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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.32294 OF 2019

(THROUGH VIDEO CONFERENCING)

P.Kumaresan

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

2. The Director of School Education,
College Road, Chennai - 600 009.

3. The Chief Educational Officer,
Coimbatore, Coimbatore District.

4. The District Educational Officer,
Coimbatore, Coimbatore District.

5. The Secretary,
Sri Ramakrishna Mission Vidyalaya High School,
Periyanaickenpalayam,
Coimbatore District - 641 020.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the third respondent in Na.Ka.No.11203/a4/2018 dated 18.12.2018 and the consequential proceedings of the fourth respondent District Educational Officer in O.Mu.No.3222/A2/2018 dated 10.01.2019, quash the same and further direct the respondents to approve forthwith the appointment of petitioner as Sweeper cum Gardener in the fifth respondent's School with effect from 25.05.2018, with all attendant benefits including arrears of salary and allowances.



For Petitioner : ***Mr.A.Mahesh Nath**

For R1 to R4 : Mr.L.S.M.Hasan Fizal
Government Advocate

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ORDER

The petitioner has challenged the impugned order dated 18.12.2018 rejecting the appointment of the petitioner to the post of Sweeper cum Gardener in the fifth respondent School.

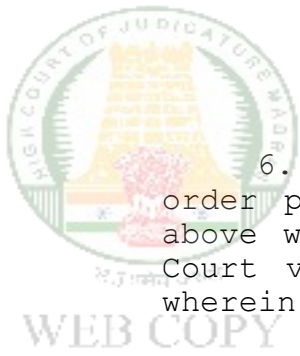
2. In the impugned order, a reference was made to G.O.Ms.No.64, School Education (Pa.Ka.6(1)) Department, dated 03.04.2018 and G.O.Ms.No.101, School Education (Finance-1) Department, dated 18.05.2018.

3. It is the contention of the petitioner that the petitioner being a non teaching staff was not governed by these Government Orders and therefore appointment of the petitioner as a Sweeper cum Gardener cannot be interfered with. In this connection, the learned counsel for the petitioner drew my attention to the decision of this Court in the case of Deva Asir Vs The Secretary to Government, School Education Department, Chennai - 9 and others, (2016) 3 L.W.152.

4. While dealing with Rule 15(4) of the rules framed under the erstwhile School Education, the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, the Court followed an earlier decision of a Division Bench of this Court in R.Kuttiswamy Vs Joint Director of School Education (Secondary Education), Chennai - 6 and others in its order dated 30.04.2008 in W.A.No.900 of 2007, wherein, it was held as under:-

"3. It is seen from the rule 15(4) which deals with the appointment of teachers only, nothing is stated in the entire rule about the appointment of the non-teaching staff. The learned Additional Government Pleader has not placed any clarification issued by the Government extending the abovesaid provision of law to the appointment of any other posts in the private schools. Therefore, when the rule is confined to the appointment of teachers in the private schools, the Junior Assistant is a non-teaching post which is not covered by Rule 15(4)."

5. The learned counsel for the petitioner also referred to the decision of this Court in S.Murugan Vs The Director of School Education, Chennai and others, passed in W.P.No.3939 of 2020 vide its order dated 26.02.2020, wherein, the above view was once again followed.



6. The learned counsel for the petitioner submits that the order passed by the learned Single Judge of this Court in the above writ petition was affirmed by the Division Bench of this Court vide its order dated 07.01.2021 in W.A.No.1022 of 2020, wherein, the Hon'ble First Bench of this Court held as under:-

"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."

7. Defending the impugned order, the learned Government Advocate for the respondents submits that 1973 Act has been replaced by Tamil Nadu Private Schools (Regulation) Act, 2018 and as per Section 35(2) of the aforesaid Act, no process of recruitment of teaching and non-teaching staff of any aided school shall be initiated without prior permission of the competent authority.

8. The learned Government Advocate for the respondents drew attention to Paragraph 8 of the counter affidavit filed by the respondents which reads as follows:-

"8. After quashing the G.O.Ms.No.115, School Education Department dated 30.05.2007 by Hon'ble Madras High Court, Madurai Bench in W.P.No.11481/2008 dated 15.03.2016 the Government issued an order in G.O.Ms.No.64, School Education Department dated 03.04.2018. In para 4(ii) of the Government order the officers concerned are permitted to approve the appointments of Non teaching staff made in the sanctioned posts by Managements of Aided school."



Learned Government Advocate reiterates that appointment has to be made strictly in accordance with G.O.Ms.No.64, School Education (Pa.Ka.6(1)) Department dated 03.04.2018 and G.O.Ms.No.101, School Education (Finance-1) Department, dated 18.05.2018. He therefore prays for dismissal of the writ petition.

9. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the impugned orders and the relevant Government Orders.

10. The staff fixation was made while old Act viz., Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 was in force. There was no requirement for obtaining permission from the Government for appointing non-teaching staff. This stands clarified by the decision of this Court which has been referred to supra by the learned counsel for the petitioner.

11. The requirement of Section 35(2) of the new enactment namely the Tamil Nadu Private Schools (Regulation) Act, 2018 cannot be made retrospectively applicable to the petitioner to justify the impugned order.

12. In the light of the above discussion, this Writ Petition deserves to be allowed and is accordingly allowed. No costs.

Sd/-

Assistant Registrar(CS III)
(15/09/2021)

***Corrected order to go
vide Letter dated 20/11/2021.**

Sd/-

**Sub Assistant Registrar(CO-II)
09/12/2021**

//True Copy//

Sub Assistant Registrar

arb

To

1. The Secretary,
Government of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai - 600 009.
- 2.The Director of School Education,
College Road, Chennai - 600 009.

**To be Substituted to
the order already
dispatched on 08/10/2021.**



3. The Chief Educational Officer,
Coimbatore, Coimbatore District.

4. The District Educational Officer,
Coimbatore, Coimbatore District.

5. The Secretary,
Sri Ramakrishna Mission
Vidyalaya High School,
Periyanaickenpalayam,
Coimbatore District - 641 020.

+1cc to the Government Pleader,
S.R.No.41073

**To be Substituted to
the order already
dispatched on 08/10/2021.**

W.P.No.32294 of 2019

PL(CO)
PM/16/09/2021
CT 13/12/2021