



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.1645 OF 2021
AND C.M.P.NO.10349 OF 2021

1. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
2. The District Educational Officer,
Chennai East, Chennai-600 094.
3. The District Educational Officer,
Chennai West, DPI Campus,
College Road, Chennai-600 006. .. Appellants/Respondents

Vs.

St. Gabriel's Higher Secondary School,
No.28, Broadway, Chennai-600 108
Rep. by its Correspondent,
Fr. Rajan, S/o.Pushpam .. Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 11.02.2020 in W.P.No.9993 of 2019.

Prayer in W.P.No.9993 of 2019:-

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the Respondents to approve the Appointment of Thiru A.vincent in the regular Sanctioned Post of Scavenger in the Petitioner School from the date of Appointment on 01-12-2007 and to make the payment of Salary with Interest and other service Benefits within a time frame to be fixed by this court.

For Appellants : Mr.R.Neelagandan
State Government Counsel

For Respondent : Mr.G.Sankaran



This is an appeal filed by the Government challenging the direction given by a learned Single Judge of this Court directing the third respondent to consider the proposal that was forwarded by the respondent School and pass appropriate orders within a period of four weeks.

2. The respondent School is a Government Aided Minority School and there was a vacancy that arose in the post of Junior Assistant. The school had already sent a proposal to the second appellant seeking approval of the appointment in non-teaching staff posts, namely, Junior Assistant, Library Clerk, Watchman, Office Assistant, Record Clerk, etc., that fell vacant on various dates prior to 2018. The Government had issued G.O.Ms.No.64, School Education Department, dated 03.04.2018 to fill up non-teaching posts, by deployment of surplus staff working in other schools. The Government had not acted upon the same and the School was functioning without the staff and non-teaching staff. Those appointed by the School in the sanctioned posts were working without payment of salary from the date of appointment and proposals were sent for approval of appointment made on temporary basis for the purpose of assessment of salary grant. In the meanwhile, G.O.Ms.No.238, School Education Department, dated 13.11.2018, was passed to fill up the vacancies of the non-teaching staff and also regulations were issued. As the School had sent the proposal for appointment of Scavenger in a sanctioned post, who was appointed on 01.12.2007, much prior to the G.O.Ms.No.238, the appellant ought to have approved the same. As the approval did not come through, a Mandamus was sought and issued. The appellants now assail the said order contending that prior permission before the appointment ought to have been obtained from the Government.

3. The said question is no longer res integra, as the same has been decided in W.P.Nos.101, 103 and 105 of 2020 dated 06.01.2020 (Kothandaraman High School V. The Director of School Education and others) by the learned Single Judge and following his own decision, directions were issued to the third respondent therein/third appellant herein to consider the proposal sent by the School and pass orders.

4. The learned counsel for the respondent/School invited this Court's attention to the recent judgment made in W.A.No.1022 of 2020 dated 07.01.2021 (Director of School Education and Others V. S.Murugan and Another). The above said Writ Appeal is also on the same subject arising in an identical situation, where the appellant was appointed prior to 2018 and when proposal was sent for approval, there was no response and the writ petition was filed and disposed of by the learned Single Judge, against which, the writ appeal was filed. In the said appeal also, the two grounds raised by the Government (i)



that no permission was sought for by the School before the appointment is made of any non-teaching staff ; and (2) that in view of G.O.Ms.No.238, the surplus staff should have been engaged, were negatived. As stated earlier, the appointment, thus, was made prior to 2018, i.e., on 01.12.2017. The Government Order passed only in the year 2018 has no retrospective effect.

5. So far as the permission to be obtained before making the appointment is concerned also, the First Division Bench in S.Murugan's case (cited supra) has held as follows :

"6. What is of importance is whether an aided School is required to obtain prior permission from any authority to undertake the process of appointment upon a vacancy arising in a sanctioned non-teaching post. The appellants have not been able to indicate any Rule or Notification or the like requiring prior permission to be sought before undertaking the exercise to look for a replacement upon a sanctioned post falling vacant in the non-teaching category.

7. It is possible that there may be surplus staff in other Government-aided Schools in the District or nearby areas. It is equally possible that the Government may require the surplus staff to be deployed at other aided Schools upon vacancies in similar post arising thereat. However, there has to be a mechanism which has to be put in place for such purpose and the process has to be certain. It would not do for the Department to refuse an appointment merely because at the time of appointment, the Department finds surplus staff of similar description in other aided Schools in the District or the locality. The position as to surplus staff ought to exist at the time when the vacancy arose or, at any rate, prior to the process of appointment being initiated. Once the appointment process is undertaken and a person is identified, it may no longer be open to the Department to refuse the appointment and undo the process by citing surplus staff.

8. In such a scenario, the Department may do well to either bring in Rules that would require aided Schools to obtain permission from the relevant District Educational Officer before undertaking an appointment procedure and the District Educational Officer being required to respond to the request within a fixed time, so that the relevant School can fill up the vacancy without undue delay. In the alternative, the relevant District Educational Officer may circulate the description and number of the surplus staff at various levels to all Schools for such Schools to be able to



To

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+1 cc to M/s.G.Sankaran, Advocate Sr.No. 37931

+1 cc to Government Pleader, Sr.No. 38068

W.A.No.1645 of 2021

RR(CO)

PBS(07/09/2021)