

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.15023 of 2020

and

WMP No.18710 of 2020

The Secretary to School Committee
Sokkalal Higher Secondary School
Mukkudal- 627 601.
Tirunelveli District.Petitioner

Vs.

- 1 The State of Tamil Nadu
Rep by. Secretary to Government
Educational Department
Fort St.George, Chennai- 600 009.
- 2 The Director of School Education
(Higher Secondary)
College Road
Chennai- 600 006.
- 3 The Chief Educational Officer
Kokkirakumal
Tirunelveli- 627 009.
- 4 The District Educational Officer
Cheranmahadevi
Tirunelveli District.
- 5 A.VishnudharshanaRespondents

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings of the 2nd respondent in Mu.Mu.No. 045162 /D2/ E3/ 2019 dated 12.08.2020 quash the same and direct the 2nd

respondent to grant approval to fill up the vacant teaching and non-teaching posts in the Sokkalal Higher Secondary School.

For Petitioner : Mr.V Selvaraj
for
Mr.S.Bharathi Rajan
For Respondents: Mr.C.Munusamy
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the impugned proceedings of the 2nd respondent dated 12.08.2020 and for a consequential direction to the 2nd respondent to grant approval to fill up the vacant teaching and non-teaching posts in the petitioner school.

2. The petitioner institution is a Government Aided Educational Institution. There was some dispute with regard to the management of the petitioner school. The same became a subject matter of a suit in O.S.No.139 of 2015 filed by the 5th respondent seeking for the relief of declaration and for other consequential reliefs. The said suit is pending as on date.

3. An order came to be passed in I.A.No.564 of 2015 in O.S.No.139 of 2015 by the Sub-Court, Ambasamudram on 22.12.2015. Certain directions were given while disposing of this petition. For proper appreciation, the same is extracted hereunder:-

"13. In fine, this petition is disposed of in following terms without cost.

1) That in this interim petition, absolute right of petitioner/plaintiff and separate ownership of 1st respondent/10th defendant on the petition mentioned schedule either as owner thereof or

as an Educational Agency cannot be decided without full-fledged trial after framing of relevant issues based on the pleadings and evidence - oral and documentary;

2) that, however, by striking a balance, till the disposal of the suit, the respondents/ defendants 10 and 12 - as a present Educational Agency and Secretary of school committee of petition mentioned private schools respectively - should not take any major decision in the matter of administration of the schools including the appointments and posting of teachers/staff members, without getting prior permission of this court ; and

3) that if respondents/defendants do not follow aforesaid interim direction and if they are taking such major decision without prior approval of this court, petitioner is at liberty to approach this court to get an appropriate order in terms of Section 53A (2) of Tamilnadu Recognized Private School (Regulation) Act, 1973, directing the Government to nominate an officer to discharge the functions of the Educational Agency and the school committee in respect of the petition mentioned schools till disposal of the suit."

4. The School committee, by a resolution dated 10.11.2015 resolved to appoint one Paulraj as the Secretary of the School Committee for a period of 3 years. When this resolution was sent for approval, the 4th respondent rejected the same and it became a subject matter of challenge before the

Madurai Bench in W.P.(MD) No.4160 of 2016. This Writ Petition was dismissed and an Appeal came to be filed in W.A.(MD). No. 710 of 2016. The Hon'ble Division Bench was pleased to allow this Appeal by an order dated 13.12.2018. The relevant portions of the order passed by the Division Bench is extracted hereunder.

"9. Accordingly, this Writ Appeal is allowed. The impugned order passed by the 1st respondent is set aside. Having regard to the fact that the office of the Secretary of the School Committee is only for a period of 3 years from 2015, on the expiry of the period of office, the appellant is permitted to file appropriate application for the renewal of approval of his appointment as Secretary of the School Committee, if he continued to hold office as Secretary of the School by the Educational Agency recognized in the interim order of civil Court. In case, a proposal is submitted for the approval of the appointment of appellant as Secretary of the school committee, the same shall be considered by the 1st respondent keeping in mind the interim arrangement as directed by the civil Court in I.A.No.564 of 2015 in O.S.No.139 of 2015 on the file of the Sub Court, Ambasamudram and the interpretation we have given in this order by holding that the civil Court has passed an order making an interim arrangement regarding the administration of the school. For the said purposes, the appellant shall be treated as the Secretary of the School Committee till a decision is taken on the fresh proposal. No costs. Consequently, connected Miscellaneous Petition is closed."

5. By virtue of the above order passed by the Hon'ble Division Bench, the matter was again remanded to the file of the 4th respondent. The 4th respondent, through proceedings dated 22.04.2019,

granted approval for the above said Paulraj to continue as the Secretary of the School Committee for a period of three years from 01.02.2019.

6. The School Committee made a representation on 06.08.2019 to the 2nd respondent seeking approval to fill up teaching and non-teaching posts. This request came to be rejected by the 2nd respondent through the impugned proceedings dated 12.08.2020 and aggrieved by the same, the present Writ Petition has been filed before this Court.

7. Heard Mr.V.Selvaraj, learned counsel for petitioner and Mr.C.Munsamy, learned Special Government Pleader for respondents 1 to 4.

