



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)Nos.23889 & 23891 of 2019

and W.M.P(MD)Nos.20509 & 20510 of 2019

WEB COPY

Little Flower Higher Secondary School,
Kumbakonam,
Thanjavur District - 612 001,
Rep. by its Correspondent.

... Petitioner in both W.Ps'

vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
School Education Department,
St. Fort George,
Chennai-600 009.

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

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

4.The District Educational Officer,
Kumbakonam,
Thanjavur District.

... Respondents in both W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writs of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent in O.Mu.Nos.3258/A4/2019 & 3257/A4/2019 respectively dated -09-2019 signed on 07.09.2019 and quash the same and consequently direct the respondents 3 and 4 herein to grant approval for appointment to the post of one S.Elayaraja as Gardener and one A.Sakayaraj as Record Clerk in the Writ Petitioner School with effect from 22.07.2019 with all attendant and monetary benefits including the arrears of salary and allowance.

For Petitioner : Mr.A.L.Kannan
(in both W.Ps') for Mr.R.Shriram

For Respondents : Mr.P.Subbaraj
(in both W.Ps') Government Advocate



COMMON ORDER

The petitioner has filed the present Writ Petitions, to quash the impugned proceedings issued by the fourth respondent, dated -09-2019 signed on 07.09.2019 and to direct the respondents 3 and 4 to grant approval for appointment to the post of one S.Elayaraja as Gardener and one A.Sakayaraj as Record Clerk respectively in the Writ Petitioner School with effect from 22.07.2019 with all attendant and monetary benefits including the arrears of salary and allowance.

2.According to the petitioner School, it is an aided minority institution recognized by the Government of Tamil Nadu and the petitioner School had been sanctioned with various teaching and non-teaching posts. The petitioner School promoted one A.Sakayaraj to the post of Record Clerk from the post of Gardener and appointed one S.Elayaraja to the post of Gardener. The said A.Sakayaraj was promoted to the sanctioned vacancy arose when the previous incumbent A.Innasi Arockia Raj was appointed as B.T Assistant on 20.06.2018. Further, according to the petitioner School, both the posts of Record Clerk and Gardener are sanctioned posts and filled up as per the provisions of the relevant Act and Rules. The proposals sent by the petitioner School for approval of the said posts were returned by the fourth respondent. Challenging the said rejection orders, the petitioner has come out with the present Writ Petitions.

3.The learned counsel appearing for the petitioner submitted that the Government imposed ban on appointment of non-teaching staffs, vide G.O.Ms.No.212, Personnel and Administrative Reforms, Department, dated 29.11.2001. Subsequently, the said ban order was lifted by the Government vide G.O.Ms.No.14, Personnel and Administrative Reforms, Department, dated 07.02.2006. Even after lifting the ban order, the Government issued letter, dated 26.05.2006, stating that there is a ban on appointment on non-teaching staffs 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 letter, dated 26.05.2006. Similarly placed Schools have preferred W.P(MD)No.11481 of 2008 etc., batch, for granting approval for the appointment made to the non-teaching posts. This Court, by order, dated 15.03.2016, allowed the Writ Petitions and directed the Department to grant approval for appointment of non-teaching staffs in the sanctioned post including the post of Junior Assistant. Pursuant to the order of this Court, the Government issued G.O.Ms.No.64, School Education Department, dated 03.04.2018, instructing the authorities to approve the appointment of non-teaching staffs in compliance with the order of this Court, dated 15.03.2016 in W.P(MD)No.11481 of 2008. As per G.O.Ms.No.64, School Education Department, dated 03.04.2018, the appointment of non-teaching staffs were approved. While so, the proposals sent by the petitioner School was returned by the fourth respondent by impugned



proceedings, dated 07.09.2019, referring to G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018, is erroneous.

