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W.P.No.6309 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.6309 of 2020
and W.M.P.Nos.7436 & 7438 of 2020

R.Mary Isabel

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George,
Chennai – 9.
- 2.The Director of School Education,
DPI Campus,
College Road,
Chennai – 600 006.
- 3.The Chief Educational Officer,
The Office of the Chief Educational Officer,
Coimbatore,
Coimbatore District – 641 001.
- 4.The District Educational Officer,
The Office of the Chief Educational Officer,
Coimbatore,
Coimbatore District – 641 001.
- 5.The Correspondent,
St.Mary's Higher Secondary School,



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1591, Trichy Road,
Coimbatore – 641 018.

... Respondents

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Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order G.O.Ms.No.238 dated 13.11.2018, School Education [Pa.6(1)] Department, on the file of the first respondent and the impugned rejection of approval dated 07.03.2019 in Na.Ka.No.1082/A2/2019, on the file of the fourth respondent and quash the same, in respect of the petitioner, directing the respondents to accord approval to the appointment of the petitioner, R.Mary Isabel, working as Record Clerk in 5th respondent school in St.Mary's Higher Secondary School, 1591, Trichy Road, Coimbatore – 641 018, w.e.f. 20.04.2018, on the file of the fourth respondent, with all service and monetary benefits.

For Petitioner : Mr.Father Xavier Arulraj,
Senior Counsel
for Father Xavier Associates

For Respondents 1 to 4 : Mr.S.Silambannan
Additional Advocate General,
Assisted by,
Mr.S.Shahjahan,
Special Government Pleader

For Respondent 5 : No Appearance

ORDER

The relief sought by the petitioner in this writ petition is to call for



the records pertaining to the impugned order G.O.Ms.No.238 dated 13.11.2018, School Education [Pa.6(1)] Department, on the file of the first respondent and the impugned rejection of approval dated 07.03.2019 in Na.Ka.No.1082/A2/2019, on the file of the fourth respondent and quash the same, in respect of the petitioner, directing the respondents to accord approval to the appointment of the petitioner, R.Mary Isabel, working as Record Clerk in 5th respondent school in St.Mary's Higher Secondary School, 1591, Trichy Road, Coimbatore – 641 018, w.e.f. 20.04.2018, on the file of the fourth respondent, with all service and monetary benefits.

2. The case of the petitioner is that the petitioner is working in the fifth respondent school, which was established in the year 1947 and administered by the Catholic Religious Congregation of Franciscan Missionaries of Mary. The petitioner was appointed as Record Clerk in the fifth respondent school with effect from 20.04.2018, the vacancy arising out of the promotion of one Mrs.A.Margaret Sagaya Mary on 09.11.2014. The fifth respondent initially forwarded the proposal for approval on 11.06.2018 to the fourth respondent and the same was returned stating that the management has to act as per G.O.Ms.No.101, School Education (Budget-1) Department, dated



18.05.2018. Thereafter, the fifth respondent again resubmitted the proposal on 10.07.2018 before the third respondent with relevant documents, however, the same was returned with a direction to resubmit the same through fourth respondent along with the documents of School Recognition order and Communal Reservation Record. The fifth respondent again resubmitted the proposal for approval addressing the third respondent through fourth respondent on 31.08.2018 with all the documents except the Communal Reservation Record, as it is not applicable to minority institutions. The fourth respondent returned the proposal on 28.12.2018 stating that the fifth respondent failed to attach the Communal Reservation Record.

2.1. Again, the fifth respondent resubmitted the proposal with all documents including the Communal Reservation Record on 19.01.2019. The fourth respondent by its proceedings dated 07.03.2019 in Na.Ka.No.1082/A2/2019, returned the proposal for approval stating that the proposal can be sent only by filing the vacant post from the surplus posts reflected in the staff-fixation of the year 2018-2019, which was fixed based on G.O.Ms.No.238, School Education (Pa.Ku6(1) Department, dated 13.11.2018. Aggrieved over the same, the petitioner has come forward with



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the present writ petition.

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3. Learned senior counsel for the petitioner submitted that the petitioner was informed that the first respondent had issued G.O.Ms.No.238 dated 13.11.2018, School Education [Pa.Ku.6(1)] Department. By the said order, they seek to restrict the number of Junior Assistants and Record Clerks to a maximum of two persons. For the purpose of restricting the same, they have clubbed both the posts into one cadre and they have done the same with the object of reducing the expenditure to the Government. With a view to reduce the number of non-teaching staff and to reduce the expenditure, they have artificially clubbed the cadres by mixing the posts, which is highly illegal. The cadres are fixed in Annexure-V(III) in respect of the Non-Teaching Staff in the private schools, u/s.19 r/w R.15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

4. Learned senior counsel for the petitioner further submitted that the petitioner has been appointed as early as on 20.04.2018 and therefore,



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G.O.Ms.No.238, dated 13.11.2018 may not be applicable to the petitioner.

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5. Counter affidavit dated 13.10.2020 has been filed by the respondents and the learned Additional Advocate General appearing for the respondents 1 to 4 submitted that the fourth respondent school is a religious minority school, which is established and administered by the Catholic Religious Congregation of Franciscan Missionaries of Mary. The school is having a permanent recognition from VI to X and temporary recognition for the classes of XI and XII. The school is getting 100% Aid from Tamil Nadu Government. The fourth respondent is the competent authority for sanctioning grant – in – aid and the third respondent is the competent authority for approving the appointments made in this school as per G.O.Ms.No.101, School Education Department dated 18.05.2018.

