



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.7778 of 2021

WEB COPY

MLWA Higher Secondary School,
No.9, Raja Mill Road,
Maninagaram,
Madurai - 625 001,
Rep. by its Secretary,
S.Bhawarlal

... Petitioner

vs.

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

2.The Chief Educational Officer,
Madurai District,
Madurai - 625 002.

3.The District Educational Officer,
Madurai Education District,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to pass orders for granting of approval of appointment of Mr.R.Britto Raj in the sanctioned post of Office Assistant in the petitioner School from the date of appointment on 15.03.2021, based on the proposal submitted by the petitioner School, dated 16.02.2021 with all consequential and other service benefits within the time stipulated by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.N.Shanmuga Selvam
Additional Government Pleader

ORDER

This Writ Petition is filed seeking for a Writ of Mandamus, directing the respondents to pass orders for granting of approval of appointment of R.Britto Raj in the sanctioned post of Office Assistant in the petitioner's School from the date of appointment on 15.03.2021, based on the proposal submitted by the petitioner's School, dated 16.02.2021 with all consequential and other service benefits within the time stipulated by this Court.



2.Mr.N.Shanmuga Selvam, learned Additional Government Pleader accepts notice on behalf of the respondents.

3.By consent of both parties, the Writ Petition is taken up for final disposal at the stage of admission itself.

4.According to the petitioner, the petitioner's School is a Government aided School and a vacancy to the post of Office Assistant arose due to the retirement of incumbent on 31.01.2019. The petitioner sought for permission from the respondents to fill up the said post. The third respondent returned the proposal on the ground that non-teaching post in the petitioner-School can be filled up only after accommodating all the surplus staffs working in other aided Schools.

5.Further, according to the petitioner, there is no need to seek prior permission from the respondents to fill up the sanctioned vacancy in non-teaching post. In the absence of amendment to Special Rules and as per the ratio laid down by this Court and the fact that the single post of Office Assistant not being filled up in the petitioner-School from February 2019, the petitioner-School has passed resolution to fill up the post of Office Assistant through direct recruitment on 25.01.2021 and after following the procedure, one R.Britto Raj was selected and appointed to the post of Office Assistant as per the Resolution passed by the committee on 15.02.2021. The said R.Britto Raj joined the post on the same day and continued to work till date. The petitioner has forwarded the proposal to the second respondent through third respondent on 16.02.2021 enclosed with all requisite documents seeking for approval of appointment of R.Britto Raj from the date of his appointment on 15.02.2021. The second respondent returned the proposal on 23.03.2021, stating that only after filling up the surplus post in other aided Schools in Madurai District as per Staff fixation for the year 2019, the approval of appointment of R.Britto Raj in the post of Office Assistant can be considered.

6.The learned counsel appearing for the petitioner relied on the Judgment of the Hon'ble First 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) and prayed for allowing the Writ Petition.

7.The learned Additional Government Pleader appearing for the respondents submitted that only after filling up the surplus post in other aided Schools in Madurai District as per Staff fixation for the year 2019, the approval of appointment of R.Britto Raj in the post of Office Assistant can be considered and prayed for dismissal of the Writ Petition.

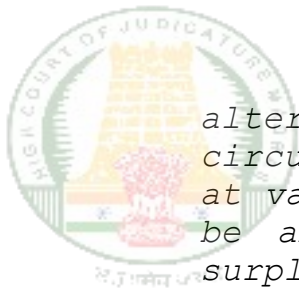


8. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

9. From the above rival submissions, it is seen that the petitioner appointed one R.Britto Raj as Office Assistant in the sanctioned post, which fell vacant on the retirement of earlier incumbent on 31.01.2019. The petitioner followed the procedure for appointment by direct recruitment and after due selection by committee, the said R.Britto Raj was selected and appointed as Office Assistant. According to the petitioner, the said R.Britto Raj joined in the School and working from the date of his appointment ie., 15.02.2021. The second respondent returned the proposal sent by the petitioner for approval of the appointment of R.Britto Raj on the ground that only after filling up the surplus post in other aided Schools in Madurai District are re-deployed, the approval of appointment of R.Britto Raj in the post of Office Assistant can be considered. The said reason for rejecting the proposal of the petitioner is erroneous. The Hon'ble First Bench of this Court had decided the issue in W.A.No.1022 of 2020, dated 07.01.2021 (The Director of School Education and others Vs. S.Murugan and another), which reads as follows:-

"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 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 a 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.

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."

10. In view of the Judgment of the Hon'ble First Bench of this Court referred to above, the respondents are bound to approve the appointment of R.Britto Raj as Office Assistant in the petitioner-School. Hence, the petitioner is directed to re-submit the proposal to the respondents within a period of two weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents are directed to approve the appointment of R.Britto Raj in the sanctioned post of Office Assistant in the petitioner School from the date of appointment on 15.02.2021 with all consequential and other service benefits, within a period of eight weeks thereafter.

11. With the above directions, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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

2.The Chief Educational Officer,
Madurai District,
Madurai - 625 002.

3.The District Educational Officer,
Madurai Education District,
Madurai District.

+1 CC to M/s.F.DEEPAAK, Advocate (SR-15920[F] dated 16/04/2021)

+1 CC to M/s.SPL GP (SR-16337[F] dated 17/04/2021)

W.P (MD) No. 7778 of 2021
15.04.2021

GS (28.04.2021) 5P 6C