4.The learned counsel appearing for the petitioner further submitted that the Writ Petitions were filed Challenging G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018 and this Court granted an order of interim stay of the said G.O. In view of the stay of the said G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018, the impugned orders passed by the fourth respondent are invalid and illegal. The posts of Record Clerk and Gardener are very essential for maintaining the records and keeping the School greenery. As per G.O.Ms.No.64, School Education Department, dated 03.04.2018, the appointment of all the non-teaching staffs were approved and prayed for setting aside the impugned orders and allowing the Writ Petitions.

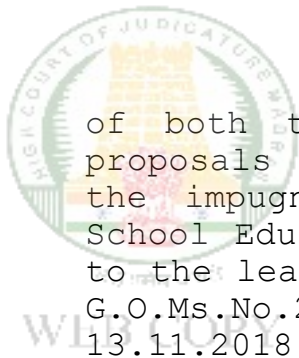
5.The respondents filed counter-affidavit.

6.Mr.P.Subbaraj, learned Government Advocate appearing for the respondents submitted that both the appointments are contrary to G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018. The Schools receiving aid, are bound to follow the Government Orders and instructions issued from time to time. If School fails to follow the same, the approval cannot be granted.

7.The learned Government Advocate refers to various Government Orders passed by the Government in respect of non-teaching staffs from the year 1951 and submitted that the Government issued G.O.Ms.No.238, School Education (SE 6(1)) Department, dated 13.11.2018, fixing norms with regard to appointment of non-teaching staffs. The appointments made by the petitioner School are in excess of staff strength fixed on 25.11.2019 for the year 2018-19. As per the staff fixation, the petitioner School is entitled to only two Junior Assistant/Record Clerk/Assistant and one Office Assistant and one Watchman. The present appointments are made in excess of staff strength fixed based on G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018. In view of the same, the impugned orders of the fourth respondent are valid and legal and prayed for dismissal of the Writ Petitions.

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

9.From the perusal of the materials available on record, it is seen that the petitioner School promoted one A.Sakayaraj, who was working as Gardener, to the post of Record Clerk. In the vacancy that arose to the place of A.Sakayaraj, the petitioner School appointed one S.Elayaraja as Gardener and sent proposal for approval



of both the posts. The fourth respondent did not approve the proposals sent by the petitioner School, but returned the same by the impugned order, dated 07.09.2019, relying on G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018. According to the learned Government Advocate, the staff strength fixed as per G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018 and appointments made by the petitioner School, are in excess of staff strength fixed by the respondents.

10.On the other hand, it is the case of the learned counsel for the petitioner that G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018, is stayed by this Court in a batch of Writ Petitions filed challenging the Government Order and the said interim order is still in force. The said contention is not denied by the respondents. Further, the petitioner School appointed A.Sakayaraj and S.Ilayaraja before fixation of staff strength on 25.11.2019 as per G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018. In any event, when G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018, is stayed in a batch of Writ Petitions, the respondents cannot rely on the said G.O, refusing to grant an approval for the appointment made by the petitioner and return the proposal. In view of the stay of the Government Order in G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018 and appointments are made before staff fixation in the sanctioned vacancy, the reason given by the fourth respondent in the impugned orders are erroneous and illegal.

11.For the above reasons, the impugned orders, dated 07.09.2019 passed by the fourth respondent are quashed. The petitioner School is directed to re-submit the proposals to the respondents for approval of A.Sakayaraj as Record Clerk and S.Ilayaraja as Gardener, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said proposals, the respondents are directed to pass orders approving the appointments subject to the result of the batch of Writ Petitions, challenging the validity of G.O.Ms.No.238, School Education (SE 6(1)), Department, dated 13.11.2018.

12.With the above directions, both the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/ /2021

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 Principal Secretary,
State of Tamil Nadu,
School Education Department,
St. Fort George,
Chennai-600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Thanjavur, Thanjavur District.
- 4.The District Educational Officer,
Kumbakonam,
Thanjavur District.

+1 CC to M/s.GP (SR-23715[F] dated 23/07/2021)

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22.07.2021

MGJ(03.08.2021) 5P 6C