



W.P.(MD) Nos.4917 and 6942 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) Nos.4917 and 6942 of 2019
and W.M.P.(MD).Nos.3911, 3912, 5531, 5532 and 5533 of 2019

W.P.(MD).No.4917 of 2019

R.Rajesh Kanna

... Petitioner

Vs.

- 1.The Director of School Education,
College Road, Chennai – 600 009.**
- 2.The Chief Educational Officer,
Theni, Theni District.**
- 3.The District Educational Officer,
Uthamapalayam, Theni District.**
- 4.The Correspondent/Secretary,
Mohamed Fathima Girl's High School,
Uthamapalayam – 625 533,
Theni District.**

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 3rd respondent District Educational Officer in



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WEB COPY Aa.Thi.Mu.No.1290/Aa2/2011, dated 24.05.2011, Quash the same and further Direct the 2nd and the 3rd respondents herein to approve forthwith the appointment of petitioner as record Clerk in the 4th respondent school namely Mohamed Fathima Girls' High School, Uthamapalayam and Disburse the grant-in-aid towards salary with all attendant benefits w.e.f., the date of his appointment i.e., 12.05.2011.

For Petitioner : Mr.A.Amala

For Respondents : Mr.S.Shaji Bino for R1 to R3
Special Government Pleader

Mr.R.J.Karthick for R4

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Uthamapalayam – 625 533, Theni District.



WEB C 5.M.Syed Ali Fathima

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... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned order issued by the 4th respondent dated 27.02.2019, appointing the 5th respondent M.Syed Ali Fathima as Record Clerk w.e.f. 27.02.2019 and the subsequent proceedings of the 3rd respondent district Educational Officer in Na.Ka.No.884-A2-2019 dated 14.03.2019, rejecting approval of appointment of petitioner as Record Clerk w.e.f. 12.05.2011, quash the same.

For Petitioner : Mr.A.Amala

For Respondents : Mr.S.Shaji Bino for R1 to R3
Special Government Pleader

Mr.R.J.Karthick for R4

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents in both writ petitions.

2.The case of the petitioner is that he was appointed as a Record Clerk in a sanctioned vacancy in the fourth respondent's school, in the vacancy of the retirement of one Mr.C.R.Rathinam. On the same day, the Management



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had submitted the proposal for approval of the appointment to the District Educational Officer. The proposal came to be rejected on 24.05.2011 stating that since the school had not obtained prior permission for appointment, they were not entitled for approval. The order of rejection dated 24.05.2011 is under challenge in the writ petition in W.P.(MD).No.4917 of 2019. Thereafter, on 27.02.2019 the fifth respondent in W.P.(MD).No.6942 of 2019 was appointed to the sanctioned post of Record Clerk and the proposal for approval was sent on 20.06.2019. Through another order dated 14.03.2019, the District Educational Officer had informed the petitioner that since the fifth respondent herein had been appointed on 27.02.2019 and a proposal for approval for such an appointment was being sent to them, the petitioner's request in his representation was not feasible. This order dated 14.03.2019 is under challenge in W.P.(MD).No.6492 of 2019.

3.The learned counsel for the petitioner submitted that since the fourth respondent's school is a minority institution, prior permission for appointment to the post of Record Clerk is not required and therefore, the original rejection order, dated 24.05.2011, cannot be sustained. It is her further submission that



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the original appointment was made in a sanctioned vacancy and after the rejection order was passed on 24.05.2011, the petitioner had been making several representations to the Authorities seeking for approval of his appointment, which have not been considered.

4.The learned counsel for the fourth respondent's school placed reliance on the averments made in the counter affidavit and submitted that the petitioner's father had originally worked in the sanctioned post and after his retirement, the petitioner was appointed, which appointment was subject to the approval to be granted by the District Educational Officer. After the order of rejection, the petitioner's services were found to be unsatisfactory and therefore, he was brought under contract basis, which continues till date. This apart, the learned counsel further submitted that in view of the unsatisfactory performance of the petitioner, they had chosen to appoint the fifth respondent in the sanctioned vacancy and had accordingly, submitted the necessary proposals to the District Educational Officer for approval of such appointment.



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5.The learned Special Government Pleader placed reliance on the counter affidavit and submitted that since the fourth respondent's school had terminated the services of the petitioner and appointed the fifth respondent and had also sent the proposal for approval of such appointment, they were unable to consider the representations made by the petitioner herein. He further submitted that there was no re-submission of the proposals insofar as the petitioner is concerned after the rejection order was made.

6.I have given careful consideration to the submissions made by the respective counsels.

7.It is no doubt true that the fourth respondent, being a minority institution, does not require to take the prior permission of the Educational Authorities for filling up a sanctioned non teaching post. But, when the appointment of the petitioner was made on 12.05.2011, there was a rider to the appointment order stating that such an appointment would be subject to the approval to be granted by the authorities. It is needless to point out that when such a rider has been incorporated in the appointment order, the moment the



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rejection order is passed, the appointment is deemed to have been cancelled.

As such, the petitioner herein cannot claim any rights under the appointment order dated 12.05.2011.

8.After 24.05.2011 when the rejection order came to be passed, the school management claims that the petitioner herein has been brought on contract basis on a consolidated payment. This aspect has not been denied by the petitioner through a reply affidavit. When the petitioner also had kept silent for almost 8 years till 28.02.2019, when the first writ petition in W.P. (MD).No.4917 of 2019 was filed, apart from claiming that representations have been sent to the authorities seeking for approval of his appointment, there is no other explanation for this long gap about 8 years. The representations claimed to have been sent by the petitioner may not be in a proper explanation for the delay, since all these representations were a futile exercise in the absence of any proposal from the school Management pending with the Educational Authorities. It is needless to point out that the Educational Authorities may not be in a position to consider the representations, when no such proposals for approval are pending with them.



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WEB.COM In this background, I am of the view that both the writ petitions are hit by laches.

9.This apart, the management had chosen to appoint the fifth respondent on 27.02.2019 and had also submitted a proposal to the District Educational Officer on 26.02.2019, seeking for approval of her appointment. This aspect is not under dispute. Without a proposal, I am unable to appreciate as to how the petitioner can now claim that his candidature should be considered for approval in the absence of any proposal from the Management. In this background, I do not find any merits in the above writ petitions.

10.Accordingly, both the writ petitions stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.06.2022

Index : Yes / No
Speaking Order/ Non Speaking Order
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M.S.RAMESH,J.

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