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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.17162 of 2019

I.V.Lakshmi

...Petitioner

Vs.

1. The Chief Educational Officer,
O/o Chief Educational Office,
Egmore, Chennai-600 008.
 2. The District Educational Officer,
Chennai-West, Chennai-600 006.
 3. The Correspondent,
K.T.C.T Girls Higher Secondary School,
New No.9 (Old 5), Narayana Mudali Street,
Chennai - 600 001.
- ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider and forthwith approve the appointment of the petitioner in the post of Record Clerk w.e.f. 18.07.2018 in having been made in a regular sanctioned vacancy and to consequently grant and extend all benefits both service and monetary on merits and within a time to be stipulated by this Court.

For Petitioner : Mr.L.Chandrakumar

For R1 to R4 : Mr.K.Tippu Sulthan
Government Advocate

ORDER

By consent of both the parties, the present writ petition is taken up for final disposal.

2. The petitioner herein was appointed as a Record Clerk on 18.07.2018 in the vacancy caused due to the retirement of sanctioned post. The third respondent's request for approval of the petitioner's appointment has been kept pending indefinitely, which prompted the petitioner to file the present Writ Petition.



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3. It is the apprehension of the petitioner that the official respondents would reject the third respondent's proposal on the ground that they had not obtained prior permission for the petitioner's appointment to the non-teaching post.

4. The issue is to whether the prior permission of the authorities to appoint a person in the sanctioned non-teaching posts is required or not, came up for consideration before the Hon'ble Division Bench of this Court in W.A.No.1022 of 2020 in the case of The Director of School Education, Chennai and Others Vs. S.Murugan and another and the Hon'ble Division Bench has held that such prior permission is not necessary. The relevant portion of the order reads 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



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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 scrutinize whether the appointment procedure was alright and whether the incumbent fits the bill."

5. The aforesaid extract is self explanatory. Since the petitioner herein was also appointed in a vacancy arising out of the sanctioned non-teaching posts, the dictum laid down by the Hon'ble Division Bench in the aforesaid decision squarely applies to the case in hand.

6. In the result, there shall be direction to the first respondent herein to approve the appointment of the petitioner in the regular sanctioned post of Record Clerk in the third respondent School with effect from 18.07.2018, without reference to failure of obtaining prior permission for the petitioner appointment, within a period of twelve weeks from the date of receipt of a copy of this order.

7. The Writ Petition stands allowed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Chief Educational Officer,
O/o Chief Educational Office,
Egmore, Chennai-600 008.

2. The District Educational Officer,
Chennai-West, Chennai-600 006.

+1CC to Mr.L.Chandrakumar, Advocate, Sr.No.34782

+1CC to Government Pleader, Sr.No.35569

W.P.No.17162 of 2019

LM (CO)

K.RK. (29.07.2021)