

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.3939 of 2020

and

WMP No.4670 of 2020

S.Murugan

..Petitioner

.v.

1. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
2. The Chief Educational Officer,
Thiruvarur District,
Thiruvarur.
3. The District Educational Officer,
Thiruvarur Educational District,
Thiruvarur District.
4. The Secretary,
Vadamattam Higher Secondary School,
Konerirajapuram, Kudavasal Taluk,
Tiruvarur District.

... Respondents

Prayer:- Writ petitions 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 impugned proceedings issued by the 2nd respondent in Na.Ka.No.7554/A2/2019 dated 12.12.2019 and to quash the same and consequently directing the respondents 1 to 3 to approve the appointment of petitioner in the post of Office Assistant in 4th respondent School from the date of appointment on 20.08.2018 with payment of salary along with interest and other consequential attendant benefits.

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

O R D E R

This writ petition has been filed challenging the impugned proceedings of the 2nd respondent dated 12.12.2019, refusing to grant approval for the appointment of the petitioner in the post of Office Assistant in the 4th respondent School.

2.The case of the petitioner is that the 4th respondent is a Government aided School. There is a sanctioned post of Office Assistant in the 4th respondent School. The said post became vacant due to the retirement of the incumbent. The 4th respondent School conducted a selection and appointed the petitioner to the post of Office Assistant by an order dated 20.08.2018. The 4th respondent School thereafter forwarded the proposal to the 3rd respondent and the 3rd respondent in turn had forwarded the proposal to the 2nd respondent. Since no steps were taken to grant approval, the petitioner filed W.P.No.29812 of 2019, before this Court for a direction to the respondents to grant approval. This Court by an order dated 18.10.2019, directed the respondents to consider and dispose of the proposal that was pending. Pursuant to the same, the 2nd respondent has issued the impugned order rejecting the proposal forwarded by the 4th respondent School on the ground that there are two surplus Office Assistants, who are available in the same union and they should be first accommodated in the 4th respondent School. Aggrieved by the same, the present writ petition has been filed before this Court.

3.The learned counsel for the petitioner submitted that the petitioner was appointed as early as on 20.08.2018 and the respondents have been keeping the file pending for more than a year. Ultimately, the respondents have rejected the approval only on the ground that there is surplus Office Assistants available in the same union. The learned for the petitioner submitted that till the passing of the impugned order, no steps have been taken to redeploy the so called excess Office Assistants available and for the first time, the same has been put against the petitioner to reject the proposal forwarded by the 4th respondent School. The learned counsel for the petitioner further relied upon the judgment of this Court in

W.P.No.28893 of 2019 dated 07.02.2020. The relevant portions in the judgment is extracted hereunder:

5.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.

6. In the present case, the posts in question were sanctioned posts and they became vacant from the year 2003 onwards. Therefore, a

proposal was sent to approve the appointment of non-teaching staffs. 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 posts and therefore, what remains is only to confirm the appointments made by the petitioner school.

7.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 judgment referred supra.

4.The learned Government Advocate appearing on behalf of the respondents submitted that there are two surplus Office Assistants, who were available within the same union viz; Thiruvarur Revenue District. The learned Government Advocate submitted that these surplus staff can be accommodated in the 4th respondent School and there is no requirement for granting approval to the appointment of the petitioner. The learned Government Advocate submitted that there is absolutely no ground to interfere with the impugned order passed by the 4th respondent and that this writ petition is liable to be dismissed.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.The judgment that was cited by the learned counsel for the petitioner will directly apply to the facts of the present case. It is seen that in every case, where an approval is being sought for an appointment, only at that point of time, the authorities wake up and say that there is surplus staff available, who can be accommodated in the post for which the approval is sought for. The fixing of the strength in each School starts during the month of September every year and it should be completed on or before 31st of December of the concerned year. If really, there is a surplus staff available, they should have been accommodated in the 4th respondent School in the year 2018 or at least in the year 2019. If such immediate steps are taken, concerned Schools will not proceed further to appoint any person. That apart, no sanction is required for filling up a non-teaching staff and the approval is

essential only after the appointment is made. Therefore, the authorities will have to act swiftly in redeploying the teaching and non-teaching staff, as and when they find any surplus. This cannot be used as a tool to reject the grant of approval for appointments.

7. In the present case, the petitioner was appointed on 20.08.2018 and the file is pending before the respondents from the year 2018. Ultimately, the impugned order came to be passed only on 12.12.2019. Till then, no steps were taken by the respondents to redeploy the surplus staff in the 4th respondent School. Therefore, it will not lie in the mouth of the 2nd respondent to turn around and reject the approval for the appointment of the petitioner in the 4th respondent School. The approval can be granted and if it is found to be surplus even the petitioner can be redeployed and sent to the School wherever his services are required.

8. In view of the above discussion, the impugned order passed by the 2nd respondent is hereby quashed and there shall be a direction to the 2nd respondent to grant approval to the appointment of the petitioner, after satisfying himself the other requirements and disburse grant-in-aid towards the salary and allowance 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.

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

सत्यमेव जयते Sd/-

Assistant Registrar(CS VI)

//True Copy//

WEB COPY Sub Assistant Registrar

KP

To

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

2. The Chief Educational Officer,
Thiruvarur District,
Thiruvarur.

3. The District Educational Officer,
Thiruvarur Educational District,
Thiruvarur District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.17498

+1cc to the Government Pleader, High Court, Madras. S.R.No.17754

W.P.No.3939 of 2020

MR (CO)
KKV/20/03/2020



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