



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.10828 of 2021

and W.M.P. (MD)No.8467 of 2021

WEB COPY

E.Jeyasri V.Rayee

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. By its Principal 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,
Thoothukudi District.

4.The District Educational Officer,
Tiruchendur, Thoothukudi District.

5.The Correspondent,
St. Thomas Higher Secondary School,
Virapandianpatnam,
Tuticorin District - 628 219.

... Respondents

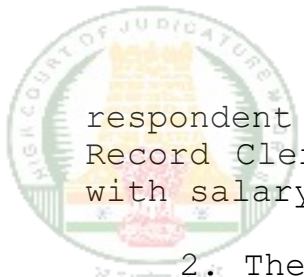
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the condition portion of impugned proceedings issued by the third respondent herein vide MOO.Moo.No.3917/Aa3/2020 dated 10.03.2021 and impugned proceedings issued by the 4th respondent herein vide O.Mu.No.1542/A5/2021, dated 22.04.2021, quash the same same and further direct the third respondent herein to approve the appointment of petitioner as Record Clerk in the 5th respondent school herein w.e.f. 22.03.2018 with salary and other attendant benefits.

For Petitioner : Mr.A.Ajith Geethan
For Respondents : Mr.K.S.Selvaganesan

Government Advocate for R1 to R4.

ORDER

The petitioner has filed this Writ Petition seeking to quash the condition portion of impugned proceedings issued by the third respondent, vide Moo.Moo.No.3917/Aa3/2020 dated 10.03.2021 and the impugned proceedings issued by the 4th respondent, vide O.Mu.No.1542/A5/2021, dated 22.04.2021, and further direct the third

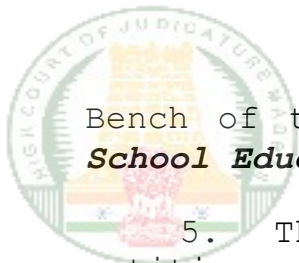


respondent herein to approve the appointment of the petitioner as Record Clerk in the 5th respondent school herein w.e.f., 22.03.2018 with salary and other attendant benefits.

2. The petitioner was appointed as Record Clerk in a sanctioned post on 22.03.2018 in the vacancy arose due to promotion of the previous incumbent Mr.Jockin Peeris as Laboratory Assistant on 01.03.2018. The fifth respondent school sent a proposal to the fourth respondent on 14.09.2018, for approving the appointment of the petitioner as Record Clerk from 22.03.2018 and for disbursement of salary to the petitioner, enclosing necessary documents.

3. Earlier, the fourth respondent returned the proposal by the proceedings dated 15.02.2019, directing the fifth respondent school to resubmit the proposal, after obtaining approval of promotion of Mr.Jockin Peeris as Laboratory Assistant. At the same time, the promotion proposal of Mr.Jockin Peeris was also returned by the third respondent on 03.10.2019, relying on G.O.Ms.No.238, School Education [Paka6(1)] Department, dated 13.11.2018. In view of the same, the fifth respondent did not resubmit the proposal for approval of petitioner's appointment. The petitioner and the said Mr.Jockin Peeris, filed W.P.(MD)Nos.8825 and 8839 of 2020 for approval of their appointments. While the Writ Petitions were pending, Mr.Jockin Peeris's promotion was approved by the third respondent, vide his proceedings dated 10.03.2021, on condition that the Record Clerk post shall be filled by surplus staff working under the management of RC Diocese of Tuticorin. As per G.O.Ms.No.238, School Education [Paka6(1)] Department, dated 13.11.2018, the Record Clerk post was rendered as surplus in the staff-fixation for the academic year 2019-2020 and the said staff-fixation was challenged by the fifth respondent school in W.P.(MD)No.1968 of 2021 and the said Writ Petition is pending. The learned counsel for the petitioner further submitted that since the appointment of the petitioner was made prior to G.O.Ms.No.238, School Education [Paka6(1)] Department, dated 13.11.2018, the fifth respondent school resubmitted the proposal on 29.03.2021, requesting to approve the appointment of the petitioner. Again, the fourth respondent returned the proposal by the impugned proceedings. The petitioner has come out with the Present Writ Petition challenging the said return.

4. The learned counsel appearing for the petitioner submitted that in G.O.Ms.No.238, School Education [Paka6(1)] Department, dated 13.11.2018, the Government directed the concerned authorities that any vacancy arises in future, the same shall be filled by surplus staff. Further, in the Government Order itself, it has been stated that the same can be effected only prospectively and hence, the respondents cannot deny the approval of the petitioner's appointment, which was made prior to G.O.Ms.No.238, School Education [Paka6(1)] Department, dated 13.11.2018. The learned counsel



Bench of this Court in ***Deva Asir V. The Secretary to Government, School Education Department and others*** reported in ***2016-3-L.W.152***.

5. The learned Government Advocate submitted that the petitioner was appointed due to the promotion of Mr.Jockin Peeris as Laboratory Assistant. By the proceedings of the third respondent dated 10.03.2021, the promotion of said Mr.Jockin Peeris was approved, on condition that the vacancy to the post of Record Clerk should be filled up only by surplus staff. In view of the same, the impugned order is valid and legal and prayed for dismissal of this Writ petition.

6. From the materials placed on record, it is seen that the petitioner was appointed on 22.03.2018 as Record Clerk in a sanctioned post on the promotion of Mr.Jockin Peeris as Laboratory Assistant. Initially, the promotion of said Mr.Jockin Peeris was not approved and therefore, the the proposal sent by the fifth respondent school for approval of appointment of the petitioner was returned. After approval of the appointment of Jockin Peeris, again, the fifth respondent school sent a proposal for approval of the appointment of the petitioner. The fourth respondent again returned the proposal by the impugned order stating that the fifth respondent school sent proposal only on 14.09.2018 and as per staff strength fixed on 01.08.2018, there are 34 surplus posts. From the materials placed on record, it is seen that the petitioner was appointed on 22.03.2018 in the sanctioned post. The appointment is made based on the staff strength fixed as on 01.08.2018. However, the staff-fixation order, fixed as on 01.08.2018, relying on G.O.Ms.No.238, School Education [Paka6(1)] Department, dated 13.11.2018, is under challenge by the fifth respondent school in W.P.(MD)No.1968 of 2021. In view of the fact that the petitioner was appointed on 22.03.2018, prior to G.O.Ms.No.238, School Education [Paka6(1)] Department, dated 13.11.2018, the reasons given by the fourth respondent for returning the proposal is erroneous and invalid.

7. For the above reasons, the impugned proceedings issued by the third respondent, vide Moo.Moo.No.3917/Aa3/2020, dated 10.03.2021 and the impugned proceedings issued by the 4th respondent vide, O.Mu.No.1542/A5/2021, dated 22.04.2021, are set aside. The fifth respondent is directed to resubmit the proposal within two weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents 1 to 4 are directed to consider the proposal of the fifth respondent school for approval of the appointment of the petitioner, taking into consideration that the petitioner was appointed on 22.03.2018, much prior to the date of issuance of G.O.Ms.No.238, School Education [Paka6(1)] Department, dated 13.11.2018, within a period of four weeks thereafter.



8. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

WEB COPY

/ /2021

Sub Assistant Registrar(CS)

vsm

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Principal 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,
Thoothukudi District.

4.The District Educational Officer,
Tiruchendur, Thoothukudi District.

+1 CC to M/s.SPL GP (SR-20883[F] dated 01/07/2021)

W.P(MD)No.10828 of 2021
and W.M.P. (MD)No.8467 of 2021

30.06.2021

SSS(CO)

LR (19.07.2021) 4P 6C