

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2020

PRONOUNCED ON : 07.10.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition Nos.11574 & 11586 of 2020
and W.M.P.Nos.14174, 14175, 14196 & 14197 of 2020

W.P.No.11574 of 2020

I.Alwin Martin,
Sweeper,
St.Mary's High School,
Karumathampatty - 641 659
Coimbatore District. Petitioner

-Vs-

1. The Director of School Education
College Road, Chennai - 600 009.
2. The Chief Education Officer
Coimbatore, Coimbatore District.
3. The District Educational Officer
S.S.Kulam, Coimbatore District.
4. The Correspondent
St.Mary's High School,
Karumathampatty - 641 659
Coimbatore District. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 2nd respondent CEO in Na.Ka.No.15638/A4/2018 dated 03.06.2020, quash the same and further direct the respondents to approve forthwith the appointment of petitioner as Sweeper in the 4th respondent's School w.e.f., 01.06.2018, with all attendant benefits including arrears of salary and allowances.

W.P.No.11586 of 2020

P.Jothimani
Scavenger,
Devanga Higher Secondary School,
R.S.Puram - 641 002
Coimbatore District. Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education
College Road, Chennai - 600 009.
3. The Chief Educational Officer
Coimbatore, Coimbatore District.
4. The District Educational Officer
Coimbatore, Coimbatore District.
5. The Secretary
Devanga Higher Secondary School,
R.S.Puram - 641 002
Coimbatore District. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 4th respondent DEO in Na.Ka.No.7220/A2/2018 dated11.2018 (sign on 28.11.2018), quash the same and further direct the respondents to approve forthwith the appointment of petitioner as Scavenger in the 5th respondent's School w.e.f., 02.11.2018, with all attendant benefits including arrears of salary and allowances.

For Petitioners : Ms.A.Amala

For Respondents : Mr.P.Raja, Government Advocate

C O M M O N O R D E R

The matter was taken up through Web-hearing.

2. The petitioners are Sweeper and Scavenger respectively employed in the fourth respondent school in the respective writ petition. The fourth respondent is a recognised minority institution receiving grant-in-aid from the Government. According to the petitioner, one vacancy in the category of Sweeper and Scavenger fell vacant as early as on 01.07.2005 and 01.02.2013 respectively due to the retirement of the incumbents in the said posts. When the fourth respondent School attempted to fill up the vacancies, there was some pending dispute and the appointments could not be fructified. However, the vacancies continued and as against the same, the petitioners were

appointed as Sweeper and Scavenger respectively on 01.06.2018 and 02.11.2018.

3. Thereafter, a proposal was submitted to the third respondent on 18.06.2018 and 15.11.2018 respectively for approval and sanction of salary and allowances to the petitioners herein. The third respondent, in turn forwarded the proposals to the second respondent. However, the proposals in respect of the petitioner in W.P.No.11574 of 2020 was returned on 10.09.2018 for certain rectification and due compliance. The fourth respondent School in turn after complying with the return, re-submitted the proposal on 02.10.2018.

4. As there was no action forthcoming from the authorities concerned, the petitioner in W.P.No.11574 of 2020 herein approached this Court in W.P.No.32288 of 2019 seeking direction to consider the rectified proposal dated 02.10.2018 and this Court on 15.11.2019, disposed of the writ petition by directing the authorities to consider and pass orders on the said proposal. On 03.06.2020, the second respondent rejected the proposal by referring to G.O.Ms.No.238 dated 13.11.2018 stating that the post of Junior Assistant, Record Clerk, Lab Assistant, Office Assistant and Watchman are only permitted to be filled up and the post of Sweeper was not the approved category. In view of the rejection of the proposal, challenging the same the petitioner is before this Court. As far as the petitioner in W.P.No.11586 of 2020 is concerned, the Authority took a similar decision and rejected the proposal of the approval of her appointment on 28.11.2018.

