



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) .No.2192 of 2021

AND

C.M.P. (MD)No.10798 of 2021

- 1.The Director of School Education,
DPI Campus,
College Road, Chennai.
 - 2.The Joint Director of School Education (Higher Secondary),
DPI Campus,
College Road, Chennai.
 - 3.The Chief Educational Officer,
Tuticorin District.
 - 4.The District Educational Officer,
Tuticorin District.
- ... Appellants/Respondents

Vs.

- 1.T.Baskaran, ...1st Respondent/Writ Petitioner
- 2.Karapettai Nadar Higher Secondary School,
Tuticorin,
represented by its Secretary,
N.T.Selvaraj ... 2nd Respondent/5th Respondent

Prayer:Writ Appeal filed under Clause XV of the Letters Patent Act, praying this Court to set aside the order dated 12.07.2021 made in W.P(MD)No.19992 of 2020.

Prayer in WP(MD) . 19992/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 3rd Respondent herein in his proceedings in Na.Ka.No.5881/Aa4/2019 dated 09-12-2020 and quash the same as illegal and further direct the 3rd and 4th Respondents herein to approve the petitioners appointment as Watchman in Karappettai Nadar Hr.Sec.School Tuticorin with effect from 11-06-2018 and pass appropriate order within a time stipulated by this Honourable Court.



For Appellant

: Mr.M.Sidharthan
Additional Government Pleader

For R1

: Mr.V.Meenakshi Sundaram
for Mr.G.Mohan Kumar

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JUDGMENT

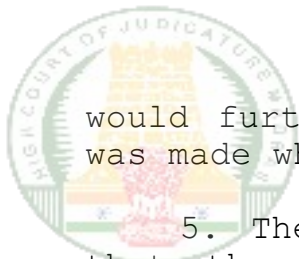
(Judgment of the Court was delivered by P.VELMURUGAN,J.)

This writ appeal has been filed by the appellants against the order, dated 12.07.2021 passed in W.P(MD)No.19992 of 2020.

2. The case of the first respondent / Writ Petitioner is that he was appointed as a Watchman in the second respondent school on 11.06.2018 and joined in the school on the same day, in the vacancy that arose due to the demise of a staff, in a sanctioned post. The second respondent school is an aided non-minority school, getting grants-in-aid from the Government of Tamil Nadu. After the appointment of the first respondent in the second respondent school, the second respondent sent a proposal for approval of the appointment to the third appellant and he rejected the proposals submitted by the second respondent school committee, by order, dated 09.12.2020, made in Na.Ka.No.5881/Aa4/2019. Aggrieved by the said order of rejection, the first respondent filed the writ petition in W.P.(MD)No.19992 of 2020 before this Court. The Writ Court allowed the writ petition. Aggrieved over the same, the present Writ Appeal has been filed by the Education Department.

3. The learned Additional Government Pleader appearing for the appellants would submit that without prior approval of the appellants, the second respondent has appointed the first respondent and they have not followed the guidelines of the Government issued in various Government Orders. The first respondent was not appointed by a legally constituted committee. The tenure of the School Committee, the President and the Secretary, cannot be extended, if the tenure of Secretary expires. The appointment made by the Secretary after the expiry of his tenure, is invalid. Therefore, the third appellant has rightly rejected the proposal sent by the second respondent.

4. The learned Additional Government Pleader appearing for the appellants would further submit that the learned Single Judge failed to appreciate the fact that without prior approval from the appellants, the first respondent was appointed and the appointment was not made by a legally constituted committee. Therefore, the order of the learned Single Judge is liable to be set aside. He



would further submit that the appointment of the first respondent was made when the interim order is in force.

5. The learned counsel for the first respondent would submit that the first respondent was appointed in a sanctioned post. Originally, one R.D.James was working as Watchman in the sanctioned post. Due to his demise on 31.12.2005, the second respondent herein sought for the list of eligible candidates from the Employment Exchange. They did not furnish any list of eligible candidates, stating the reason that the appointment of the Secretary of the second respondent school was not approved. Since the Employment Exchange did not furnish the list of eligible candidates, the second respondent published an advertisement in a newspaper, calling for applications for appointment of Watchman in the second respondent school and the second respondent school selected the first respondent. Subsequently, the second respondent sent a proposal for approval of the appointment of the first respondent and the same was rejected. Challenging the impugned order of rejection, the first respondent approached this Court by way of writ petition in W.P.(MD) No.19992 of 2020. The learned Single Judge rightly appreciated and answered the objection raised by the appellants herein and allowed the writ petition. Challenging the same, Department has come up with this Writ Appeal.

