



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.17121 of 2020

and

W.M.P(MD)No.14317 of 2020

WEB COPY

Sesha Iyengar Memorial Higher Secondary School,
Rep. by its Secretary,
Nachiar Koil Street, Woraiyur,
Tiruchirappalli-620 003.

... Petitioner

vs.

1.The Chief Educational Officer,
Office of Chief Educational Officer,
Madurai Road, Palakarai,
Tiruchirappalli.

2.The District Educational Officer,
Office of the District Educational Officer,
Old District Collector's Office Campus,
Cantonment,
Trichy - 1.

... 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 impugned proceedings issued by the second respondent in Na.Ka.No.1569/A1/2020, dated 09.03.2020 as illegal and quash the same and consequently direct the respondents 1 and 2 herein to grant approval for the appointments of one R.Vinothini as Office Assistant, one K.Hema as Record Clerk and one V.Dineshkumar as office Assistant made by the petitioner School with effect from 29.05.2018 (F.N) with all consequential monetary benefits and arrears of salary as per proposal, dated 30.05.2018 submitted by the petitioner School within the time stipulated by this Court.

For Petitioner : Mr.V.R.Shanmuganathan
for Mr.AL.Kannan

For Respondents : Mr.K.S.Selva Ganesan
Government Advocate

ORDER

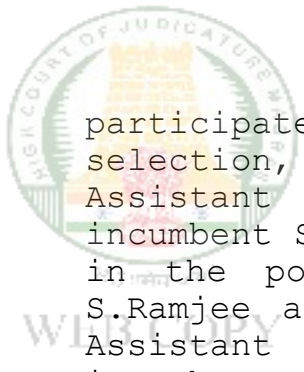
The petitioner has filed the present Writ Petition, to quash the impugned proceedings issued by the second respondent, dated 09.03.2020 and to direct the respondents to grant approval for the appointments of one R.Vinothini as Office Assistant, one K.Hema as Record Clerk and one V.Dineshkumar as office Assistant made by the



petitioner School with effect from 29.05.2018 (F.N) with all consequential monetary benefits and arrears of salary as per proposal, dated 30.05.2018, submitted by the petitioner School.

2.The petitioner School is a recognized private Government Aided non-minority Higher Secondary School. Insofar as the appointment of non-teaching staff in private aided Schools is concerned, the Government imposed ban, vide G.O.Ms.No.212, Personnel and Administrative Reforms Department, dated 29.11.2001 and the said ban was lifted by the Government, vide G.O.Ms.No.14, Personnel and Administrative Reforms Department, dated 07.02.2006. Subsequent to the abovesaid G.Os., the Government issued G.Os, viz., G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007, G.O.Ms.No.189, School Education (D1) Department, dated 29.07.2009 and G.O.Ms.No.203, School Education (D1) Department, dated 23.07.2010, permitting the private Schools to fill up the posts of non-teaching staff. On the other hand, the Government issued letter, dated 26.05.2006, stating that there is a ban on appointment of non-teaching posts in the aided School. The said Government letter was challenged before this Court in W.P(MD)No.2218 of 2009 and this Court by order, dated 01.04.2009, quashed the above said Government letter. Later, the said order was also implemented by the Government. Further, the Government cannot take away the post which was already sanctioned to the School, by way of issuing a letter without making proper amendments in the relevant Act and Rules. Similarly placed Schools have preferred batch of Writ Petitions in W.P(MD)No.11481 of 2008 etc., before this Court and this Court, by order, dated 15.03.2016, allowed the said Writ Petitions, directing the Department to grant approval for the appointment of non-teaching staff in the sanctioned post including the post of Office Assistant and Record Clerk. Subsequent to the order passed in the said Writ Petitions, the Government issued G.O.Ms.No.64, School Education Department, dated 03.04.2018. Based on the said G.O., all the non-teaching posts filled in private aided Schools were granted approval.

3.Further, according to the petitioner School, it is an aided recognized, Private School and the said School was recognized by the Government of Tamil Nadu. The said School has been sanctioned with various non-teaching staff including post of Office Assistants and Record Clerk. On account of promotion of incumbent S.Akila, one post of Office Assistant fell vacant on 08.09.2005; on account of promotion of incumbent S.Ramjee, one post of Junior Assistant fell vacant on 18.04.2012 and on account of retirement of incumbent R.Iilakkuvan, another post of Office Assistant fell vacant on 30.09.2015. Due to the ban, the said posts were kept vacant. Subsequent to the lifting of the said ban through G.O.Ms.No.64, School Education Department, dated 03.04.2018, the petitioner School called for applications from the eligible candidates to the said posts. Eligible candidates applied for the said posts and



