



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.07.2021

PRONOUNCED ON : 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27232 of 2019

K.Thennarasu

... Petitioner

Vs.

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

2.The Chief Educational Officer,
Presidency Girls Higher Secondary School Campus,
Egmore High Road,
Egmore, Chennai-600 008.

3.The District Educational Officer,
Chennai East,
Government Model Higher Secondary
School Campus,
Kamarajar Salai,
Chennai-600 005.

4.The Secretary,
R.B.A.N.C. Higher Secondary School,
No.26, Swamy Street, Pudupet,
Chennai-600 002.

... 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 relating to the impugned proceedings issued by the second respondent in Na.Ka.No.3853/Aa3/2019 dated 19.08.2019 and to quash the same and consequently, directing the respondents 1 to 3 to approve the appointment of petitioner in the regular sanctioned post of Record Clerk in the fourth respondent School from the date of appointment on 13.12.2018 and to make the payment of salary with interest and other service benefits.

For Petitioner : Mr.G.Sankaran

For Respondent :Mr.K.V.Sajeev Kumar
Nos.1 to 3 Counsel for Government



O R D E R

The present Writ Petition is heard through Video Conferencing on 08.07.2021.

WEB COPY

2. Heard Mr.G.Sankaran, learned counsel appearing for the petitioner and Mr.K.V.Sajeev Kumar, learned counsel appearing on behalf of the respondents 1 to 3.

3. The petitioner herein was appointed as a Record Clerk in the fourth respondent School in a regular sanctioned vacancy. When the fourth respondent School had forwarded the proposal for approval of the petitioner's appointment, the second respondent herein had rejected the petitioner's claim through the impugned order dated 19.08.2019, on the ground that the petitioner's appointment was made without obtaining prior permission. The order of rejection is put under challenge in the present Writ Petition.

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



WEB COPY

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 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 and the respondent had rejected it on the ground that the fourth respondent School had not sought for prior permission for such appointment, the dictum laid down by the Hon'ble Division Bench in the aforesaid decision squarely applies to the case in hand. Accordingly, the impugned order dated 19.08.2019, cannot be sustained.

6. In the result, the impugned order passed by the second respondent in Na.Ka.No.3853/Aa3/2019 dated 19.08.2019, is hereby quashed. Consequently, there shall be a direction to the second respondent to approve the appointment of the petitioner in the regular sanctioned posts of Record Clerk in the fourth respondent School from the date of his appointment



i.e., from 13.12.2018 and disburse the salaries payable to him, atleast within a period of twelve weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. There shall be no orders as to costs.

WEB COPY

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

DP

To

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
- 2.The Chief Educational Officer,
Presidency Girls Higher Secondary School Campus,
Egmore High Road,
Egmore, Chennai-600 008.
- 3.The District Educational Officer,
Chennai East,
Government Model Higher Secondary
School Campus,
Kamarajar Salai,
Chennai-600 005.

+2ccs to Mr.G.Sankaran, Advocate SR.No.35403, 32170

W.P.No.27232 of 2019

RSV(CO)
GMY(03/08/2021)