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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

and

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.A. (MD) No.1567 of 2019

and

C.M.P. (MD) No.12429 of 2019

- 1.The State of Tamil Nadu
represented 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, Madurai District ... Appellants

-vs-

The Correspondent
St.Joseph's Girls Higher Secondary School
Madurai-625 009
Madurai District ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 04.10.2019, passed in W.P.(MD) No.20033 of 2019, on the file of this Court.

Prayer in WP(MD). 20033/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court calling for the records relating to the impugned order issued by the 4th respondent district Educational Officer vide proceedings in O.Mu.No.1961/A2/2019 dt. .. 07/2019, quash the same and further direct the respondents herein to approve forthwith the appointment of M.Karthigai Selvai as Scavenger wef 01/04/2019 in the Petitioners school and disburse the grant - in - aid towards her salary with all attendant benefits from the said date.

For Appellants : Ms.S.Srimathy
Special Government Pleader

For Respondent : Ms.A.Amala



J U D G M E N T

[Judgment of the Court was made by M.DURAISWAMY, J.]

Challenging the order, dated 04.10.2019, passed in W.P.(MD) No.20033 of 2019, the State has filed the above writ appeal.

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2. The respondent filed the writ petition to issue a writ of certiorarified mandamus to call for the records relating to the order, dated07.2019, issued by the fourth appellant, to quash the same and to direct the appellants herein to approve forthwith the appointment of M.Karthigai Selvi as Scavenger with effect from 01.04.2019 in the respondent's School and disburse the grant-in-aid towards her salary with all attendant benefits from the said date.

3. It is the case of the respondent / writ petitioner that there was a sanctioned post of Scavenger in their School, which fell vacant on 01.04.2019 due to the retirement of the then incumbent, namely, M.Muniyammal, on 31.03.2019. In the said place, the respondent appointed one M.Karthigai Selvi as Scavenger with effect from 01.04.2019. The respondent submitted a proposal to the third appellant through the fourth appellant, on 15.04.2019, for the approval of the said appointment with effect from 01.04.2019 and to disburse grant-in-aid towards the salary. However, the fourth appellant, instead of forwarding the said proposal to the third appellant, had returned the same by proceedings dated07.2019, stating that as per G.O.(Ms).No.238, School Education (Pa.Ka.6(1)) Department, dated 13.11.2018, apart from the posts of Junior Assistant or Record Clerk, Office Assistant and Watchman, the other posts can be allowed to continue till the retirement of the present incumbents and restrained the Schools from filling-up such posts. The order, dated07.2019, passed by the fourth appellant, was under challenge in the writ petition.

4. The respondent - School also filed a writ petition in W.P.(MD) No.11895 of 2019 challenging the Government Order in G.O. (Ms).No.238, School Education (Pa.Ka.6(1)) Department, dated 13.11.2018, wherein this Court, by order dated 15.05.2019, granted an order of *status quo* and the said writ petition is still pending. It is also brought to the notice of this Court that another School also filed a writ petition in W.P.(MD) No.13404 of 2019 challenging the very same Government Order, wherein this Court by order, dated 14.06.2019, granted an order of interim stay. In spite of the orders of *status quo* and interim stay granted by this Court on 15.05.2019 and 14.06.2019 respectively in two separate writ petitions, the fourth appellant had passed the order dated 07.2019, relying upon the very same Government Order i.e. G.O.(Ms). No.238, School Education (Pa.Ka.6(1)) Department, dated 13.11.2018, which is the subject matter in the writ petitions in W.P.(MD) Nos.11895 of 2019 and 13404 of 2019.



5. Taking note of these facts, the learned Single Judge, by order dated 04.10.2019, set aside the order dated07.2019, passed by the fourth appellant. Further, the learned Single Judge, while allowing the writ petition, directed the third appellant to approve the appointment of the said M.Karthigai Selvi as Scavenger, subject to the result of the writ petition in W.P.(MD) No.11895 of 2019, filed by the respondent - School challenging the Government Order in G.O.(Ms).No.238, School Education (Pa.Ka.6(1)) Department, dated 13.11.2018.

6. Ms.S.Srimathy, learned Special Government Pleader appearing for the appellants, submitted that the learned Single Judge ought not to have given a positive direction to the third appellant for the approval of the individual as Scavenger when the other two writ petitions are pending.

7. So far as passing of the order dated07.2019, by the fourth appellant is concerned, since the same was passed in spite of the orders of *status quo* and interim stay granted by this Court, which were in force, the same was rightly set aside by the learned Single Judge. We do not find any error or irregularity in setting aside the order, dated07.2019, passed by the fourth appellant.

8. However, so far as issuance of positive direction to the third appellant is concerned, we are of the view that the third appellant should have been directed to consider the case of the individual, namely, M.Karthigai Selvi as Scavenger, after the disposal of the writ petitions in W.P.(MD) Nos.11895 and 13404 of 2019. Accordingly, we modify the order, dated 04.10.2019, passed by the learned Single Judge in the writ petition by directing the third appellant to consider the case of the individual, namely, M.Karthigai Selvi as Scavenger, after the disposal of the writ petitions in W.P.(MD) Nos.11895 and 13404 of 2019.

9. With the above modification, the writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

Krk



To

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represented 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, Madurai District

+1 CC to M/s.SPL.GP (SR-2348[F] dated 22/01/2020)

W.A. (MD) No.1567 of 2019

and

C.M.P. (MD) No.12429 of 2019

21.01.2020

KK/SAR/04.02.2020/4P-6C/