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W.P.(MD)No.21959 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.13145 of 2017
and
W.M.P.(MD)No.10214 of 2017

S.R.M. Higher Secondary School,
Nattarasankottai, Sivagangai District.
Represented by its Secretary,
S.R.M.Chidambaram

... Petitioner

vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Department of School Education,
Fort Saint George, Chennai – 9.
2. The Director of School Education (Secondary),
College Road, Chennai – 6.
3. The Chief Educational Officer,
Sivagangai, Sivagangai District.
4. The District Educational Officer,
Sivagangai, Sivagangai District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of ***Certiorarified Mandamus***, calling for the records relating to the impugned proceedings of 4th respondent in Muu.Mu.No.1224/A.2/2017, dated 08.05.2017, and quash the same and consequently direct the respondents to approve the appointment of P.Ilayaraja as Night Watchman in the petitioner's school from the date of appointment i.e., 04.01.2017 with all monetary and consequential benefits within the time frame fixed by this Court.

For Petitioner : Mr.S.Manikandan

For Respondents : M/s.V.Om Prakash,
Government Advocate (Civil Side)

ORDER

This Writ Petition has been filed to quash the impugned proceedings, dated 08.05.2017, in Muu.Mu.No.1224/A.2/2017 passed by the 4th respondent and for consequential direction to the respondents to approve the appointment of P.Ilayaraja as Night Watchman in the petitioner's school from the date of appointment i.e., 04.01.2017 with all monetary and consequential benefits within the time frame fixed by this Court.



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2. The brief facts as stated in the affidavit are that the petitioner's school is a Recognized Private Government Aided Girls Higher Secondary School. The school has been sanctioned with non-teaching staffs, including the post of Night Watchman. On account of retirement of incumbent Mr. Kannappan, the Night Watchman post fell vacant on 01.07.1999 and the petitioner's school selected one P.Ilayaraja and appointed to the said post from 04.01.2017. Thereafter, the school management has forwarded the proposal for approval of appointment and the same was rejected, vide impugned proceedings, dated 08.05.2017, on the ground that the Government order or the proceedings of the Director of School Education to fill up the said post was not enclosed. Further, it has been stated that the prior permission of the Chief Educational Officer and the Government Order for sanctioning the post are not enclosed.

3. The contention of the petitioner's school is that the impugned rejection order passed by the 4th respondent is against the Tamil Nadu Recognized Private Schools Regulations Act and Rules. Since there is no provision to get



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prior permission from any authority to fill up the non-teaching post the impugned order passed by the 4th respondent is illegal and the same is liable to be quashed.

4. The respondents have submitted that the Government, vide letter No.8884/D1/2011-2012, dated 09.07.2012 has issued a clarification stating that in the aided schools for filling up of the non-teaching staffs, the Government has contemplated a formula and will issue guidelines. In order to issue new guidelines, the Government had constituted a committee. Therefore, until a final decision is taken, the vacant non-teaching post shall not to be filled up and the same would be considered after the committee's report. Therefore, granting permission to fill up the post and approval to the said post was declined. Subsequently, the Government has issued G.O.No.64 School Education [பக 6(1)] Department, dated 03.04.2018, wherein certain guidelines have been issued in paragraph No.4 and the same is extracted hereunder:

.....

4(ii). மாண்புமிகு சென்னை உயர்நீதிமன்றம், வழக்கு நீதிப்பேராணை மனு (எம் டி) எண்.11481-2008 மற்றும் பிற தொகுப்பு வழக்கு சார்ந்து 15.03.2016-ம் நாளிட்ட தீர்ப்பில் தெரிவித்துள்ளவாறு, அரசு



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நிதியுதவி பெறும் பள்ளிகளில் அனுமதியளிக்கப்பட்ட ஆசிரியரல்லா பணியிடங்களில் (sanctioned posts) நியமனம் செய்யப்பட்டவர்களின் நியமனங்களுக்கு ஒப்புதல் அளிக்க உரிய அலுவலருக்கு அறிவுறுத்தி அரசு ஆணையிடுகிறது.”

In the meanwhile, the respondents have considered the case of the petitioner and granted approval vide, order, dated 07.05.2018. Therefore, the respondents have prayed to consider the case as per Rules and Regulations and pass an order.

5. Heard Mr.S.Manikandan, learned counsel appearing for the petitioner and M/s.V.Om Prakash, learned Government Advocate (Civil Side) appearing for the respondents. Perused the material documents available on record.

6. The Petitioner's School has appointed one P.Ilayaraja as Night Watchman in the retirement vacancy, on 04.01.2017. The issue of sanctioning/ granting non-teaching staff was considered by the Government, as early as, in the year 1966 under the G.O.No.583, Education Department and Public Health



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Department, dated 23.4.1966. Generally, all non-teaching staffs will be granted based on the students' strength. As far as the G.O.No.583 is concerned, only one post of Junior Assistant was granted irrespective of the students' strength. The relevant portion of the G.O. is extracted hereunder:

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

Thereafter, there was a general ban for recruitment of any government servant including recruitment of non-teaching staffs to the private aided schools for a period from 2001 to 2006.



