



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P(MD)No.215 of 2021

and

W.M.P(MD) No.180 of 2021

WEB COPY

The Correspondent
St.Mary's Higher Secondary School,
Vickramasingapuram,
Tirunelveli District-627 425.

...Petitioner

Vs.

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

2.The Director of School Education,
College Road, Chennai-600 006.

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

4.The District Educational Officer,
Cheranmahadevi at Tirunelveli,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the third respondent Chief Educational Officer in O.Mu.No.7082/a5/2019 dated 25.09.2020, quash the same and further direct the third respondent Chief Educational Officer herein to approve forthwith the appointment of A.Jeyaraj as Office Assistant w.e.f. 03.10.2007 in the petitioner's school namely, St.Mary's Higher Secondary School, Vickramasingapuram and disburse the grant-in-aid towards his salary with all attendant benefits from the said date.

For Petitioner : Mr.A.Amala

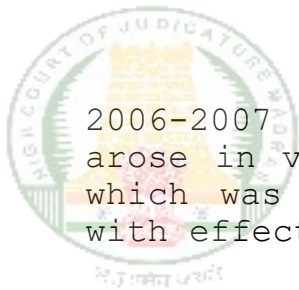
For Respondents : Mr.N.Shanmugaselvam,
Additional Government Pleader

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

2.The petitioner herein is a minority institution. Among other posts, two posts of Office Assistant was sanctioned from the year

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2006-2007 onwards. On 01.07.2007, one vacancy of Office Assistant arose in view of the retirement of the erstwhile Office Assistant, which was filled up by the petitioner, appointing one A.Jeyaraj, with effect from 03.10.2007.

3.A proposal for disbursement of grant-in-aid for the said post was rejected by the third respondent herein on 25.09.2020 by placing reliance on G.O(MS) No238, School Education (Pa.Ka.6(1)) Department, dated 13.11.2018. Challenging the same, the present writ petition has been filed.

4.The learned counsel for the petitioner would submit that the appointment of A.Jeyaraj was in a regular sanctioned vacancy and the rejection of the proposal by placing reliance on G.O(MS) No238, School Education (Pa.Ka.6(1)) Department, dated 13.11.2018, cannot be sustained, since the said Government Order would have a prospective effect from 13.11.2018 and would not have a bearing on the appointment, which was made in the year 2007.

5.The learned Additional Government Pleader appearing for the respondents placed reliance on the averments made in the counter affidavit and submitted that the respondents have disregarded a total ban in direct recruitment, which was invoked from the year 2001 and therefore, he submitted that there was an infirmity in the rejection of petitioner's proposal.

6.The justification assigned in the counter affidavit cannot be assailed for the simple reason that the ban on the recruitment alleged therein, is not a reason assigned in the impugned order for disregarding the petitioner's proposal for approval. It is settled proposition of law that the counter statement cannot improve the reasoning adduced in the order of rejection, which could be termed as an afterthought.

7.Even otherwise, this Court had an occasion to deal with an identical issue, wherein, a similar proposal was rejected by the respondent by placing reliance on G.O(MS)No.238, School Education (Pa.Ka.6(1)) Department, dated 13.11.2018 and this Court in its order passed in the case of **The Correspondent, Holy Family Girls Higher Secondary School Vs The State of Tamil Nadu Rep by its Secretary, Department of School Education and others**, in W.P(MD) No.20527 of 2019, had set aside a similar rejection order and the Authority was directed to disburse the grant-in-aid of the employee appointed by the Management. The relevant portion of the orders reads as follows:-

3.It is not in dispute that the appointment of these two posts of Record Clerk and Office Assistant were based on the sanction granted on 28.12.1996 in G.O (Ms)No.1731, Education Department. While that being



so, relying on the subsequent G.O(Ms) No.238 for the purpose of rejection of the approval is illegal, since G.O(Ms) No.238 can only have a prospective effect. In view of the same, the consequential order passed by the respondent dated 10.06.2019 is also unsustainable. On this short ground, the petitioner herein would be entitled to succeed.

4.The learned counsel for the petitioner had also placed reliance upon a decision of this Court passed in W.P(MD)No.19677 of 2019 dated 04.10.2019 in the case of **The Correspondent, St.Lasalle Higher Secondary School Vs. The State of Tamil Nadu and others**, wherein this Court had taken note of the fact that the post involved in that case fell vacant prior to issuance of G.O(Ms) No.238 and therefore, reliance on G.O(Ms) No.238 for the sake of granting approval cannot be sustained. A similar view was also taken by this Court in W.P(MD) Nos.27911 and 27912 of 2019 dated 20.09.2019 in the case of **P.Manikandan and other Vs. The Director of School Education and others**.

5.The learned counsel for the petitioner had also relied upon a decision of this Court in **S.Rasheetha Banu Vs. State of Tamil Nadu and others** reported in (2012) 4 MLJ 198, wherein the learned Single Judge of this Court had held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected on the ground that there is a fall in strength and the post became surplus. This Court was of the view that for the purpose of granting approval, the Teacher along with the post could be transferred and deployed to a needy school.

6.In the instant case also, if at all the respondents were of the view that there was a surplus, the option that would have been available to the respondents, would be to grant approval to the said posts and the concerned employee could have been redeployed to the needy school and as such, the rejection of the approval itself ought not to have been exercised. In any event, such a rejection by relying on subsequent G.O is impermissible.

7.For all the aforesaid reasons, the impugned order dated 03.04.2019, issued by the third respondent in O.Mu.No.3083/E1/2019 and the consequential proceedings of the fourth respondent in Na. Ka. No. 2211/A3/2019 dated ...06.2019, are set aside.



Consequently, there shall be a direction to the third respondent herein to disburse the grant-in-aid towards the salaries of the two employees namely S.Ignatius and D.Jeya Seela Rajathi from the date of their appointment/promotion together with all attendant benefits. Such an exercise shall be completed atleast within a period of six weeks from the date of receipt of a copy of this order. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

8.As held in the aforesaid decision, the Government Order on which reliance has been placed by the respondents for the purpose of rejecting the petitioner approval, cannot have retrospective effect and therefore, the consequential rejection of the proposal cannot be sustained.

9.In view of the above observations, the impugned order issued by the third respondent in O.Mu.No.7082/a5/2019, dated 25.09.2020, is quashed and consequently, there shall be a direction to the third respondent to forthwith approve the appointment of A.Jeyaraj as Office Assistant, w.e.f. 03.10.2007 in the petitioner's school namely, St.Mary's Higher Secondary School, Vickramasingapuram and to disburse the grant-in-aid towards his salary with all attendant benefits from the said date, at least within a period of twelve weeks from the date of receipt of a copy of this order.

10.Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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/ /2021

Sub Assistant Registrar(CS)

To:-

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

2.The Director of School Education,
College Road, Chennai-600 006.

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

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



4.The District Educational Officer,
Cheranmahadevi at Tirunelveli,
Tirunelveli District.

+1 CC to M/s.A.AMALA, Advocate (SR-13163[F] dated 24/03/2021)

+1 CC to M/s.SPL GP (SR-13240[F] dated 24/03/2021)

W.P (MD) No.215 of 2021
23.03.2021

SSS (CO)
KB (24.04.2021) 5P 7C