8. The 2nd respondent has rejected the request made by the petitioner mainly on the ground that the competent Civil Court has directed that the School Committee should not take any major decisions in the matter of administration of school including the appointments and postings of teachers/staff members without getting prior permission of the Court. According to the 2nd respondent, the petitioner can approach seeking for filling up of the posts only after getting the prior permission of the Civil Court and till then no approval can be granted.

9. In the considered view of this Court, the 2nd respondent did not properly understand the scope of the permission that was requested by the petitioner school. There were totally 5 approved teaching posts, which fell vacant. As a first step, the respondents will have to recognize the fact that there are 5 approved posts, which have fallen vacant and the same requires to be filled up. Once the 2nd respondent recognizes this fact and grants permission to fill up the posts, the petitioner will have to go with that permission order before the Civil Court and seek for a further permission. Only after the Civil Court grants such a permission, the school can go ahead and fill up the posts and seek for approval of same. In other

words, without the permission of the 2nd respondent identifying and granting permission to fill up the posts, the petitioner school cannot even approach the Civil Court seeking for permission. The 2nd respondent obviously did not understand these nuances at the time of passing the impugned order.

10. In view of the above discussion, the impugned proceedings of the 2nd respondent dated 12.08.2020 is hereby quashed. The matter is remanded to the file of 2nd respondent and the 2nd respondent is directed to identify/recognize the 5 vacant teaching posts that is claimed by the petitioner school. Once the same is recognized, the 2nd respondent can pass an order granting permission to the petitioner school to fill up the vacant posts subject to obtaining the permission of the concerned Civil Court. The petitioner, on receipt of this Order from the 2nd respondent, shall thereafter file an application before the concerned Civil Court seeking for permission to fill up the posts. It is left open to the Civil Court to deal with the application on its own merits and in accordance with law, without being influenced by the order passed in this Writ Petition. The further action of the 2nd respondent will depend upon the final order passed by the competent Civil Court in the application filed by the petitioner seeking for permission. The 2nd respondent shall pass necessary orders within a period of four weeks from the date of receipt of a copy of this order.

11. This Writ petition is, accordingly, allowed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Secretary to Government
The State of Tamil Nadu
Educational Department
Fort St.George, Chennai- 600 009.

2 The Director of School Education
(Higher Secondary)
College Road
Chennai- 600 006.

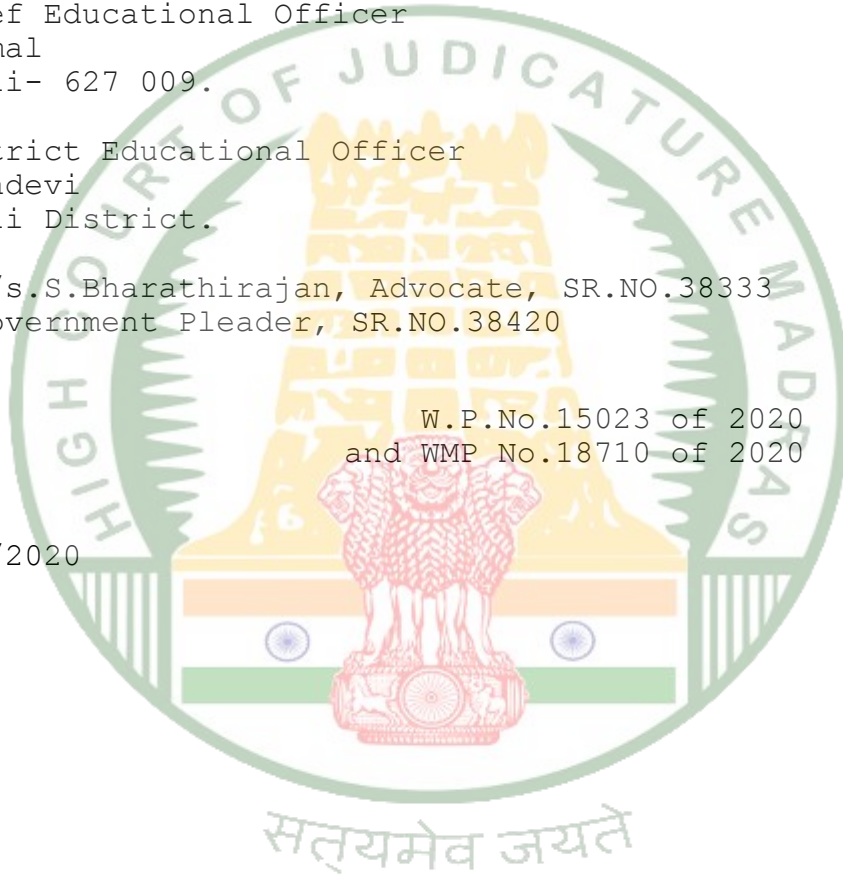
3 The Chief Educational Officer
Kokkirakumal
Tirunelveli- 627 009.

4 The District Educational Officer
Cheranmahadevi
Tirunelveli District.

+1cc to M/s.S.Bharathirajan, Advocate, SR.NO.38333
+1cc to Government Pleader, SR.NO.38420

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and WMP No.18710 of 2020

SR II(CO)
KKV/30/12/2020



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