



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.03.2020

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NO.3733 OF 2018

N.Ganesh Kumar

...Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep by the Principal Secretary,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
D.P.I.Campus, College Road,
Nungambakkam, Chennai - 600 006.
3. The Chief Educational Officer,
Perambalur, Perambalur District.
4. The District Educational Officer,
Perambalur, Perambalur District.
5. Nehru Higher Secondary School,
Rep by its Secretary,
Eraiyyur - 621 133.
Perambalur District.

...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order passed by the 4th respondent in A.Thi.Mu.No.002/A1/2017, dated 18.01.2018, quash the same and direct the respondents 1 to 4 to approve the appointment of petitioner as Sweeper in the fifth respondent school with effect from 20.12.2017 with all attendant monetary benefits.

For Petitioner .. Mr.R.Subramanian

For Respondents .. Mr.P.Raja
Government Advocate
(for R.1 to R.4)
No appearance for R.5



ORDER

The case of the petitioner is as follows;

2.The fifth respondent/school in which the petitioner was employed as a Sweeper is a non-minority school established in the year 1985. The school has a strength of 1,000 students and has a sanctioned staff strength of 20 Teaching posts and 4 Non-teaching Posts for the academic year 2016-17. One of the 4 Non-teaching posts was ear-marked for the category of Sweeper.

3.According to the petitioner, one C.Ponnuchamy, was working as Sweeper earlier to the petitioner and retired from service on attaining age of superannuation on 30.06.2014. Therefore, 5th respondent/school decided to fill up the vacancy. On 22.11.2017, the 5th respondent/school issued a Notification in Tamil Daily calling for the applications for filling up the post of Sweeper in O.C.Category as per communal roster. Since, the petitioner was eligible for consideration for appointment, he applied for the same.

4.On the basis of the request made by the 5th respondent/School, the District Employment Office, Perambalur has sponsored the candidates. The petitioner and others were called to participate in the selection process and after due completion of the selection process, the petitioner was selected and appointed as Sweeper on 19.12.2017 and the petitioner joined service on 20.12.2017.

5.Subsequent to the appointment of the petitioner, the School Management has sent a proposal for approval to the Education Authorities on 02.01.2018. However, the same was returned by the fourth respondent vide his proceedings dated 18.01.2018, stating that the permission to fill up the post of Sweeper was not obtained. In response to the said proceedings, on 24.01.2018 the Management re-submitted the proposal by enclosing the order of the School Committee and also the order passed by this Court in W.P(MD).No.11481 of 2008 and batch. This Court has held that no permission was required for appointment of Non-teaching staff. However, the fourth respondent has informed the School Management that in view of the issuance of G.O.Ms.No.115 dated 30.05.2005, they were not in a position to approve the appointment. In view of the decision taken by the Education Authorities that the appointment of the petitioner was not preceded by sanction or permission taken by the school concerned and the proposal sent by the school was returned, the petitioner is before this Court challenging the communication dated 18.01.2018 returning the proposal.



6.Mr.R.Subramanian, learned counsel for the petitioner would submit that the official respondents herein have failed to appreciate that the Government Orders which were cited against the approval of the petitioner were already quashed by this Court in a batch of writ petitions. This Court repeatedly held that by insistence of getting prior permission for appointment of Non-teaching staff was outside the scheme of Tamil Nadu Private Schools and Regulations Act, 1973 and the Rules framed thereunder. This Court has categorically held that wherever vacancies arose in sanctioned posts, no prior permission is required for filling up the post. Unfortunately, the proposal which emanated from the Management was returned by the Official respondents arbitrarily and unjustly.

7.The learned counsel infact would rely on a decision of this Court in the case of Deva Asir Vs. The Secretary to Government, School Education Department in W.P.(MD) Nos.11481 of 2008 etc., batch reported in 2016-3-L.W.152. In the said case, the learned Judge of this Court has held that State cannot issue administrative instructions by way of Government Orders overriding the provisions of the Act and Rules. The learned Judge has also held that G.O.Ms.No.115 dated 30.05.2007 and other Government Orders issued on the subject matter were without jurisdiction and violative of the scheme of the Act. A detailed judgment was passed by the learned Judge covering inter alia various aspects including the present issue raised in the case on hand. Following above decision, number of decisions have been rendered by this Court, one such decision was relied on by the learned counsel in the case of Thiakesar Alai Higher Secondary School Vs. The Government of Tamil Nadu & others in W.P.(MD).No.23740 of 2016. The learned Judge has upheld the contention that no permission is required and allowed the writ petition.

8.The learned counsel infact would also rely on the decision of this Court in the case of K.Balamurugan Vs. The State of Tamil Nadu & others in W.P.No.23950 of 2018 dated 25.06.2019 wherein this Court has held as under;

"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 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 aforementioned decisions, has held that such requirement cannot be insisted upon for appointment of the non-teaching staff, since nothing has been provided



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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 objections of the official respondents has no legs to stand and the same has to be rejected as without any merits or substance.

After observing as such above, this Court has given following directions;

"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 fourth respondent in Na.Ka.No.3469/A2/2018 dated 24.07.2018 is hereby set aside. The fourth respondent is directed to grant approval to the appointment of the petitioner as Lab Assistant in the fifth 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. The learned counsel would also submit that as against that, Writ Appeal was filed by the State in W.A.No.4011 of 2019 and the Hon'ble First Bench of this Court has dismissed the appeal by confirming the order passed by this Court vide its recent decision dated 11.02.2020. Therefore, the learned counsel would submit that in all fours, the claim of the petitioner is liable to be allowed.

10. After notice, Mr.P.Raja, learned Government Advocate has entered appearance for respondents 1 to 4 and made his submissions. In any event, the legal principle which has been clearly enunciated by the Court in respect of the issue raised in the present writ petition cannot be disputed at all. When specific and categorical view taken by this Court by many judges and the decisions have also been upheld by way of Intra Court Appeals, the issue is no more res integra and the grievance which was fall out of the issue is not any more open for adjudication or to be opposed.

11. In view of the same, this Court has no hesitation in allowing the writ petition. The repeated opposition to the grant approval to such appointments on the ground that the School Management had not taken prior permission before filling up the vacancy is contrary to the legal principles and it is very unfortunate that the Education Authorities keep repeating the same objections, notwithstanding the several decisions of this Court by Single Judges as well as Hon'ble Division Bench which are starkly staring at them. In any event, out of judicial



propriety, this Court restrains itself from passing any uncharitable comments on the conduct of the Authorities for repeatedly displaying their audacious ignorance or temerity born out of assumed supremacy in the matter of grant of approval for appointment of staff in schools governed by Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.

12. In view of the proposal being returned on a misunderstanding of the rule position and the law laid down by the Courts, the fifth respondent/school is directed to re-submit a proposal within a period of two weeks from the date of receipt of a copy of this order. On such proposal being forwarded by the fifth respondent/school, the fourth respondent is directed to grant appropriate approval within a period of four weeks thereafter.

13. With the above observations, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(Writ)

//True Copy//

Sub Assistant Registrar

mrm/nsd

To

1. The Principal Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
2. The Director of School Education,
DPI Complex, College Road, Nungambakkam,
Chennai - 600 006.
3. The Chief Educational Officer,
Perambalur, Perambalur District.
4. The District Educational Officer,
Perambalur, Perambalur District.
5. The Secretary,
Nehru Higher Secondary School,
Eraiyyur-621 133, Perambalur District.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.20814

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VD(CO)
CS/08/07/2020