

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.5717 OF 2021

Motilal Fomra Sanatana Dharma Higher Secondary School,
New No.17, Old No.26, Managappan Street,
Sowcarpet, Chennai - 600 079,
Rep. by its Correspondent,
K.K.Maheshwari,
S/o. Bhagwan Das Maheshwari

... Petitioner

-vs-

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006
2. The Chief Educational Officer,
Chennai District,
Egmore, Chennai - 600 008.
3. The District Educational Officer,
Chennai North,
SIDCO Nagar, Villivakkam,
Chennai - 600 049.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to approve the appointment of Non-teaching staff Mr.R.Janrthan in the post of Office Assistant in the petitioner school with effect from 28.05.2019, by accepting the proposal submitted by the petitioner school dated 29.05.2019, with all consequential and other attendant benefits including payment of salary from the date of appointment, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.P.Raja
Government Advocate

O R D E R

This Writ petition is filed, seeking a direction to the respondents to approve the appointment of Non-teaching staff Mr.R.Janarthanan in the post of Office Assistant in the petitioner school with effect from 28.05.2019, by accepting the proposal submitted by the petitioner school dated 29.05.2019, with all consequential and other attendant benefits including payment of salary from the date of appointment, within a time frame to be fixed by this Court.

2. Mr.P.Raja, learned Government Advocate takes notice for respondents. By consent, final orders are passed in the Writ Petition at the admissions stage.

3. It is the case of the petitioner, that the petitioner school was established by S.S.D.V. Association and it is a Linguistic Minority Institution, governed by the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and Rules 1974, made thereunder. Presently, there are more than 730 students studying in the petitioner school and there are 26 Teaching staff including Headmaster and 5 Non-teaching staff working in the school. In the petitioner school, a vacancy in the post of Office Assistant arose due to retirement of one incumbent Smt.M.Vatchala on 31.03.2019 AN. In the resultant vacancy, one Mr.R.Janarthanan was appointed in the post of Office Assistant on 28.05.2019 FN. Consequently, the petitioner school has forwarded proposal to the 3rd respondent on 29.05.2019 with necessary enclosures and in turn he has also forwarded the proposal to the 2nd respondent and the same is pending for consideration and no further orders have been passed thereafter.

4. The proposal is kept pending in the office of 2nd respondent on the premise that the appointment was made in the post of Office Assistant cannot be granted without deployment of surplus staff working in other school by referring to G.O.Ms.No.238 School Education Department dated 13.11.2018. Any such stand has been discountenanced by the orders of this Court passed in W.A.No.1022 of 2020 dated 07.01.2021. Aggrieved over the same the petitioner is before this Court.

5. Considering the facts and circumstances of this case, if the Petitioner's application is already pending with the authorities concerned and, not disposed of earlier, this Court directs the respondent concerned to consider the representation of the petitioner dated 24.01.2020 and 22.01.2021, if he is otherwise eligible and pass appropriate orders, in accordance with law, after affording an opportunity of hearing to the petitioner , as expeditiously as possible, preferably within a

period of 60 days from the date of receipt of a copy of this order. The petitioner shall appear for personal hearing on the specified date fixed by the 1st respondent either physically or virtually or he shall send a written submission through registered or speed post, which can be treated as a personal hearing. In case the petitioner fails either to appear in-person or submit his written submission, there is no bar for the respondent to pass orders on the mercy petition based on the available documents before him and the petitioner, at a later point of time, cannot take a plea that opportunity of hearing was not afforded.

6. The petitioner shall furnish his phone number, email ID, if any, etc., along with a copy of the representation dated 24.01.2020 and 22.01.2021 and this order, to the respondent concerned forthwith. The respondent concerned is directed to communicate the decision taken on the application, to the petitioner within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no need for the parties to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the parties, they will have to face the civil imprisonment in case of contempt proceedings and, if they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of attempt of delivery, so that the parties, at a later point of time, will not take a plea that he is not aware of the order.

7. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006

2. The Chief Educational Officer,
Chennai District,
Egmore, Chennai - 600 008.
3. The District Educational Officer,
Chennai North,
SIDCO Nagar, Villivakkam,
Chennai - 600 049.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.14658

W.P.No.5717 of 2021

PP(CO)
CS/27/04/2021