participated in the process of selection. In the process of selection, one K.Vinothini was selected and appointed as Office Assistant in the post fell vacant on account of promotion of incumbent S.Akila; K.Hema was selected and appointed as Record Clerk in the post fell vacant on account of promotion of incumbent S.Ramjee and V.Dinesh Kumar was selected and appointed as Office Assistant in the post fell vacant on account of retirement of incumbent R.Ilakkuvan, vide resolution, dated 24.05.2018 and they have joined duty on 29.05.2018. The petitioner School submitted a proposal, dated 30.05.2018, for approval of the said appointments to the second respondent. The second respondent returned the proposal raising certain queries on 23.08.2018. The petitioner School re-submitted the proposal on 02.11.2018 and sent reminder on 10.07.2019. On receipt of the said reminder letter, the second respondent by proceedings, dated 18.07.2019, returned the proposal directing the petitioner School to submit the staff fixation order for the Year 2018-19 along with the proposal for approval. The petitioner School re-submitted the proposal along with staff fixation order for the year 2018-19 on 26.07.2019 and reminder dated 03.09.2019. On receipt of the reminder, the second respondent again returned the proposal on the ground that the School Committee approval for the said appointments has been obtained only upto 27.03.2013. Thereafter, the petitioner School submitted the proposal. The same was rejected once again on the ground that the petitioner School should produce the staff fixation order.

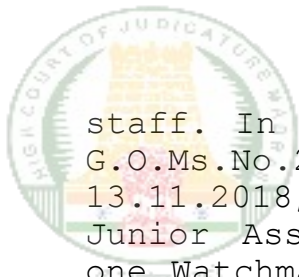
4. Therefore, according to the petitioner School, the second respondent returned the proposals on three occasions raising different queries. The above said three persons, viz., R.Vinothini, K.Hema and V.Dineshkumar, who were appointed in the abovesaid posts, filed W.P(MD)Nos.19, 21 and 30 of 2020 respectively before this Court, challenging the return order, dated 21.11.2019 issued by the second respondent. This Court, by order, dated 28.01.2020, directed the second respondent to consider the proposal of the petitioner School, dated 24.07.2019, without insisting for the renewal of the tenure of the School Committee. On receipt of the copy of the order, the petitioner School once again re-submitted the proposal on 28.02.2020 to the second respondent. The second respondent by proceedings, dated 09.03.2020, rejected the proposal referring to G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, stating that the petitioner School is entitled for approval only to one post of Office Assistant and cannot grant approval for other post of Office Assistant and Record Clerk. Challenging the same, the petitioner has come out with the present Writ Petition.

5. The learned counsel appearing for the petitioner submitted that vacancies arose in the sanctioned post in the year 2005, 2012 and 2015 respectively. Due to the ban on appointment of non-teaching staff, the posts were not filled up. On lifting the ban order,



following due process of selection, the said posts were filled up by resolution, dated 24.05.2018. The second respondent, only with an intention to reject the proposal, returned the same on flimsy grounds on different occasions. The second respondent failed to consider the common order of this Court, dated 28.01.2020 passed in W.P(MD)Nos.19, 21 and 30 of 2020 and only with a view to get over the contempt petition being filed by the appointees, passed the impugned order. The reference of G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, in the impugned order is nothing to do with the facts of the present case, as the petitioner School has filled up the sanctioned posts, which arose due to the promotions and retirement of incumbents. The posts were filled up by the petitioner School as per the staff fixation order issued for the year 2017-18. Hence, by relying subsequent staff fixation order for the year 2018-19, the second respondent cannot reject the proposal. G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, do not have any retrospective effect and the impugned order is passed without application of mind, invalid and illegal and prayed for setting aside the order of the second respondent.

6.The second respondent filed the counter-affidavit. In the counter-affidavit, the respondents have extensively stated the procedure for appointment of non-teaching staffs in private aided School from the year 1951 onwards. The learned Government Advocate appearing for the respondents referred to various averments made in the counter-affidavit with regard to the appointment of non-teaching staff in the private aided School. The learned Government Advocate further submitted that the Government imposed ban order on the appointment of non-teaching staff vide G.O(Ms)No.212, Personnel and Administrative Reforms Department, dated 29.11.2001 and the same was lifted vide, G.O.(Ms)No.14, Personnel and Administrative Reforms Department, dated 07.02.2006. Subsequently, by G.O.Ms.No.37, School Education Department, dated 08.02.2007, the Government prescribed certain norms to fill up the non-teaching posts in the Government High School and Higher Secondary Schools. In G.O.Ms.No.115, School Education Department, dated 30.05.2007, the Government permitted for filling up 50% of vacancies in the posts of Junior Assistants and Office Assistants. However, G.O.Ms.No.115, School Education Department, dated 30.05.2007, was quashed by this Court. After such order, the Government issued G.O.Ms.No.64, School Education (Pa.Ka.(1)) Department, dated 03.04.2018, regularizing the appointment of non-teaching staff. In the said G.O in paragraph No.4(v), it is stated that the posts of Librarian, Library Assistants, Gardener and Waterman cannot be filled up. When the existing incumbent retired or promoted to other post, the said post should be resumed. Subsequently, the Government in G.O.Ms.No.238, School Education SE 6(1) Department, dated 13.11.2018, issued revised guidelines for filling up non-teaching staff. Accordingly, the guidelines issued taking into account the increased usage of computers and the decrease in man power, in fixation of non-teaching



