



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.02.2022

PRONOUNCED ON: 24.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.4783 of 2018

and

W.M.P (MD)Nos.4792 and 4793 of 2018

I.Joselin ... Petitioner

vs.

1.The State of Tamilnadu,
represented by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

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

3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.

4.The District Educational Officer,
Thuckalay, Kanyakumari District.

5.The Corporate Manager,
CSI Corporate schools,
CSI Diocese of Kanyakumari,
No.71A, Dennis Street,
Nagercoil- 629 001.

6.The Correspondent,
L.M.S.Higher Secondary School,
Zionpuram, Monikettipottal post,
Kanyakumari District- 629 501.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 4th respondent District Educational Officer in O.Mu.No.5382/A2/2017, dated 15/11/2017, to quash the same and further direct the 4th respondent District Educational Officer to



approve forthwith the appointment of the petitioner as Junior Assistant in the 6th respondent school with effect from 09/10/2017 with all attendant benefits including arrears of salary and allowances.

For Petitioner : Mr.S.Xavier Rajini
For R1 to R4 : Mr.N.Ramesh Arumugam
Government Advocate (Civil side)
For R5 and R6 : No appearance

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings issued by the 4th respondent, District Educational Officer in O.Mu.No.5382/A2/2017, dated 15/11/2017 and further direct the 4th respondent to approve forthwith the appointment of the petitioner as Junior Assistant in the 6th respondent school with effect from 09.10.2017 with all attendant benefits including arrears of salary and allowances.

2.The brief facts of the case are that the petitioner was appointed as Junior Assistant by the 6th respondent School in the retirement vacancy of the then incumbent, namely A. Sundara Bai, who retired on 30.09.2011. The post was vacant from 01.10.2011 and the petitioner was appointed on 09.10.2017. The School submitted a proposal to the DEO on 19.10.2017, requesting to approve the appointment.

3.The contention of the petitioner is that in the staff fixation order for the academic year 2017-2018 the vacancy was shown and the petitioner was appointed in that vacancy. The DEO returned the proposal stating that prior permission was not obtained from the Director of School Education, vide proceedings, dated 15.11.2017. The 6th respondent resubmitted the proposal on 12.12.2017, stating that prior permission is not necessary to fill up the sanctioned vacancy. Aggrieved over the return of the proposal, the petitioner has preferred this Writ Petition.

4. The respondents have filed a counter affidavit stating that there was a ban in the year 2001, for recruiting any fresh non-teaching staff by G.O. Ms. No. 212 Personnel and Administrative Reforms Department dated 29.11.2001 and the Government has lifted the ban, vide G.O.Ms.No.14 Personnel and Administrative Reforms Department dated 07.02.2006. Thereafter, the Government issued 2 G.O.s, namely, G.O.Ms.No.115, School Education (D2) Department, dated 13.05.2007 and G.O.Ms.No.189, School Education (D2) Department, dated 29.07.2009. Therefore, the petitioner is not entitled to the approval of the appointment.



5. Heard Mr. S. Xavier Rajini, learned Counsel appearing for the petitioner and Mr. N. Ramesh Arumugam, learned Government Advocate (Civil side) appearing for respondents 1 to 4.

6. The Government allows "grant-in-aid" to the non-teaching staffs as per G.O. Ms. 583 Education Department and Public Health Department dated 23.04.1966. In the said G.O. the non-teaching staffs was granted as under:

Categories of Non Teaching Staff	Number Strength			
	Below 250	More than 250 but below 1000	More than 1000 but below 1500	More than 1500
Clerks	Nil	Nil	2	3
Librarian or Clerks for Library	Nil	1	Nil	Nil
Attenders for Office	1	1	1	1
Peons	1	1	2	3
Watchman	1	1	1	1
Waterman	-	-	-	-
Gardener Cum Sweeper	-	-	-	-
Gardener	-	-	-	-
Sweeper	1 part time	1 part time	1 part time	1
Scavengers	1 part time	1 part time	1 part time	1

7. The Government has issued another G.O. Ms. No. 245 Education Department dated 21.02.1970 modifying the date of implementing the G.O. Ms. No. 583. In the above said two G.O.'s it has been clearly stated that the educational institutions are not eligible for post of **Waterman, Gardener cum Sweeper and Gardener**. Therefore, if any proposal is submitted for the aforesaid three posts, then the approval cannot be granted. The G.O. has not



sanctioned any Lab Assistant post at all. As far as Sweeper and Scavengers are concerned the G.O. has sanctioned only part time post based on student strength. If the student strength is below 1500 and one post of full time Sweeper and Scavenger if the student strength is above 1500. As far as the post of Clerks, Librarian, Attenders for Office, Peons are concerned the G.O. prescribes based on the student strength.

