

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3220 of 2021 and
W.M.P. No.3651 of 2021

R.Venkateswaran

... Petitioner

Vs.

1. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
 2. The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.
 3. The District Educational Officer,
Nagapattinam Educational District,
Nagapattinam.
 4. The Secretary,
Kasthurba Gandhi Kanya Gurukulam
Girls Higher Secondary School,
Vedharanyam, Nagapattinam District.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, calling for the records pertaining to the orders in O.Mu.No.9225/A2/2019 dated -10.2020 (signed on 13.10.2020) on the file of the second respondent, quash the same and to direct the second respondent to approve the appointment of the petitioner in pursuant to the order in Na.Ka.No.048 dated 15.05.2018 issued by the fourth respondent and to grant such other consequential order(s).

For Petitioner : Mr.R.Selvakumar
For Respondents : Mr.P.Raja,
Government Advocate

O R D E R

By consent, final orders are passed in the writ petition at the admission stage itself. Mr.P.Raja, learned Government Advocate takes notice for respondents.

2.The petitioner has come up with this Writ Petition challenging the impugned proceedings issued by the second Respondent vide proceedings in O.Mu.No.9225/A2/2019 dated -10.2020 (signed on 13.10.2020) and for a consequential direction to the second respondent to approve his appointment in pursuance of the order in Na.Ka.No.048 dated 15.05.2018 issued by the fourth respondent.

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, Petitioner 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 Petitioner 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, the order impugned in this writ petition is interfered with, and the Respondents are directed to consider the case of the Petitioner 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 him an opportunity of hearing.

6. With the above direction, the Writ Petition is allowed. No costs. Consequently, W.M.P.No.3651 of 2021 is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vum

To:

1. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
2. The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.
3. The District Educational Officer,
Nagapattinam Educational District,
Nagapattinam.

+1 CC to Mr.R.Selvakumar, Advocate sr 9280.

+1 CC to The Government Pleader sr 9544.

W.P.No.3220 of 2021 and

W.M.P. No.3651 of 2021

SKY(CO)
SP(16/03/2021)

WEB COPY