



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2022

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. No.18279 of 2020

and

WMP Nos.26656 and 26657 of 2020

P.Saravanan

... Petitioner

Vs

1. Director of School Education,
DPI Campus, Chennai - 600 006.
2. Chief Educational Officer,
Thiruvannamalai District.
3. The District Educational Officer,
Arani, Thiruvannamalai.
4. The Secretary/Correspondent,
Subramanian Sastriar Higher Secondary School
(Aided), Arani.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Na.Ka.No.162/E2/2020 dated 19.03.2020 and the consequential order of the 3rd respondent dated 03.07.2020 in Na.Ka.No.3623/Aa2/2019 and quash the same and consequently direct the respondent to approve the appointment of the petitioner to the post of Nigh Watchman in the 4th respondent school with effect from 24.07.2019 with all attendant including service and monetary benefits to the petitioner.

For Petitioner : Ms.Dakshayani Reddy

For Respondent : Mr.V.Nanmaran
Additional Government Pleader



O R D E R

The case of the petitioner is that the 4th respondent school is a Government Aided non-minority school, which selected and appointed the petitioner as Night Watchman, with effect from 24.07.2019. According to him, before selection, the 4th respondent school has obtained a list of candidates from the Employment Exchange and also caused paper advertisement calling for candidates. Only after going through the regular selection process, the petitioner was selected and appointed. .

2. After the appointment of the petitioner, the school has forwarded the proposal for his approval to the respondent authorities. The fixation of staff strength for the 4th respondent school included a post of Night Watchman. However, according to the petitioner, the proposal was rejected by the respondents only on the ground that prior permission was not obtained in terms of Rule 15(4) of the Tamil Nadu Private Schools Regulation, 1974. Challenging the same, the petitioner is before this Court.

3. Ms.Dakshayani Reddy, learned counsel for the petitioner would submit that the rejection by the respondents on the stated grounds is misconceived and also contrary to the legal dictum laid down by this Court on several occasions. According to the learned counsel, that the provision that has been relied on by the respondent authorities is held to be not applicable to the appointment of non-teaching staff against sanctioned vacancy. This Court has repeatedly held so, but unfortunately, despite the directions of this Court consistently, over the years, the educational authorities regularly reject such application without any application of mind.

4. The learned counsel for the petitioner would draw the attention of this Court a Division Bench decision rendered in W.A.No.4011 of 2019 dated 11.02.2020 and relying upon paragraph No.6, wherein, on the basis of the earlier legal precedent, it has been held that Rule 15(4) of 1974 Rules does not specifically mandate requirement of prior permission in relation to the appointment of non-teaching staff in an Aided High or Higher Secondary School. The relevant observation and the ruling of the Division Bench of this Court as found in paragraph No.6 is extracted hereunder:

6. We have considered the submissions raised and we find that the provisions of Rule 15(4) of the 1974 Rules, does not specify the applicability of the Rule of prior permission in relation to the appointment of a non-teaching staff of an Aided High or Higher Secondary School. In the instant case, the issue is about the



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appointment of a Lab Assistant, which is admittedly a non-teaching post. We, therefore, find that in the absence of any such specific intention in the Rule, to apply the same for seeking a prior permission to appoint a non-teaching staff would be contrary to the ratio of the judgment in the case of R.Kuttiswamy (supra) as relied on by the respondent that is squarely applicable. We see no reason to differ from WA.No.4011 of 2019 the view taken therein in relation to appointments against non-teaching posts that have been made prior to the issuance of G.O.Ms.No.101 dated 18.05.2018. The judgment in the case of The Director of Elementary Education and others Vs. P.Manikandan and another (supra) was in relation to the appointment of a teacher and not a non-teaching staff. The ratio thereof is, therefore, distinguishable and not applicable in the present case. Accordingly, no prior permission was required in the present case for appointing the respondent/writ petitioner as a Lab Assistant.

5. The learned counsel would also refer to paragraph Nos.8 and 9 of a very recent decision of yet another Division Bench of this Court rendered in W.P.(MD) No.2192 of 2021 dated 15.12.2021, which read as follows:

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 nonteaching 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:



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" 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.

6. On behalf of the respondents, a counter affidavit has been filed. However, the learned counsel appearing for the respondents would have no quarrel with the above stated legal principles in respect of the subject matter of lis before this Court. In fact, in the counter affidavit, it has been perfunctorily repeated that no prior permission was obtained by the 4th respondent school from the second respondent while appointing the petitioner as Night Watchman. Apart from the above objection, there are other objections raised in the counter affidavit. In fact, the counter affidavit replicated the reasons set forth in the impugned orders of rejection of appointment.

7. This Court considered the objections of the respondents and also the submissions made on behalf of the petitioner.



8. As far as the issue of obtaining prior permission for appointment of non-teaching staff in a sanctioned post is concerned, it has been consistently held by the Courts that no such requirement could be insisted upon. The Rules that are relied upon by the respondents are not to be made applicable to the appointment of the non-teaching staff. In such circumstances, the rejection of the proposal of the petitioner's appointment as Night Watchman in the 4th respondent school cannot be sustained in law.

9. This Court finds that there are other objections raised in the impugned order as well as in the counter affidavit and in the event of the 4th respondent school satisfying the objections as raised like non-furnishing of a copy of the newspaper advertisement and non-furnishing of documents relating to obtaining list of eligible candidates from the Employment Exchange etc., the approval cannot be withheld for not obtaining prior permission by the 4th respondent school.

10. In the aforesaid circumstances, the respondent authorities are directed to grant approval subject to the school satisfying the questions raised by the authorities as to the procedure in which the selection was conducted and final appointment made. The 4th respondent school is also directed to submit copies of the documents that are required to be taken into consideration for grant of approval by the authorities.

11. On being satisfied with the other requirements as stated above, the authorities are directed to pass appropriate orders granting approval, if it is otherwise in order, in respect of appointment of the petitioner as Night Watchman and such order shall be passed within a period of six (6) weeks from the date of receipt of a copy of this order.

12. The Writ Petition stands allowed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Director of School Education,
DPI Campus, Chennai - 600 006.
2. The Chief Educational Officer,
Thiruvannamalai District.
3. The District Educational Officer,
Arani, Thiruvannamalai.
4. The Secretary/Correspondent,
Subramanian Sastriar Higher Secondary School
(Aided), Arani.

+1cc to M/s.Dakshayani Reddy, Advocate, S.R.No.2138

+1cc to the Government Pleader, S.R.No.2712

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NMI (CO)
SU(28/01/2022)