

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.3139, 3144 and 3149 of 2021

S.Ebinezar ... Petitioner in W.P.No.3139/2021
T.Gabriel Sathiyaseelan ... Petitioner in W.P.No.3144/2021
S.George Prem ... Petitioner in W.P.No.3149/2021

Vs.

1. The Chief Educational Officer,
Nagapattinam Educational District,
Nagapattinam.
2. The District Educational Officer,
Sirkazhi Education District,
Sirkazhi 609 110,
Nagapattinam District.
3. The Correspondent,
L.M.C. Higher Secondary School,
Pidari West Street,
Sirkazhi 609 110. ... Respondents in all W.Ps.

Writ Petition No.3139 of 2021 filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 1st Respondent in O.Mu.No.1004/A2/2020, dated 11.09.2020 and to quash the same and consequently direct the Respondents to grant approval of promotion of the Petitioner to the post of Junior Assistant from the date of promotion on 20.07.2017 in the 3rd Respondent School, with all consequential and other attendant benefits, including payment of arrears of salary.

Writ Petition No.3144 of 2021 filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 1st Respondent in O.Mu.No.1006/A2/2020, dated 11.09.2020 and to quash the same and consequently direct the Respondents to grant approval of promotion of the Petitioner to the post of Record Clerk from the date of promotion on 20.07.2017 in the 3rd Respondent School, with all consequential and other attendant benefits, including

payment of arrears of salary.

Writ Petition No.3149 of 2021 filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 1st Respondent in O.Mu.No.1005/A2/2020, dated 11.09.2020 and to quash the same and consequently direct the Respondents to grant approval of appointment of the Petitioner to the post of Office Assistant from the date of appointment on 20.07.2017 in the 3rd Respondent School, with all consequential and other attendant benefits, including payment of arrears of salary.

For Petitioner in all W.Ps. : Mr.G.Sankaran

For Respondents in all W.Ps. : Mr.P.Raja,
Government Advocate

C O M M O N O R D E R

As the issue involved in all these Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

2. Petitioners have come up with these Writ Petitions challenging the impugned proceedings issued by the 1st Respondent vide proceedings in O.Mu.No.1004/A2/2020, O.Mu.No.1006/A2/2020 and O.Mu.No.1005/A2/2020, respectively, dated 11.09.2020 and for a consequential direction to the Respondents to grant approval of their respective promotion and appointment in the 3rd Respondent School, with all consequential and other attendant benefits, including payment of arrears of salary.

3. When the matter was taken up for hearing, it was represented by the learned Government Advocate appearing for the Respondents that, the issue in question is covered by a judgment dated 07.01.2021 rendered by the First Bench of this Court in W.A.No.1022 of 2020 and in view of the same, Petitioners will not be entitled to the benefits of G.O.Ms.No.238, dated 13.11.2018. Relevant portion of the said judgment reads thus:

"9. In the present case, the order impugned cannot be faulted, since there was no mechanism of either kind as referred to above. It is irrelevant that, the vacancy arose in 2014 and the attempt to fill the vacancy was undertaken in 2018. Since there was no Rule to seek prior permission from the District Educational Officer before the appointment procedure was undertaken, the School cannot be blamed. The appointment

cannot be denied merely because there was surplus staff which the School was not made aware of before the School undertook the appointment procedure.

10. For the reasons above, the judgment and order impugned are not interfered with. ..."

4. In reply, learned counsel for the Petitioners drew the attention of this Court to the common order dated 07.10.2020 passed by this Court in W.P.Nos.11574 and 11586 of 2020 and submitted that, the Respondents therein were directed to grant approval to the appointment of the Petitioners therein with effect from the date of their initial appointment with all consequential benefits of arrears of salary and allowances admissible to the Petitioners. For better appreciation, relevant portion of the said order, reads thus:

