.Annalakshmi,
Government Advocate

ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the respondents to fill up the post of Record Clerk in the regular sanctioned post lying vacant from 27.09.2010 based on the proposal submitted by the petitioner-school dated 25.05.2018.

2. The case of the petitioner is that the school has been established in the year 1948 and the petitioner school is an aided school and a vacancy arose in the post of Record Clerk due to the promotion of the incumbent on 27.09.2010. The further case of the petitioner-school is that the petitioner-school has already forwarded a proposal to the respondents, seeking for approval to fill up the post of Record Clerk by stating that the post is lying vacant from 27.09.2010. The Government also issued order in G.O.Ms.No.238, School Education Department, dated 13.11.2018 to fill up the non-teaching post by deployment of surplus staff working in other schools. Since the same was not acted upon, the present writ petition has been filed for a direction to the respondents to fill up the post of Record Clerk.

3. Heard the learned counsel appearing on behalf of the petitioner and the learned Government Advocate appearing on behalf of the respondents.

4. 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 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."

5. The above judgement will squarely apply to the facts of the present case. In the present case, the petitioner-school has been sanctioned with teaching and non-teaching post. Therefore, there is no requirement to seek for any permission for appointment. The permission is only necessary for granting approval for the appointment. In the present case, the vacancy and the appointment had taken place much prior to the passing of the Government Order. Therefore, G.O.Ms.No.238 dated 13.11.2018 cannot be put against the petitioner-school. The 3rd respondent has to necessarily deal with the file strictly in accordance with the judgment given by this Court and the sanction cannot be rejected by putting the G.O against the petitioner-school. If the file is otherwise in order and the petitioner-school has satisfied the other requirements as provided under the Act and

Rules, the 3rd respondent has to proceed further to grant sanction for the appointment and for the disbursement of the grant in aid. The 3rd respondent is therefore, directed to consider the file that has been forwarded by the petitioner-school and pass appropriate orders, within a period of four(4) weeks from the date of receipt of copy of this order, by granting sanction for the appointment.

6. This writ petition is disposed of with the above directions.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KMI

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 Government Pleader, Sr.No.11834

+1cc to Mr.G.Sankaran, Advocate, Sr.No.11161

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SVI (CO)
GS(04/06/2020)