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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.1461 of 2021
and C.M.P.No.9116 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

Vs.

1. D.Karthikeyan
Junior Assistant,
S.M.H. Higher Secondary School,
Sirkali - 609 110,
Nagapattinam District.
2. The Secretary,
S.M.H. Higher Secondary School,
Sirkali - 609 110,
Nagapattinam District.

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent to set aside the order dated 07.02.2020 made in W.P.No.28456 of 2019.

W.P in 28456 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 Junior Assistant in the 4th



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respondent School from the date of appointment on 28.03.2018 and to make the payment of Salary with interest and other Service benefits, within a time frame fixed by this Court.

For Appellants : Mr.C.Jayaprakash
Government Advocate

For Respondent-1 : Mr.G.Sankaran

JUDGMENT

[Judgment of the Court was made by PUSHPA SATHYANARAYANA, J.]

The appeal is filed by the Government against the order passed by this Court in W.P.No.28456 of 2019, wherein the writ petitioner had sought for a mandamus directing the appellants herein to appoint him in the regular sanctioned post of Junior Assistant in the second respondent-School herein from the date of appointment i.e. 28.03.2018 and to make the payment of salary with interest and other service benefits.

2. Admittedly, the first respondent/writ petitioner was appointed only in the regular sanctioned post of Junior Assistant in the second respondent school herein. The said appointment was pursuant to the retirement of the incumbent on 31.05.2017. The appointment was also made as a result of a selection process. When the second respondent school herein had sent a proposal to the appellants for approval of the appointment of the writ petitioner, there was no response. Hence the writ petition was filed seeking a mandamus.

3. The only objection raised by the learned Government Advocate appearing for the appellants even before the Writ Court was that pursuant to the passing of G.O.Ms.No.238 dated 11.11.2018, in the case of non-teaching staff, the surplus staff in the other schools will have to be deployed and only in the absence of the same, sanction can be granted by the appellants for the appointment done by the second respondent school herein.

4. The learned Single Judge had placed reliance on the order passed in W.P.Nos.101, 103 and 105 of 2020 [Kothandaraman High School vs. The Director of School Education and others] and held that there is no provision for seeking prior permission for making an appointment so far as the non-teaching staffs are concerned. The learned Single Judge further held that G.O.Ms.No.238 dated 11.11.2018 cannot be put against the first respondent/writ petitioner as his appointment was made as early as on 28.03.2018, which is prior to the passing of the Government Order. As the Government Order does not have retrospective operation, the appellants only have to proceed



further to grant sanction for the appointment and for the disbursement of the grant-in-aid, if otherwise the first respondent/writ petitioner has satisfied the other requirements as provided under the Act and Rules. Thus holding, the Writ Court had directed the third appellant to consider the file that has been forwarded by the second respondent school herein and pass appropriate orders within a period of four weeks from the date of receipt of a copy of the order, if otherwise the first respondent/writ petitioner had satisfied the required qualifications.

5. Heard the learned Government Advocate appearing for the appellants and the learned counsel appearing for the first respondent and perused the materials placed before this Court.

6. The appellants cannot be aggrieved by the above said order, as the appointment is yet to be approved by the third appellant. The learned counsel appearing for the first respondent/writ petitioner would also place his reliance on the recent judgment of the Division Bench of this Court in W.A.No.1022 of 2020 dated 07.01.2021 [The Director of School Education and others vs. S.Murugan and another], wherein, it has been held that the Government has 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. The Division Bench has further observed as follows:

“ 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 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.



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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."

7. In view of the above, the requirement of seeking prior permission for filling up the sanctioned post does not arise. With regard to the other requirements to be satisfied by the first respondent/writ petitioner, it is well within the powers of the third appellant while considering the proposal for approval. Therefore, there is no infirmity in the order passed by the learned Single Judge and hence, the Writ Appeal is dismissed.

8. The third appellant is given extension of time of four weeks to consider the proposal sent by the second respondent school herein seeking for grant of approval of the appointment of the first respondent/writ petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(LOK ADALAT)

//True Copy//

Sub Assistant Registrar

rsi

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.

+1cc to Government Pleader, SR.No.29402

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and
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SR II (CO)
BE (20/07/2021)