8. Thereafter the government has framed Rules under the Tamil Nadu Private Schools (Regulation) Act, 1974. The government has power to restrict the grant-in-aid after considering the overall financial considerations under Rule 15 of the Tamil Nadu Private Schools (Regulation) Rules 1974 wherein it has been stated that the number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by Director of School Education from time to time with reference to the academic requirements, teacher-pupil ratio and **overall financial considerations.**

9. In the meanwhile the general ban for recruitment came into effect vide G.O. Ms. No. 212 Personnel and Administrative Reforms Department dated 29.11.2001. The ban is applicable to non-teaching staffs and the schools ought not to have been appointed during this period.

10. The G.O. Ms. No. 49 Personnel and Administrative Reforms Department dated 14.05.2002 was issued wherein it has been directed to outsource the "D" Category Posts, such as Sweeper, Scavenger, Cleaner, Gardener, Office Assistants, etc., have to be outsourced and entrusted on contract basis.

11. The general ban was lifted vide G.O. Ms. No. 14 Personnel and Administrative Reforms Department dated 07.02.2006.

12. In spite of ban, when proposals were received from the Aided Private Schools to approve appointments of non-teaching staff made during the ban period, the authorities concerned sought clarification from the Director of School Education. The Director of School Education had issued a circular vide Letter No. 11462 / d2 / 06-1 dated 25.05.2006 wherein it is clarified that the government would issue a revised norm in fixing the non-teaching posts in aided schools and till the revised norms are issued **there is no need to lift the ban imposed for filling up of the non-teaching posts.** Therefore, the ban was not lifted as far as the appointment of non-teaching staffs are concerned.



13. Then the G.O. Ms. No. 91 Personnel and Administrative Reforms Department dated 06.07.2006 was issued wherein it has been stated that the estimated vacancies should be placed before Staff Committee.

14. Then G.O. Ms. No. 37 School Education (R2) Department dated 08.02.2007 was issued granting permission to fill up the various categories of non-teaching staff to the extent stated in the said G.O. beyond that, ban continued in respect of all other categories. The G.O. states that certain posts shall be filled up through outsourcing only. The G.O. has stated that the rest of the posts would be considered after reviewing the issue.

15. Then G.O. Ms. No. 115 School Education (D2) Department dated 30.05.2007 and G.O. Ms. No. 203 School Education dated 23.07.2010 and Government Letter No. 8884 / D1 / 2011-2 dated 09.07.2012 was issued to fill up the post stated thereunder and rest of the post ought to be out sourced. A batch of writ petitions were filed in W.P. (MD) No. 11481 / 2008 batch in Deva Asir case reported in 2016-3-L.W.152, wherein this Honourable Court has quashed the G.O. 115 School Education dated 30.05.2007 and G.O. 203 School Education dated 23.07.2010 and Government Letter No. 8884 / D1 / 2011-2 dated 09.07.2012. It is seen that except these two G.O.s, the other G.O.s stated above are not set aside.

16. Then the government had issued G.O. Ms. No. 189 School Education (D1) Department dated 29.07.2009, thereby granted permission to fill the post of 147 Junior Assistant post and 237 Office Assistant posts alone, since in these schools only one such sanctioned post is available. Thereafter vide Government Letter Ms. No. 275 School Education (D1) Department / 09 dated 26.10.2009 the government had clarified that as on 01.06.2009 the posts of 147 Junior Assistants and 237 Office Assistants are there and the 147 Junior Assistant posts and 237 Office Assistant posts alone were permitted to be filled up.

17. Then G.O. Ms. No. 64 School Education Pa.6 (1) Department dated 03.04.2018 was issued wherein it has been stated that the approval shall be granted to the persons appointed in the sanctioned posts as stated in the order of Deva Asir's case. The G.O. also states that the concerned authority shall determine the surplus post based on student strength and intimate the institution that the post would get cancelled automatically after the incumbent's retirement or otherwise. The G.O. also states that



the posts like Librarian, Library Assistant, Waterman and Gardener shall lapse and return back to the Government once the incumbent retires or otherwise.