"7. This Court considered the objections, but as far as the present claim on hand is concerned, admittedly, the appointments of the Petitioners had been made against the vacancies which existed prior to the issuance of G.O.Ms.No.238, dated 13.11.2018. These Petitioners had also been admittedly appointed earlier to the date of the said G.O. Therefore, this Court finds that the reliance placed on the order passed by the learned Single Judge in the above mentioned matter (W.P.(MD) No.20527 of 2019) would clinch the issue in favour of the Petitioners herein. For due appreciation of the claims of the Petitioners herein, the relevant portions of the order passed by the learned Single Judge in paragraphs 2 to 7 are extracted hereunder:

"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." "

5. In view of the above and considering the facts and circumstances of the case, orders impugned in the above Writ Petitions are interfered with, and the Respondents are directed to consider the case of the Petitioners without reference to G.O.Ms.No.238, dated 13.11.2018, and pass appropriate orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order, after affording them an opportunity of hearing.

6. With the above direction, the Writ Petitions are allowed. No costs. Consequently, connected W.M.P.Nos.3566 & 3568 of 2021 in W.P.No.3139 of 2021; W.M.P.Nos.3573 & 3575 of 2021 in W.P.No.3144 of 2021 and W.M.P.Nos.3580 & 3582 of 2021 in W.P.No.3149 of 2021 are closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1.The Chief Educational Officer,
Nagapattinam Educational District,
Nagapattinam.

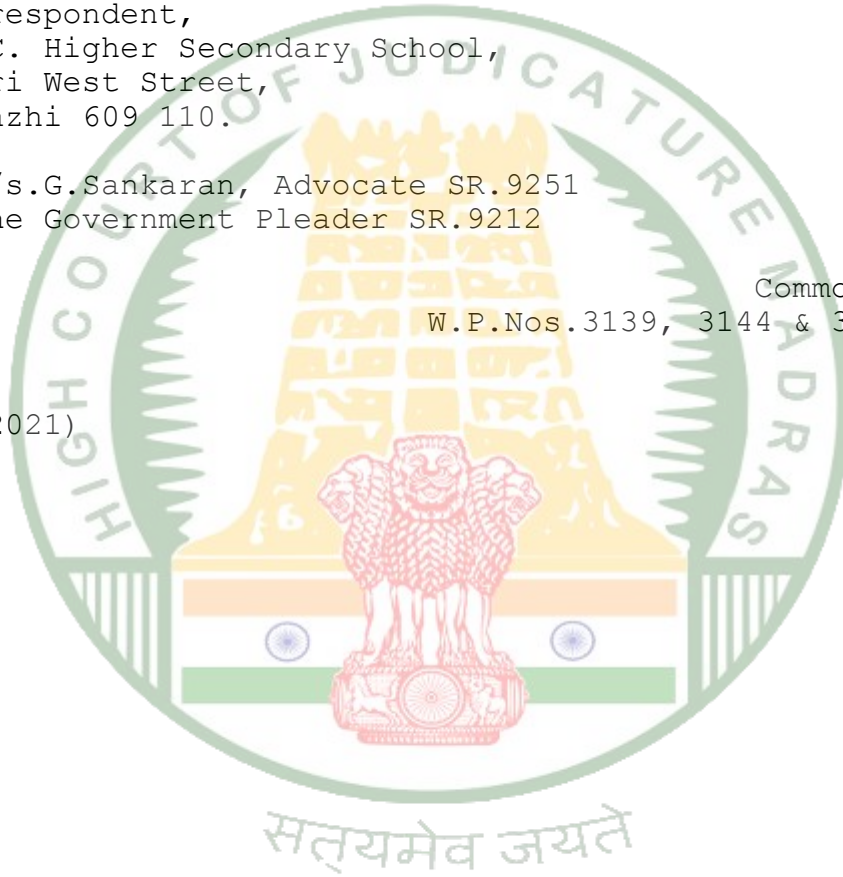
2.The District Educational Officer,
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Sirkazhi 609 110,
Nagapattinam District.

3.The Correspondent,
L.M.C. Higher Secondary School,
Pidari West Street,
Sirkazhi 609 110.

+3cc to M/s.G.Sankaran, Advocate SR.9251
+1cc to the Government Pleader SR.9212

Common order in
W.P.Nos.3139, 3144 & 3149 of 2021

GMI (CO)
CB(17/03/2021)



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