6. Heard Mr.M.Sidharthan, Additional Government Pleader appearing for the appellants and Mr.V.Meenakshi Sundaram, learned counsel appearing for the first respondent and perused the materials placed before this Court.

7. Admittedly, the first respondent was appointed as a Watchman in the sanctioned post in the second respondent school. After the appointment, the second respondent sent a proposal to the third appellant, for approval of the appointment of the first respondent. He rejected the same. The appellants have taken two grounds, challenging the order of the learned Single Judge that the tenure of the Secretary of the second respondent school was expired and therefore, the appointment made by the Secretary after the expiry of his tenure, is not valid. In this regard, this Court already dealt with the similar matters in W.P.(MD)No.2145 of 2021 dated 01.12.2021. The relevant portion of the order is extracted hereunder:

"4.Against the dismissal of the Writ Petition(MD) Nos.19905 and 19906 of 2017, Writ Appeal(MD)Nos.1711 and 1712 of 2018 were filed. The said appeals were decided on 08.05.2019 and the writ appeal were allowed, as the erstwhile Secretary himself, who contested in the election, was elected again as Secretary in the second respondent school and the said Secretary had appointed the writ petitioner as Office Assistant. Therefore, when the Secretary was in the office, the said appointment was



made. The Writ Court had allowed the writ petition.

5. In fact, in the judgement of the writ appeals, the question of the powers of the Secretaries when the order of interim stay in force, was also discussed, which was relied upon by the learned single Judge and allowed the Writ Petition. Therefore, the objection raised by the Government that the approval for appointment made by the Secretary, who was not in office, is erroneous and the said argument is not sustainable, as already the Division Bench held that the appointment made by the Secretary was valid."

8. As far as the mode of appointment is concerned, it is to be noted that the second respondent school sought for eligible candidates from the Employment Exchange. However, the Employment Exchange did not furnish the list of eligible candidates, instead he sent a reply, stating that the appointment of the Secretary of the second respondent school was not approved. Therefore, the second respondent school has given a publication in a newspaper, calling for the eligible candidates and after shortlisting the candidates by conducting interview, they selected the first respondent. Since it is a sanctioned post and the person who was working in the place also died, subsequently, the petitioner was appointed in the place of said vacancy. Since it is a sanctioned post and the second respondent school is a aided non-minority school and the post in which the first respondent was appointed, is a non-teaching post, the grounds taken by the appellants are not sustainable. Regarding the appointment of non-teaching staff in the sanctioned post is concerned, the first respondent referred to the judgment in the case of **Deva Asir vs. Secretary to the Government, School Education Department, Chennai**, reported in [2016-III-LLJ-49 (Mad)] where it is held as follows:

" 24.1. The learned counsels for the petitioners submitted that once the posts are sanctioned by the Director under Rule 15(1) of the Rules, the DEOs/DEEOs are bound to sanction grant as per Rule 11(2) of the Rules and there is no need to get prior permission from any authority to fill the vacancies that would arise in those sanctioned posts. Unless the State Government suitably amends the provisions of the Act and the Rules making it mandatory to obtain prior permission for filling up of those sanctioned non-teaching posts, the Government could not issue impugned Government orders. I am in entire agreement with the said submission. Since there is no such provision in the Act and the Rules to seek prior permission, the official respondents in these writ petitions, DEOs/DEEOs, could not rely on the impugned Government Orders/Government Letters to seek permission of the State Government or the Director or any authority to



fill up the sanctioned posts for approving of the same for the purpose of grant and therefore, the impugned Government Orders and the consequential proceedings refusing to approve of the non-teaching posts for the purpose of grant are issued in gross violation of the provisions of Section 19 and 20 of the Act read with Rule 15 of the Rules."

9.For the foregoing reasons, there is no merit in this Writ Appeal, therefore, this Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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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 Director of School Education,
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- 2.The Joint Director of School Education (Higher Secondary),
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- 3.The Chief Educational Officer,
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