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18. Then G.O. Ms. No. 238 School Education (Pa. Ka. 6 (1)) Department dated 13.11.2018 has issued, wherein the staff fixation of non-teaching staff is fixed as under:

Categories of Non-Teaching Staff	Students Strength			
	Until 250	From 251 to 1000	More than 1001	Remarks
Junior Assistant or Assistant or Record Clerk	Nil	1	2	Maximum 2
Office Assistant	1		2	Maximum 2
Watchman	1			Maximum 1

The salient features of the G.O. 238 are that,

- Whatever be the nomenclature, the G.O. considers the Junior Assistant or Assistant or Record Clerk posts as one post.
- The G.O. also states that if the above stated posts is already sanctioned to the school prior to 1991-1992, then alone the school is eligible to the said post.
- The Lab Assistant post if sanctioned prior to 1991-1992 then the school is eligible and not otherwise.



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- The student strength ought to be calculated from the class and sections which was granted grant-in-aid prior to 1991-1992.
- If there is surplus then the concerned authority shall deploy the said surplus post to the needy school within the Revenue District and submit the surplus list to the Director to be deployed to other Districts.
- If any post is surplus without person then the post shall be surrendered to the Director's Common Pool.
- The Chief Educational Officer ought to ascertain that there is no surplus before granting any permission / approval to fill the post.
- The posts not stated in the tabulation shall be filled up through outsourcing as stated in the G.O. Ms. No. 77 School Education (Pa.Ka.1) Department dated 13.04.2015, G.O. Ms. No. 166 Municipal Administration and Water Supply Department dated 23.11.2016 and G.O. Ms. No. 79 Rural Development and Panchayat Raj Department dated 14.07.2017.
- If any person is working in any post, other than the posts stated in the above tabulation, the post would lapse on the person retirement or otherwise. The school shall not appoint or transfer or promote in the said lapsed post.
- If the posts stated in the above tabulation fell vacant, then the said post ought to be filled up with the surplus staff alone.

19.The comprehensive reading of all these above said Government Orders are that

- ❖ The school is not eligible to fill the post of Waterman, Gardener cum Sweeper and Gardener at all as per G.O. 583 from 1966 onwards.



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- ❖ The school is eligible to appoint the Lab Assistant if the post is sanctioned post prior to the academic year 1991-1992
- ❖ The posts other than the posts of Junior Assistant or Assistant or Record Clerk, Office Assistant and Watchman would lapse, if the incumbent retires or otherwise. Then the school is not eligible to fill the lapsed post at all.
- ❖ The posts of Junior Assistant or Assistant or Record Clerk, Office Assistant and Watchman shall be granted as per the student strength stated in the said G.O. 238 and the maximum limit as stated in the said G.O. 238
- ❖ Any appointments prior to G.O. Ms. No. 64 shall be approved as per the said G.O. 64, but the surplus staff ought to be deployed to the needy place within the Revenue District and then the surplus staff shall be submitted to Director for further deployment to other Districts.
- ❖ The G.O. 64 was issued on 03.04.2018 and the G.O. 238 was issued on 13.11.2018 and in between the said G.O. any appointments are made, the same shall be approved. But the approval shall not be granted for the posts of Waterman, Gardener cum Sweeper and Gardener since the said posts was not granted even in G.O. 583 from 1966 onwards.
- ❖ Except the posts of Junior Assistant or Assistant or Record Clerk, Office Assistant and Watchman, all other posts shall be filled up through out-sourcing and there is not grant-in-aid for the said posts

20. Based on the above Government Orders the present case ought to be considered. The petitioner was appointed on 09.10.2017 and the G.O. Ms. No. 64 is applicable. The school comes under the Corporate Management of Church of South India Diocese of Kanyakumari (CSI). Whether the school has any surplus non-teaching staff or whether the Corporate Management has any surplus non-



teaching staff is not placed before this Court. According to the petitioner in the staff fixation order for the academic year 2017-2018, the post was not shown as surplus.

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21. Therefore this Court is of the considered opinion that the respondents ought to ascertain whether there is surplus non-teaching staff for the academic year 2017-2018 in the Corporate Management of the Church of South India Diocese of Kanyakumari (CSI). If surplus was there then the petitioner is not eligible for the approval and if surplus is not there then the petitioner is eligible for the approval. The respondents are directed to ascertain the surplus status of the entire corporate management as stated supra, thereafter consider and pass orders. The respondents are directed to complete the said exercise within a period of four weeks from the date of receipt of the copy of the order.

22. Therefore, the Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.S.III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Secretary to Government,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.



3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.

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4.The District Educational Officer,
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Zionpuram, Monikettipottal post,
Kanyakumari District- 629 501.

+1cc to Mr.S.XAVIER RAJINI, Advocate Sr.No.8428

+1cc to Special Government Pleader, Sr.No.8672

W.P. (MD) No.4783 of 2018

Date:24.02.2022

SA(05.03.2022) 10P 9C