5. Learned counsel for the petitioners Ms.Amala would submit that the reliance placed on G.O.Ms.No.238 dated 13.11.2018 is the subject matter of consideration in a batch of writ petitions before this Court and the said Government Order has also been stayed in W.P.(MD) No.13404 of 2019 etc., batch. Even otherwise, the Government Order was issued in November 2018 whereas the vacancy admittedly arose much prior to the date of the G.O., and the appointment of the petitioners was also much before. Therefore, the G.O., cannot have retrospective application. The learned counsel for the petitioners would rely on a recent decision of this Court rendered in W.P.(MD) No.20527 of 2019 dated 10.02.2020 wherein the learned Single Judge of this Court has relied on an earlier precedents on the subject matter and allowed similar claim and the decision of the said learned Single Judge would squarely apply to the facts and circumstances of the present cases as well.

6. Mr.D.Raja, Government Advocate entered appearance in response to the notice. The above stated position as submitted by the learned counsel for the petitioners is not disputed.

However, the learned Government Advocate would submit that the issue as to whether it is open to the aided schools to appoint persons of their choice against the categories of employment which were not approved by the Education authorities or not, is pending consideration before this Court.

7. This Court considered the objections, but as far as the present claim on hand is concerned, admittedly the appointments of the petitioners had been made against the vacancies which existed prior to the issuance of G.O.Ms.No.238 dated 13.11.2018. These petitioners had also been admittedly appointed earlier to the date of the said G.O., Therefore, this Court finds that the reliance placed on the order passed by the learned Single Judge in the above mentioned matter (W.P. (MD) No.20527 of 2019) would clinch the issue in favour of the petitioners herein. For due appreciation of the claims of the petitioners herein, the relevant portions of the order passed by the learned Single Judge in Paragraphs 2 to 7 are extracted hereunder.

"2.The learned counsel for the petitioner would submit that the Government Order itself cannot be sustained and since the petitioner was appointed in the post sanctioned in the year 1996 itself in regular vacancy on retirement and promotion, the reliance on the subsequent G.O passed on 13.11.2018, is improper. Insofar as, the sanctity of G.O(Ms) No.238 dated 13.11.2018 is concerned, the same is a subject matter of batch of writ petitions, which are said to be pending and therefore, I do not intend to go into the merits of the grounds raised questioning the validity of G.O(Ms) No.238. Nevertheless the fact remains that the proposal seeking for approval has now been rejected based on the reliance placed by the respondents on G.O(Ms) No.238 dated 13.11.2018.

3.It is not in dispute that the appointment of these two posts of Record Clerk and Office Assistant were based on the sanction granted on 28.12.1996 in G.O(Ms)No.1731, Education Department. While that being so, relying on the subsequent G.O(Ms) No.238 for the purpose of rejection of the approval is illegal, since G.O(Ms) No.238 can only have a prospective effect. In view of the same, the consequential order passed by the respondent dated 10.06.2019 is also unsustainable. On this short ground, the petitioner herein would be entitled to succeed.

4.The learned counsel for the petitioner had also placed reliance upon a decision of this Court passed in W.P(MD)No.19677 of 2019 dated 04.10.2019 in the case of The Correspondent, St.Lasalle Higher Secondary School Vs. The State of Tamil Nadu and others, wherein this Court had taken note of the fact that the post involved in that case fell vacant prior to issuance of G.O(Ms)No.238 and therefore, reliance on G.O(Ms) No.238 for the sake of granting approval cannot be sustained. A similar view was also taken by this Court in W.P(MD) Nos.27911 and 27912 of 2019 dated 20.09.2019 in the case of P.Manikandan and other Vs. The Director of School Education and others.

5.The learned counsel for the petitioner had also relied upon a decision of this Court in S.Rasheetha Banu Vs. State of Tamil Nadu and others reported in (2012) 4 MLJ 198, wherein the learned Single Judge of this Court had held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected on the ground that there is a fall in strength and the post became surplus. This Court was of the view that for the purpose of granting approval, the Teacher along with the post could be transferred and deployed to a needy school.

6.In the instant case also, if at all the respondents were of the view that there was a surplus, the option that would have been available to the respondents, would be to grant approval to the said posts and the concerned employee could have been redeployed to the needy school and as such, the rejection of the approval itself ought not to have been exercised. In any event, such a rejection by relying on subsequent G.O is impermissible.

