

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.02.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No. 4725 of 2020
and WMP No.5582 of 2020

Shree G.K.Jain Higher Secondary School,
Rep. By its Correspondent,,
15, 180, MS Koil Street,
Pudumanikuppam,
Royapuram, Chennai 12. Petitioner

Vs.

1. The District
Directorate of School Education,
DPI Campus,
College Road, Chennai 600 006.
2. The Chief Educational Officer,
Chennai.
3. The District Educational Officer,
Office of the District Education Office,
Chennai (East) Chennai 600 005. ... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent Proc.No.A.Thimu/3176/Aa2/2019 dated 9.9.2019 whereby the third respondent has returned the proposal on the premise that it can be reconsidered only after fixation of staff strength for the year 2019-2020 and quash the same and consequently direct the respondents to grant approval to Narsingh Patel to the post of Watchman with effect from 1.8.2019 in accordance with G.O.Ms.No.64 dated 3.04.2018 and G.O.Ms.No.238 dated 13.11.2018.

For Petitioner : Mrs.Dakshayani Reddy

For Respondents : Mrs.V.Annalakshmi
Government Advocate

O R D E R

By consent of both parties, the Writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition has been filed aggrieved by the non-consideration of the proposal submitted by the petitioner for granting approval for the appointment to the post of Watchman.

3. The case of the petitioner is that petitioner school is a Minority Aided Institution. According to the petitioner, the School has been sanctioned with one post of Record Clerk, one post of Office Assistant and one post of Watchman, besides one post of part time Sweeper. A vacancy arose in the post of watchman which fell vacant due to the retirement of the incumbent and the petitioner School selected and appointed a Watchman on 01.03.2019. The petitioner School thereafter had sent the papers seeking for approval of the appointment. This proposal was returned by the third respondent on the ground that the staff strength is yet to be determined for the year 2019-2020 and only after such determination, the proposal that was forwarded by the petitioner School will be considered.

4. The learned counsel appearing for the petitioner submitted that the staff strength has already been determined by the second respondent through his proceedings dated 24.12.2019 and it is clearly seen that there is one post of watchman shown as vacant. The submission made by the petitioner is also substantiated by the documents placed before this Court and page 46 of the typed set of papers shows that one post of watchman remains vacant. This is a sanctioned post.

5. The learned Government Advocate appearing on behalf of the respondents submitted that the petitioners School can resubmit the proposal seeking for approval of the appointment and the same will be considered by the third respondent in accordance with law.

6. The issue that has been raised in the present Writ Petition has been considered by this Court in Kothandaraman High School, Rep. By its Correspondent, Uthukottai 602 026, in WP Nos.101, 103 and 105 of 2020 dated 06.01.2020. The relevant portions in the judgment is extracted hereunder:

"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."

7.It is clear from the above judgment that there is no requirement for seeking prior permission of making any appointment of non-teaching staff and the approval is required only after appointment. The staff strength that has been fixed also shows that there is a one post of watchman which remains vacant

8.In view of the above, there shall be a direction to the petitioner School to resubmit the proposal to the third respondent and the third respondent shall pass appropriate orders in line with the present order, within a period of four weeks from the date of receipt of copy of this order.

9. This Writ Petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

jv

To

1. The District
Directorate of School Education,
DPI Campus, College Road, Chennai 600 006.
2. The Chief Educational Officer,
Chennai.
3. The District Educational Officer,
Office of the District Education Office,
Chennai (East) Chennai 600 005.

+1cc to Mr.Dakshayani Reddy, Advocate, S.R.No.17076
+1cc to the Government Pleader, S.R.No.16709

W.P.No. 4725 of 2020
and WMP No.5582 of 2020

VBA (CO)
KKV/20/05/2020

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