



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.02.2020**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P. (MD)No.20527 of 2019

and

W.P(MD) Nos.17163 and 17164 of 2019

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The Correspondent,
Holy Family Girls Higher Secondary School,
Gnanaolivupuram,
Madurai-625 016.

... 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,
Madurai, Madurai District.

4.The District Educational Officer,
Madurai-625 002,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders issued by the third respondent Chief Educational Officer in O.Mu.No.3083/E1/2019 dated 03.04.2019 and the consequential proceedings of the fourth respondent District Education Officer in Na.Ka.No.2211/A3/2019 dated ...06.2019, quash the same and further direct the respondents herein to approve forthwith the promotion of S.Ignatius as Record Clerk and the appointment of D.Jeya Seela Rajathi as Office Assistant w.e.f.01.06.2018 in the petitioner's school and disburse the grant-in-aid towards their salary with all attendant benefits from the said date.

For Petitioner
For Respondents

: Mr.A.Amala
: Mr.A.Thiagarajan
Government Advocate

ORDER

The petitioner's request seeking for approval of the promotion of Record Clerk and the appointment of Office Assistant came to be rejected by impugned order dated 03.04.2019 by relying

<https://hcservices.ecourts.gov.in/hcservices>



on G.O(Ms) No.238, School Education Department, dated 13.11.2018.

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.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To:-

- 1.The Secretary,
The State of Tamil Nadu,
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,
Madurai, Madurai District.



4.The District Educational Officer,
Madurai-625 002,
Madurai District.

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+1 CC to M/s.A.AMALA, Advocate (SR-5590[F] dated 11/02/2020)

+1 CC to SPL GP (SR-5597[F] dated 11/02/2020)

Order made in
W.P. (MD)No.20527 of 2019

Dated:
10.02.2020

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