staff. In the petitioner School, there are 359 students and as per G.O.Ms.No.238, School Education (Pa.Ka.6(1)) Department, dated 13.11.2018, the petitioner School is entitled to only one post of Junior Assistant/Assistant/Record Clerk, one Office Assistant and one Watchman. Already one Ramji was working as Junior Assistant and hence, the petitioner School is not entitled to appoint more than one Junior Assistant. Similarly, the petitioner School is not entitled for approval of two Office Assistant and Record Clerk. Hence, by the impugned order, dated 09.03.2020, the second respondent rejected the proposal submitted by the petitioner School. The impugned order is valid and legal and prayed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

8. From the materials available on record, it is seen that in the petitioner School vacancy arose in the non-teaching posts during the year 2005, 2012 and 2015. The petitioner School could not fill up the said vacancy due to the ban order and various Government Orders. The petitioner School appointed one R.Vinothini as Office Assistant, K.Hema as Record Clerk and V.Dineshkumar as Office Assistant by resolution, dated 24.05.2018, by following due process of law in the vacancy that arose as per the staff strength fixed for the year 2017-18 due to the promotion and retirement of incumbents. The abovesaid three persons joined duty in the petitioner School on 29.05.2018 and are working in the petitioner School. When the petitioner School sent a proposal for approval on 30.05.2018, the same was returned by the respondents raising certain queries. The petitioner School, after rectifying various queries raised by the second respondent, re-submitted the proposal on 02.11.2018. The second respondent returned the proposal vide proceedings dated 18.07.2019, directing the petitioner School to submit the staff fixation order for the year 2018-19 along with the proposal for approval. The petitioner School once again re-submitted the proposal along with staff fixation order for the year 2018-19 on 26.07.2019. The second respondent again returned the same on the ground that approval of School Committee was obtained only upto 27.03.2013 and only after renewal of approval of the School Committee, the proposal can be considered. The above three persons appointed in the petitioner School filed W.P(MD)Nos.19, 21 and 30 of 2020 and this Court, by order, dated 28.01.2020, quashed the return order, dated 21.11.2019 and directed the second respondent to consider the proposal of the petitioner School, dated 24.07.2019, without insisting for renewal of the tenure of the School Committee. The second respondent, without complying the order of this Court, dated 28.01.2020, found out a new ground to reject the proposal of the petitioner relying on G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, which was issued subsequent to the



appointment of the above three persons and proposal submitted by the petitioner School. G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, has no retrospective effect.

9.The petitioner School filled up vacancy arose in the year 2005, 2012 and 2015, as per the staff fixation order for the year 2017-18. When the vacancy arose in the petitioner School and when the petitioner School filled up the said posts, G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, was not in existence. The said G.O, came into effect much later ie., on 13.11.2018. In the counter-affidavit, the respondents have admitted that non-teaching staff strength has to be fixed on the first day of August of every year based on the students strength.

10.In view of the same, even for the year 2018-19, the second respondent cannot rely on G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, which came into force only on 13.11.2018. Even when this Court considered the Writ Petitions in W.P(MD)Nos.19, 21 and 30 of 2020, filed by the individuals, the respondents have not relied on G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018. At that time, the respondents were insisting on renewal of approval of the School Committee.

11.From the materials placed on record, it is seen that the second respondent has returned the proposal on three occasions raising three different queries. Finally, after the order of this Court, dated 28.01.2020, directing the second respondent to pass orders on the proposal without insisting for renewal of the tenure of the School Committee, the second respondent rejected the proposal referring to G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, which was not in force when the vacancy arose, the petitioner School filled up vacancy in the sanctioned post and submitted the proposal for approval on 30.05.2018.

12.Considering the above materials, it is clear that it is the intention of the second respondent is some how or other not to give approval for the appointments of three persons made by the petitioner School. The reason given by the second respondent in the impugned order is erroneous and is liable to be quashed.

13.In the result, the impugned order of the second respondent, dated 09.03.2020, is quashed. The respondents are directed to grant approval for the appointments of R.Vinothini as Office Assistant, K.Hema as Record Clerk and V.Dineshkumar as office Assistant made by the petitioner School with effect from 29.05.2018 (F.N) with all consequential monetary benefits and arrears of salary as per proposal, dated 30.05.2018 submitted by the petitioner School.



14. With the above direction, the Writ Petition is allowed as prayed for. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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 Chief Educational Officer,
Office of Chief Educational Officer,
Madurai Road, Palakarai,
Tiruchirappalli.
2. The District Educational Officer,
Office of the District Educational Officer,
Old District Collector's Office Campus,
Cantonment, Trichy - 1.

+1 CC to M/s.SPL GP (SR-19771[F] dated 21/06/2021)

**W.P(MD)No.17121 of 2020
18.06.2021**

na(CO)
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