



W.P.No.6334 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.6334 of 2022
and W.M.P.Nos.6434 & 6436 of 2022

JP Allwin Nicholas Jesudoss

... Petitioner

Vs.

1.The District Educational Officer,
Thiruvannamalai.

2.The Chief Educational Officer,
Thiruvannamalai.

3.The Secretary,
Arcot Lutheran Church,
ALC Central Office,
No.9, ALC Campus,
Cuddalore – 697 001.

4.The Correspondent,
Danish Mission Higher Secondary School,
Thiruvannamalai.

5.Mrs.W. Beulah

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent vide Na.Ka.No.9314/A2/2019 dated 9.9.2021 and quash the same and consequently direct the 1st and 2nd respondents herein to approve the appointment of the petitioner, in terms of the 3rd respondent's letter vide S/455/2016-19 dated 20.11.2017.

For Petitioner	: Mr.Bhagavath Krishnnan
For R1 & R2	: Mr.V. Manoharan, Additional Government Pleader
For R3	: M/s.Aishwarya & Nathan
For R4	: No appearance
For R5	: Mr.S. Nedunchezhiyan

ORDER

Heard the learned counsel for the petitioner, learned Additional Government Pleader for the respondents 1 & 2, learned counsel for 3rd respondent, as well as learned counsel for 5th respondent. There is no representation on behalf of 4th respondent.



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2. The fourth respondent herein is a Minority Educational Institution, in which, as per the staff fixation done in the year 2017-2018, 3 posts of Office Assistant were sanctioned for the School. When one of the Office Assistant namely Solomon had retired, the vacancy was filled up by the appointment of the fifth respondent herein. When the approval for such an appointment was not granted to the fifth respondent, she had approached this Court and by an order dated 15.12.2021 passed in WP.No.3324 of 2020, the authorities were directed to grant approval to the fifth respondent. In the said order, the learned Single Judge had rejected the contention of the Government that in G.O.Ms.No.238, School Education Department dated 13.11.2018, the Government had reduced the sanctioned posts of Office Assistant from 3 to 2 and held that the said Government Order will only have a prospective effect and that the fifth respondent was appointed on 01.09.2018, which is prior to G.O.Ms.No.238 dated 13.11.2018. The aforesaid order reads as follows:-

..... “9. From the above extracted judgments, it is clear that the proposal which was mooted and initiated prior to issuance of the said G.O.Ms.No.238, dated 13.11.2019, (School Education Department), cannot be covered under the said G.O. and this Court



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allowed similar claims either at the instance of the employee concerned or by the School which sought approval for the appointments in the sanctioned vacancies.

10. As the present batch of the Writ Petitions, is covered by the above orders passed in Writ Petitions/Writ Appeals and factually established that the appointments in question had taken place much prior to issuance of G.O.Ms.No.238, dated 13.11.2019 (School Education Department), the non-grant of approval by relying upon the said G.O., cannot be countenanced both in law and on facts.

11. Further, if the impugned rejection order is passed on the basis of the said G.O.Ms.No.238, the respective impugned rejection orders passed by the educational authorities, are hereby set aside and the concerned educational authorities are directed to consider the proposal seeking approval to the respective appointments without reference to the said G.O.Ms.No.238, if such appointments were otherwise in order.



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12. The educational authorities are directed to pass appropriate orders in respect of each of the proposals pending consideration, within a period of four weeks from the date of receipt of a copy of this order, or on production of a web-copy of this order, whichever is earlier. On approval of the appointments, it is hereby clarified that, the staff concerned will be entitled to all consequential and attendant benefits, including the arrears of salary and allowances, as admissible.....”

(Emphasis supplied)

3. The aforesaid extract is self explanatory. In the present case, the petitioner herein was appointed to the post of Office Assistant on 20.11.2017 in the vacancy that arose owing to the retirement of one Kanagaraj. The School's proposals to approve the appointment of the petitioner herein have been rejected stating that in view of the orders passed by this Court, the fifth respondent's appointment have already been approved and therefore, the appointment of the petitioner cannot be considered.



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4. The fact that 3 posts of Office Assistant were sanctioned to the fourth respondent/School for the year 2017-2018 and the petitioner having been appointed in a sanctioned vacancy on 20.11.2017, is not in dispute. The only objection that seems to be raised by the first and second respondents is that there are only 2 sanctioned vacancies in view of G.O.Ms.No.238 dated 13.11.2018 and since the fifth respondent has already been appointed in one of vacancies pursuant to the orders of this Court, the approval of the petitioner's appointment cannot be considered.

5. When similar objection was raised that when the fifth respondent herein had sought for a direction for approval of her appointment, this Court had held that G.O.Ms.No.238 dated 13.11.2018, will only have a prospective effect and therefore, the appointment of the fifth respondent in 1 vacancy among 3 sanctioned posts prior to G.O.Ms.No.238, is legally sustainable. The same analogy will also apply to the petitioner herein, who was appointed on 20.11.2017, which is prior to G.O.Ms.No.238 dated 13.11.2018.

6. This apart, merely because the fifth respondent herein was



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appointed through orders of this Court, it does not mean that all the incumbents of the sanctioned vacancy have to approach the Court to obtain orders for the purpose of directing the authorities to grant approval. When it is well established that there was a sanctioned post in the year 2017 when the petitioner was appointed, there cannot be any impediment on the part of the first and second respondents in filling up the post and the rejection of the sanctioned post through G.O.Ms.No.238 dated 13.11.2018, will have no bearing on his appointment. Thus, the reasoning adopted by the first respondent in the impugned order, cannot be sustained.

7. At this juncture, the learned counsel for the petitioner submitted that even assuming the sanctioned posts as 2, apart from the fifth respondent herein, one Raja, who was also an approved appointee to the post of Office Assistant, had expired on 22.04.2023. If that be so, the petitioner would be entitled for orders of approval in view of the fact that one post of Office Assistant is now vacant on the death of the said Raja.

8. In the result, the Writ Petition stands allowed and the impugned



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order dated 09.09.2021 passed in Na.Ka.No.9314/A2/2019 by the first respondent is quashed. Consequently, there shall be a direction to the first and second respondents, to pass appropriate orders, approving the appointment of the petitioner with effect from 20.11.2017 and thereby, disburse all the salaries payable to the petitioner. Such order shall be passed, at least within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

22.11.2023

Speaking/Non-speaking Order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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M.S.RAMESH,J.

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