



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.13161 of 2019

and W.M.P.(MD).No.9802 of 2019

WEB COPY

The Secretary,
K.Nataraja Pillai Memorial
Madurai Pillaimar Sangam
Higher Secondary School,
Sammattipuram,
Madurai - 625 010.

...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- 600 009.

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

4.The District Educational Officer,
Thirumangalam -625 706,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 3rd and 4th respondents herein to approve forthwith the appointment of P.Balasundari as Junior Assistant in the petitioner's School w.e.f. the date of her appointment i.e., 07.06.2004 and to disburse all attendant benefits including the arrears of salary and allowance.

For Petitioner : Ms.A.Amala

For Respondents : Mr.A.Thiyagarajan,
Government Advocate



O R D E R

The petitioner is a **(*)private aided institution**. The sanctioned post of Junior Assistant in the petitioner School fell vacant on 20.04.2004 and in the said vacancy, the petitioner-school had appointed one P.Balasundari on 07.06.2004. The proposal for approval of such appointment was sent belatedly on 07.11.2007. Consequently, the fourth respondent herein had approved the proposal from 07.11.2007 instead of 07.06.2004. Since the petitioner was entitled to seek for approval from 07.06.2004 itself, they had approached the fourth respondent herein and made several representations in this regard. But, no order has been passed by the fourth respondent till date. Hence, the present writ petition has been filed.

2. The petitioner being a **(*)private aided institution**, does not require to seek prior permission from the authorities to fill up a sanctioned post. This preposition came up for consideration in various decisions and in one such decision in the case of **Correspondent, Holy Family Girls Higher Secondary School vs. State of Tamilnadu and others**, in **W.P.(MD)No.3226 of 2019**, this Court had held that the minority institutions therein were entitled for approval of the appointment of Teacher from the date on which the appointments are made. The relevant portion reads as follows:

"11. It is not in dispute that the appointment was made against the sanctioned post.

12. It is trite that no prior permission is required from the Director of School Education to fill up a sanctioned post, in a minority institution.

13. At this juncture, it is more profitable to refer to the relevant paragraphs of the judgment in **Deva Asir v. The Secretary to Government, School Education Department and others [2016(3) LW 152]**, which are as under:

"8. Teaching and non-teaching staff of the Non-minority Private Aided Schools are appointed by the School Committee by following the Act and the Rules. In the case of Minority Private Aided Schools, the Educational Agency is the appointing authority and though various provisions of the Act and the Rules are not applicable to the Minority Educational Institutions, Section 19 of the Act and Rule 15 of the Rules are applicable to those Institutions also. Admittedly, all the Private Schools - Minority and Non-Minority - concerned in these writ petitions are in receipt of Aid From the Tamil Nadu Government for the posts sanctioned by the Director of School



Education, as per Rule 15(1) of the Rules and the DEOs/DEEOs are the grant sanctioning authorities to those sanctioned posts under Rule 11(2) of the Rules. Whenever vacancies arise in those sanctioned posts due to death/retirement/resignation, etc. these Private Aided Schools could fill those vacancies as per the provisions of the Act and the Rules for filling up those posts, the Act and the Rules do not contemplate seeking of prior permission from any authority. The vacancies shall be filled immediately. If there is any delay in filling up the vacancies in respect of the teaching as well as the non-teaching posts, it would result in serious prejudice and damage to the educational interest of the downtrodden people, who only enter the portals of these Aided Schools.

32.2. Emphasis is made to "such payment of grants shall be subject to Government Orders and instructions issued from time to time" that appears in the later portion of Rule 11. I am not in agreement with the submission made by the learned Special Government Pleader that the Government has unfettered power to issue directions and instructions in relation to the grant of aid to the Private Schools, that are governed by the Act and the Rules. The directions and instructions that could be issued by the Government should be under the Act and the Rules and the same cannot be outside the Act and the Rules.

33. ...It is the submission of the learned Special Government Pleader that the Government has unfettered discretion to decide about the sanction of grant even when the appointments are made to the sanctioned posts. In my view, if an appointment is made to the sanctioned posts that are sanctioned by the Director under Rule 15(1), then the DEOs/DEEOs are bound to sanction grant and the DEOs/DEEOs could not ask the school to seek permission from the Government before appointing a non-teaching staff in the sanctioned post, whenever vacancies arise in the sanctioned posts due to death/retirement/resignation, etc.,. Hence, this submission has no merit and whatever reasons given for rejecting submission (i) of the learned Special Government Pleader would equally apply to reject submission (ii) also."



14. The issue relating to permission from the Government before appointing a non-teaching staff in a Minority Educational Institution, that too, in a sanctioned vacancy, is not necessary and it is the bounden duty of the authorities concerned to sanction grant, had been dealt with in detail in the case referred to supra.

15. In the case at hand also, the School is the Minority Educational Institution and the appointment was made in the sanctioned post. In such an event, permission from the Director of School Education before making such appointment has no relevance and the fourth respondent is liable to grant sanction to the appointee and thus, the approval granted to S.Sekar with effect from 11.01.2010 cannot stand in the eye of law.

16. In such view of the matter, a Writ in the nature of a Writ of Mandamus is issued, directing the third and fourth respondents to approve the appointment of Thiru.S.Sekar as Junior Assistant in the petitioner's School with effect from 26.11.2007, i.e., from the date of his appointment, forthwith and disburse all attendant benefits including the arrears of salary and allowance, etc., which he is legally entitled to, within a period of eight weeks from the date of receipt of a copy of this order."

3. The above said extract is self-explanatory. Further, it is brought to the notice of this Court that pursuant to the above said order passed in the case of **Holy Family Higher Secondary School vs. State of Tamilnadu and others, (Supra)** the order came to be complied by the authorities and the approval was also extended from the date of that teacher's appointment. In this backdrop, the respondents are not justified in granting approval to the Junior Assistant attached to the petitioner's school, from the date of her appointment.

4. At this juncture, the learned Government Advocate would submit that the authority to grant approval is now vested with the Chief Educational Officer, who is the third respondent herein. Accordingly, the third respondent herein is directed to grant approval for appointment of the said P.Balasundari, as Junior Assistant from the date of her appointment, ie., from 07.06.2004 and disburse the grant-in-aid towards her salary, with all attendant benefits from such date, atleast within a period of eight weeks from the date of receipt of a copy of this order.



5. The Writ Petition stands allowed accordingly. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

**(*) Amended as per order of this Court
dated 22.03.2021 in WP(MD).No.13161 of 2019
made herein.**

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

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

(*) to be substituted the order already despatched on 17.03.2021.

1.The Secretary,
The State of Tamil Nadu,
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,
Madurai, Madurai District.

4.The District Educational Officer,
Thirumangalam -625 706,
Madurai District.

+1 CC to SPL GP (SR-6184[F] dated 19/02/2021)

+1 CC to M/S.A.AMALA, Advocate (SR-6227[F] dated 19/02/2021)

W.P. (MD) No.13161 of 2019

18.02.2021

KM (16.03.2021) 5P 7C

TR (16.04.2021) 5P 7C