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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

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

W.A.No.1826 of 2021
and C.M.P.No.11557 of 2021

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,
Sirkali Educational District,
Nagapattinam District. .. Appellants/Respondents 1 to 3

Vs.

1. R.Prabakaran ... 1st Respondent/Petitioner
2. The Secretary,
Ramakrishna Higher Secondary School,
Kothandapuram, Sirkali Taluk,
Nagapattinam District. ... 2nd Respondent/4th Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 07.02.2020 in W.P.No.28453 of 2019.

Prayer in WP.28453 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to approve the appointment of petitioner in the regular sanctioned post of Office Assistant in the 4th respondent school from the date of appointment on 01.10.2017 and to make the payment of salary with interest and other service benefits, within a time frame fixed by this Court.

For Appellants : Mr.R.Neelakandan
State Government Counsel

For Respondents: Mr.G.Sankaran



J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

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 second respondent School is a Government Aided School and there was a vacancy that arose in the post of Office Assistant. The school had already sent a proposal dated 05.04.2018 to the third appellant seeking an approval of appointment of the writ petitioner and for assessment of salary grant. The said approval was not granted, in view of the ban on recruitment issued by the Government followed in G.O.Ms.No.115, dated 30.05.2017. The non-teaching posts, which are absolutely required for administrative and smooth functioning of the School, could not be filled up, in view of the decision taken by the State Government. Due to non-approval of appointment, the first respondent/writ petitioner was working in the School without payment of salary from the date of appointment. 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 second respondent-School had sent the proposal for appointment of Office Assistant in a sanctioned post, who was appointed on 01.10.2017, 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, following his own decision, and 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 second 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, namely, (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 06.03.2016. 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



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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 fill up any vacancy that arises from the surplus staff at the relevant post. In the absence of either, an aided School cannot be faulted for undertaking the exercise of appointing a person to a sanctioned post or seeking the appointment. The permission that is sought is not permission to fill the post as such, but permission to enable the District Educational Officer to scrutinise whether the appointment procedure was alright and whether the incumbent fits the bill.

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."

6. Both the grounds raised by the appellant are already decided in the above case, which are similar to the facts of the instant case in hand. In view of the above, in the absence of any specific rule or regulation mandating that prior permission is required for appointing a non-teaching staff in a sanctioned post, the appointment made by the respondent school cannot be faulted with and the learned Single Judge, therefore, rightly directed the authorities to approve the same within a period prescribed. We see no reason to interfere with the same.

7. For the foregoing reasons, the Writ Appeal is dismissed and the order of the learned Single Judge is confirmed. The appellants are directed to comply with the directions issued by the learned Single Judge within a period of four weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar



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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,
Sirkali Educational District,
Nagapattinam District.

4. The Secretary,
Ramakrishna Higher Secondary School,
Kothandapuram, Sirkali Taluk,
Nagapattinam District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.38677

+1cc to the Government Pleader, S.R.No. 38788

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and C.M.P.No.11557 of 2021

BR(CO)
GN(14/09/2021)