7.For all the aforesaid reasons, the impugned order dated 03.04.2019, issued by the third respondent in O.Mu.No.3083/E1/2019 and the consequential proceedings of the fourth respondent in Na.Ka.No. 2211/A3/2019 dated ...06.2019, are set aside. Consequently, there shall be a direction to the third respondent herein to disburse the grant-in-aid towards the salaries of the two employees namely S.Ignatius and D.Jeya Seela Rajathi from the date of their appointment/promotion together with all attendant benefits. Such an exercise shall be completed atleast within a period of six weeks from the date of receipt of a copy of this order.

Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed."

8. This Court is of the considered view that the claims of the petitioners are covered by the aforesaid findings as set forth by the learned Single Judge in the above paragraphs in all fours. Therefore, the writ petitions are allowed and the impugned orders in Na.Ka.No.15638/A4/2018 dated 03.06.2020 and Na.Ka.No.7220/A2/2018 dated ..11.2018 (sign on 28.11.2018) rejecting the approval of the petitioners are hereby set aside. The second and third respondents in the respective writ petition are directed to grant approval to the appointment of the petitioners in the fourth respondent school with effect from their date of initial appointment with all consequential benefits of arrears of salary and allowances admissible to the petitioners, if their appointment is found to be in order, otherwise. The second and third respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

8. The writ petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education
College Road, Chennai - 600 009.
3. The Chief Educational Officer
Coimbatore, Coimbatore District.
4. The District Educational Officer
Coimbatore, Coimbatore District.
5. The Secretary
Devanga Higher Secondary School,
R.S.Puram - 641 002
Coimbatore District.

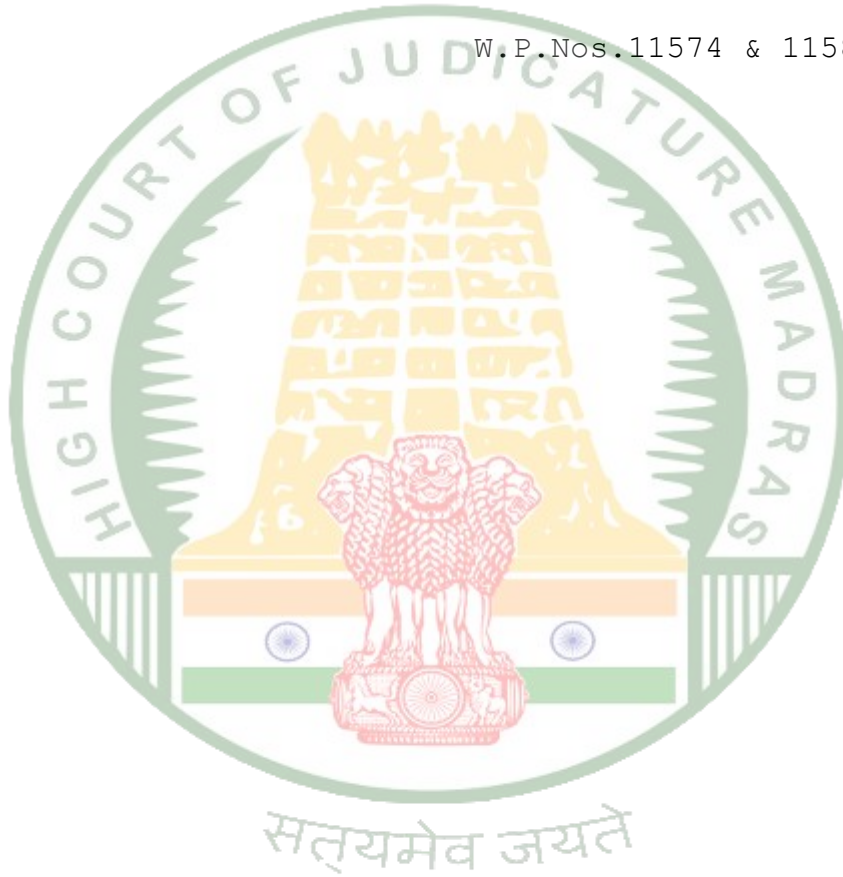
6. The District Educational Officer
S.S.Kulam, Coimbatore District.

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St.Mary's High School,
Karumathampatty - 641 659
Coimbatore District.

+1 cc to government Pleader, sr.33291.

Pp(co)
krd 5/11

W.P.Nos.11574 & 11586 of 2020



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