

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 08.12.2020

Order delivered on 18.12.2020

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.19824, 19828 & 19834 of 2019

and

W.M.P.Nos.19356, 19358, 19363, 19364,
19372 & 19373 of 2019

P.Ranjith Kumar ... Petitioner in W.P.No.19824/2019
R.Nagaraj ... Petitioner in W.P.No.19828/2019
R.Vasantha ... Petitioner in W.P.No.19834/2019

Vs

1. The Chief Educational Officer,
Saidapet, Chennai – 600 015.
2. The District Educational Officer(West),
DPI Campus, Chennai – 600 006.
3. The Correspondent,
Sir M.Ct.Muthiah Chettiar Boys
Higher Secondary School,
23, Raja Annamalai Road, Purasawalkam,
Chennai – 600 084. ... Respondents in all the W.Ps.

Prayer:

Writ Petitions filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the records pertaining to the orders passed by the 1st respondent in his proceedings O.Mu.No.1613/E4/2019, O.Mu.No.1612/E4/2019 & O.Mu.No.1611/E4/2019 respectively dated 05.04.2019 and quash the same and direct the respondents to approve the petitioners' appointment as Watchman, Scavenger & Sweeper respectively from the date of appointment i.e., 09.05.2018 and confer all consequential benefits.

For Petitioners : Mr.P.Ganesan
for M/s. C.S.Associates

For Respondents : Mr.C.Munusamy,
Special Government Pleader
for R1 and R2
Mr.T.Madhusudhan for R3

COMMON ORDER

The matter is taken up through web hearing.

These petitioners were appointed as Watchman, Scavenger & Sweeper respectively against the sanctioned vacancies on 09.05.2018 in the 3rd respondent School. Before their appointment, the 3rd respondent school had followed the procedure contemplated under the relevant Rules

governing such appointments in calling for the candidates from the Employment Exchange and also causing publication in 'Dhina Thanthi' announcing the subject recruitment. In pursuance of the above initiation, interview was conducted and these petitioners were selected as Watchman, Scavenger & Sweeper respectively and joined the post on 10.05.2018. Thereafter, the Management forwarded the proposal to the 1st respondent through the 2nd respondent on 12.06.2018 for approval of these appointments. Initially, the proposal was returned for certain defects to be complied with and on complying with the returns, the proposal was re-forwarded to the authorities. However, there was no action forthcoming from the authorities in response to the proposal forwarded to them.

3. When the School, subsequently, made enquiry as to why no action was taken on the proposal, finally, the Management was informed vide proceedings of the 1st respondent dated 05.04.2019 that the proposal for seeking approval of the appointment of the petitioners could not be acceded to, for the reason that no prior permission had been taken by the School before appointing them. The proceedings of the 1st respondent is the

subject matter of challenge in these writ petitions.

4. Mr.P.Ganesan, learned counsel for the petitioners would submit that when the authorities kept the proposal pending without taking any timely action, these petitioners were constrained to approach this Court in W.P.No.33345/2018 and this Court was pleased to direct the first respondent to pass orders on the proposal vide its order dated 18.12.2018. In pursuance of the direction of this Court, the rejection order was issued on 05.04.2019.

5. Learned counsel for the petitioners would submit that the issue raised in these writ petitions is no more *res integra* for the reason that in respect of appointment of non-teaching staff, no prior permission is required in terms of the Tamil Nadu Private School Regulations Act. On behalf of the authorities, the claim of the petitioner is sought to be rejected on the basis of G.O.Ms.No.101, School Education Department, dated 18.05.2018, which provides condition for obtaining prior permission from the authorities by the Schools before appointing the employees. According to the learned counsel for the petitioners, the said G.O. cannot be countenanced in law, as the statutory rules do not prescribe any pre-condition and therefore, an

executive order ,namely the G.O. cannot override the statutory provisions. Even otherwise, these appointments have happened earlier to the issue of the said G.O. and therefore, the same cannot be made applicable to the writ petitioners. Learned counsel would submit that the issue has been directly covered by a recent order of the Division Bench in W.A.No.4011/2019 dated 11.02.2020.

