

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4011 of 2019

and C.M.P.No.25133 of 2019

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600009.
2. The Director of School Education, (Secondary)
College Road,
Chennai - 600006.
3. The Chief Educational Officer,
IIIrd Floor, No.301, District Collectorate Complex,
Salem - 636001.
4. The District Educational Officer,
IIIrd Floor, No.306, District Collectorate Complex,
Salem - 636001. ... Appellants/Respondents

-vs-

1. K.Balamurugan : 1st Respondent/Petitioner
2. The Secretary
Gokulnath Hindu Mahajana Higher Secondary School,
Bretts Road,
Salem - 636001. : 2nd Respondents/5th Respondent

Appeal filed under Clause 15 of the Letters Patent against
the order dated 25.06.2019 passed by this Hon'ble Court in
W.P.No.23950 of 2018.

Prayer in W.P.No.23950 of 2018: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 4th respondent District Educational Officer vide proceedings in Na.Ka.NO.3469/A2/2018 dated 24.07.2018 (as signed) quash the same and further direct the 4th respondent District Educational Officer to approve forthwith the appointment of the petitioner as Lab Assistant in the 5th respondent School and disburse the grant-in-aid towards his salary and allowances with effect from the date of his appointment viz., 26.02.2018.

For Appellants : Mr.C.Munusamy
Special Government Pleader
(Education)
For Respondents : Mr.P.Godson Swaminath
for M/s. Isaac Chambers [R1]

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

This appeal questions the correctness of the impugned judgment dated 25.06.2019 of the learned Single Judge whereby, the writ petition filed by the respondent in respect of his appointment as a Lab Assistant in a Secondary School namely Gokulnath Hindu Mahajana Higher Secondary School, has been upheld and the order of the District Educational Officer refusing to accept the same, has been quashed. The learned Single Judge has further issued directions to treat the petitioner to have been validly appointed and grant approval to his appointment with effect from the date of his initial appointment i.e., 26.02.2018.

2. Learned counsel for the appellants has urged that in view of the provisions of Rule 15(4)(iii)(c) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, a prior permission for appointment on a sanctioned post is a sine qua non and therefore, the order passed by the District Educational Officer that was impugned in the writ petition was perfectly justified. The contention is that a prior permission having not been taken by the Institution, any appointment in violation of the said provision is void. He has also urged that the proposal for appointment was dispatched on 03.07.2018, by which time, G.O.Ms.No.101, School Education (Budget-1) Department, dated 18.05.2018 had been issued and the same under heading 'Service Matters' makes a specific provision empowering the Approval Authority to accord prior permission for filling up of teaching and non-teaching posts in Aided High and Higher Secondary School and further to grant approval to such posts. He, therefore,

submits that once the Government Order was in place prior to the receipt of proposal from the Institution, the District Educational Officer was justified in referring to the same. It is urged that the learned Single Judge committed an error in interfering with the said order. He has also relied on a judgment of this Court dated 22.01.2020 in the case of The Director of Elementary Education and others Vs. P.Manikandan and another (W.P.No.3961 of 2019) to contend that Rule 15(4) has been interpreted and has been held that prior permission is necessary before making any appointment under the said Rules. It is also submitted that in the absence of any prior permission, there is no occasion for the Government to release the salary and grant approval, hence, the impugned judgment deserves to be set aside.

3. Responding to the said submissions, learned counsel for the respondent/writ petitioner contends that the appointment of the employee was in accordance with the Staff Fixation Order dated 28.09.2017 where one Lab Assistant has been provided for the School. The appointment is, therefore, in accordance with norms and was made on 26.02.2018 long before the promulgation of G.O.Ms.No.101 dated 18.05.2018. It is, therefore, submitted that there was no requirement of any prior permission and the school proposal had been received by the Officer on 13.04.2018 that was directed to be reprocessed again. Thus, the entire process of appointment and the submission of documents was already engaging the attention of the Educational Authorities prior to the issuance of the Government Order dated 18.05.2018. It was only the resubmission of the proposal on 03.07.2018 which was in continuity of the earlier transactions and therefore, was not a fresh proposal, but, with regard to the very same appointment dated 26.02.2018. In this background and in the absence of any such requirement of prior permission as on the date of appointment of the answering respondent, the impugned order could not be sustained and the learned Single Judge has, therefore, rightly quashed the same while accepting the arguments raised on behalf of the answering respondent.

4. It has also been pointed out that the new Rules have been given the shape of an Act being Act No.35 of 2019 where Section 35(2) has been introduced where, for the first time, the words "non-teaching staff" have been included for obtaining prior permission before proceeding to make appointments. It is, however, not disputed at the bar that the said Act has not yet been promulgated and therefore, in our opinion, does not bear any relevance to the present controversy.

5. Learned counsel for the respondent has then urged that the G.O.Ms.No.101 cannot be applied retrospectively and even otherwise, it cannot be read as a substitute for the existing provisions for which reliance is placed on a Division Bench Judgment on which Director of School Education and others Vs. Geldon Wifred Viola and others reported in 2009 (2) TLNJ 101. Heavy reliance has been placed by the learned counsel for the respondent on a Division Bench Judgment delivered on 30.04.2008 in the case of R.Kuttiswamy Vs. Joint Director of School Education and others (W.A.No.900 of 2007), where the Division Bench was dealing with the very same issue, as raised herein and it has been held that the phrase 'Other persons' used in Section 15 of the 1974 Rules, does not include non-teaching posts.

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 from 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.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

sni

To

1. The Secretary, State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai - 600009.
2. The Director of School Education, (Secondary)
College Road,
Chennai - 600006.
3. The Chief Educational Officer,
IIIrd Floor, No.301, District Collectorate Complex,
Salem - 636001.
4. The District Educational Officer,
IIIrd Floor, No.306, District Collectorate Complex,
Salem - 636001.

+1cc to M/s.Isaac Chamber, Advocate, SR.No.11044.
+1cc to Government Pleader, SR.No.11422.

CP(CO)
CSR: 20.02.2020

W.A.No.4011 of 2019

WEB COPY