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7. From 2006 onwards, the Government has issued several G.Os. restricting the appointment of non-teaching staffs in the aided schools since the Government was contemplating to issue new guidelines. One such Government order was issued G.O.No.115 dated 30.05.2007 along with certain Government letters. The said G.O. was challenged before this Court in Deva Asir case reported in **2016-3-L.W.152**, wherein the said G.O. and government letter were quashed.

8. Subsequently, the Government has issued G.O.Ms.No.64, dated 03.04.2018, whereby, the Government has approved the appointment of certain category of non-teaching staffs. However, the said approval was granted from the date of issuance of the G.O.Ms.No.64, dated 03.04.2018.

9. Thereafter the Government had issued G.O.No.238, wherein the post of “Junior Assistant, Assistant and Record Clerk”, are considered as one and the same post. In the said G.O., it is stated if the students’ strength is less than 250 the school is not entitled to the said post. If the school is having strength from 250 to 1000 then the school is eligible for one post. If the school is having



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strength from 1000 and above the school is entitled to two. The G.O. also states maximum of two of “Junior Assistant, Assistant and Record Clerk” alone shall be sanctioned. In other words, the Government has restricted the “Junior Assistant, Assistant and Record Clerk” post to two only. The relevant portion of the government order is extracted hereunder:

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

10. The Government has categorically stated in a Government letter that appointing of non-teaching staff in the posts of Junior Assistant and Office Assistant, which are vacant after 2006 cannot be considered. In the present case, the petitioner's school has appointed one Night Watchman from 04.01.2017.



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As per G.O.Ms.No.64 the petitioner's school is eligible from the date of issuance of G.O.Ms.No.64 i.e. from 03.04.2018. Grant-in-aid is not a fundamental right and the government have power to deny the same as held in the case of ***G.Sahaevan Nair vs. Government of Tamil Nadu, rep. by its Secretary [(2008) 4 MLJ 289]***, this Court has held follows:-

"15. In view of several decisions of the Supreme Court, there can be no longer any doubt that even though there is a fundamental right to establish a minority institution by a religious or linguistic minority, such minority institution cannot claim grant in aid either as a fundamental right or even as a statutory right, in the absence of any specific provision to that extent. However, under Article 30(2) of the Constitution, it has the protection of not being discriminated against. If there is no provision for grant in aid to any institution, obviously there cannot be any discrimination because the minority institutions and the non-minority institutions are treated alike. It is in the above context, the validity of Section 14-A of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 incorporated by way of amending Act 11 of 1999 has been upheld by the Division Bench [(2006) 5 CTC 193]. However, in the present case, we are



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not called upon to determine the rights of the parties on that footing. In the present case, the questions are confined to the institutions which had been in existence before the cut-off date. Some of the institutions were receiving aid and the question relating to those institutions is regarding their right to claim aid in respect of additional posts. In respect of other institutions, the question is whether they were entitled to claim grant-in-aid. If any minority institution was entitled to receive such aid, but was denied such aid on account of any erroneous order, such order is obviously to be corrected and such institution established before the cut-off date can have the continued right of receiving such aid and the amended provision contained in Section 14-A cannot be put against such right merely on account of the fact that such institution had not received aid before the cut-off date."

In the case of ***State of Odisha and another vs. Anup Kumar Senapati and another [Civil Appeal No.7295 of 2019]***, in paragraph No.8, the Hon'ble Supreme Court had held that that grant-in-aid cannot be claimed as a matter of right merely on completion of the prescribed period and it is dependent upon fulfilment of various conditions. Following the aforesaid judgments the Madras High Court has held writ of Mandamus will not lie against the provisions



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of the Act, moreover the grant-in-aid is not a fundamental right in *the State of Tamil Nadu and others Vs. the Correspondent St. Joseph's Middle School* vide order dated 25.03.2021 in REV.APLC(MD)No.180 of 2018. Therefore, following the judgments stated supra this Court is of the considered opinion the Government has every right to stipulate conditions for granting grant-in-aid. In the present case the government in order to formulate guidelines had directed not to fill up the vacancies until 03.04.2018. However after issuance of G.O.Ms. No.64, the government granted permission to appoint from the date of issuance of the said G.O. Hence the appointment made in the school from 10.04.2017 cannot be approved, but the appointment shall be approved from 03.04.2018 onwards by invoking G.O.Ms.No.64. Therefore the respondents are directed to grant approval from 03.04.2018 and grant all consequential benefits thereafter.

II. Accordingly, this Writ Petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

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To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Department of School Education,
Fort Saint George, Chennai – 9.
2. The Director of School Education (Secondary),
College Road, Chennai – 6.
3. The Chief Educational Officer,
Sivagangai, Sivagangai District.
4. The District Educational Officer,
Sivagangai, Sivagangai District.



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S.SRIMATHY, J

ksa

Order made in
W.P.(MD)No.13145 of 2017

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