6. After notice, Mr.C.Munusamy, learned Special Government Pleader entered appearance. Initially, the learned Special Government Pleader objected to the grant of any relief to the petitioners on the ground that prior permission has not been obtained by the School. However, in regard to the decision of this Court on the subject matter, the learned Special Government Pleader fairly submitted that the claim of these petitioners are also to be covered by the decision of the learned Single Judge of this Court dated 25.06.2019 as affirmed by the Division Bench in the above Writ Appeal dated 11.02.2020.

7. In the said circumstances, the issue of obtaining prior permission for appointment of these petitioners did not arise, both in terms of the

statutory rules, regulations and also applicability of G.O.Ms.No.101, School Education Department, dated 18.05.2018 and therefore, this Court is of the view that no further adjudication is called for. For the sake of clarity, the observations of the Learned Division Bench as found in paragraph Nos.6 and 7 are extracted hereunder.

6. We have considered the submissions raised and we find that the provisions of Rule 15(4) of the 1974 Rules, does not specify the applicability of the Rule of prior permission in relation to the appointment of a non-teaching staff of an Aided High or Higher Secondary School. In the instant case, the issue is about the appointment of a Lab Assistant, which is admittedly a non-teaching post. We, therefore, find that in the absence of any such specific intention in the Rule, to apply the same for seeking a prior permission to appoint a non-teaching staff would be contrary to the ratio of the judgment in the case of R.Kuttiswamy (supra) as relied on by the respondent that is squarely applicable. We see no reason to differ the view taken therein in relation to appointments against non-teaching posts that have been made prior to the issuance of G.O.Ms.No.101

dated 18.05.2018. The judgment in the case of The Director of Elementary Education and others Vs. P.Manikandan and another (supra) was in relation to the appointment of a teacher and not a non-teaching staff. The ratio thereof is, therefore, distinguishable and not applicable in the present case. Accordingly, no prior permission was required in the present case for appointing the respondent/writ petitioner as a Lab Assistant.

7. In the wake of the aforesaid conclusion having been arrived at, it is not necessary for us to enter into the other questions raised on behalf of the State, inasmuch as the finding recorded by the learned Single Judge on facts with regard to the appointment of the respondent having been made on 26.02.2018, remains undisputed. We further find that the said appointment had been put into process that was returned for completion of certain formalities on 13.04.2018 by the concerned official and this transaction was obviously prior to the issuance of G.O.Ms.No.101 dated 18.05.2018. The same was resubmitted on 03.07.2018 and therefore, it was not a transaction that could be said to be covered by the Government Order dated

18.05.2018. Consequently, the order dated 24.07.2018 passed by the District Educational Officer, in our opinion, has been rightly quashed. The respondent was, therefore, entitled to all the benefits as have been extended by the learned Single Judge. There is no merit in the appeal, which is accordingly rejected. No costs. Connected civil miscellaneous petition is closed.

The above observations would have to be applied *ipso facto* to the present case as well.

8. In the said circumstances, the Writ Petitions are allowed. The impugned orders in O.Mu.No.1613/E4/2019, O.Mu.No.1612/E4/2019 O.Mu.No.1611/E4/2019 respectively dated 05.04.2019 passed by the 1st respondent, are hereby set aside.

9. The official respondents are directed to approve the petitioners' appointment as Watchman, Scavenger & Sweeper respectively from the date of their initial appointment on 09.05.2018 and confer all consequential benefits as admissible to them on such approval being granted.

10. The official 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. No costs. Consequently, connected miscellaneous petitions are closed.

18.12.2020

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Speaking/Non-speaking

Internet : Yes/No

Index : Yes/No

Note: Issue order copy by 22.12.2020

To

1. The Chief Educational Officer,
Saidapet, Chennai – 600 015.
2. The District Educational Officer(West),
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3. The Correspondent,
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W.P.No.19824 of 2019 etc.

V.PARTHIBAN.J.,

vsi



Pre-delivery order in

W.P.No.19824, 19828 & 19834 of 2019

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