6. Learned Additional Advocate General appearing for the respondents further submitted that In the meantime the Tamil Nadu Government has

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issued revised norms for the fixation of Non teaching staff strength in Aided High and Higher Secondary school in G.O.Ms.No.238, School Education Department dated 13.11.2018. In Para 3(x) of the above Government order was stated below:

“As per the fixation of Aided Schools, if any vacancy need to be filled up, the particulars of surplus staff working in other school should be collected and then the needy vacant post should be filled out of the surplus staffs. No new appointment should be made”.

Based on the above instruction, the proposal was returned to the fifth respondent by the impugned order.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The case of the petitioner is not in dispute. The petitioner was appointed as Record Clerk in the fifth respondent school with effect from 20.04.2018. Immediately, after the appointment, the proposal was sent to the third respondent through fourth respondent on 19.01.2019 furnishing all the



relevant particulars and documents of the petitioner. The same was returned by the fourth respondent on 07.03.2019 on the ground that as per G.O.Ms.No.238, School Education Department, dated 13.11.2018, the vacancies in the posts of non-teaching staff are to be filled up only from the surplus staff working in other aided schools. The same is questioned in the writ petition.

9. The said question is no longer *res integra*, as the same has been decided by the Division of this Court in ***W.A.No.42 of 2021*** dated ***03.08.2021*** in the case of ***The Director of School Education and others Vs., DBTR National Higher Secondary School***. In order to substantiate the aforesaid question, it is pertinent to extract the relevant paragraphs of the said judgment:

“7. Next comes the question of G.O.Ms.No.238, dated 13.11.2018. The said Government Order is also of no avail to the appellants, as the appointments were made by the School as early as on 28.09.2018 and all the non-teaching staff had joined duty on 01.10.2018, much prior to the issuance of the above said Government Order. The above said Government Order relates to non-teaching staff and how the vacancies have to be filled etc. Clause (ix) of the said Government Order states



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that”.... if the staff is appointed and is in service those staff by way of retirement, promotion, death and in such reasons when the vacancy arises, those posts will cease by itself. Those posts should not be filled by appointment, transfer or promotion.” This was issued keeping in view the fixation of non-teaching posts and usage of the Government provided human resources, taking into account the reduction in expenses to be incurred by the Government. The above said regularization of the strength of the non-teaching staff in Government Aided Schools came into effect only from the date of issuance of G.O., i.e., from 13.11.2018.

10. For the foregoing reasons, the Writ Appeal filed by the appellants fail and the same deserves to be dismissed and accordingly, dismissed. The appellants are directed to grant approval of the appointment of the non-teaching staff, in terms of the proposal submitted by the writ petitioner School, after satisfying the other requirements mandated in the relevant enactments and disburse the grant-in-aid to the writ petitioner School with effect from the date of the appointment. The above said exercise has to be completed and orders be passed within a period of four weeks from the date of receipt of a copy of this order. However, there will be no orders as to costs.”

10. Further, the judgment of this Court in the case of ***The Director of School Education, DPI Campus, College Road, Chennai and others Vs., St.Gabriel's Higher Secondary School, Chennai***, wherein, the judgment of



the First Bench in **Director of School Education and others Vs.,**

S.Murugan and another has been referred to and the relevant paragraphs are extracted as under:

“6. What is of importance is whether an aided School is required to obtain prior permission from any authority to undertake the process of appointment upon a vacancy arising in a sanctioned non-teaching post. The appellants have not been able to indicate any Rule or Notification or the like requiring prior permission to be sought before undertaking the exercise to look for a replacement upon a sanctioned post falling vacant in the non-teaching category.

7. It is possible that there may be surplus staff in other Government-aided Schools in the District or nearby areas. It is equally possible that the Government may require the surplus staff to be deployed at other aided Schools upon vacancies in similar post arising thereat. However, there has to be a mechanism which has to be put in place for such purpose and the process has to be certain. It would not do for the Department to refuse an appointment merely because at the time of appointment, the Department finds surplus staff of similar description in other aided Schools in the District or the locality. The position as to surplus staff ought to exist at the time when the vacancy arose or, at any rate, prior to the process of appointment being initiated. Once the appointment process is undertaken and a person is identified, it may no longer be open to the Department to refuse the appointment and undo the



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process by citing surplus staff.

8. In such a scenario, the Department may do well to either bring in Rules that would require aided Schools to obtain permission from the relevant District Educational Officer before undertaking an appointment procedure and the District Educational Officer being required to respond to the request within a fixed time, so that the relevant School can fill up the vacancy without undue delay. In the alternative, the relevant District Educational Officer may circulate the description and number of the surplus staff at various levels to all Schools for such Schools to be able to fill up any vacancy that arises from the surplus staff at the relevant post. In the absence of either, an aided School cannot be faulted for undertaking the exercise of appointing a person to a sanctioned post or seeking the appointment. The permission that is sought is not permission to fill the post as such, but permission to enable the District Educational Officer to scrutinise whether the appointment procedure was alright and whether the incumbent fits the bill.

9. In the present case, the order impugned cannot be faulted, since there was no mechanism of either kind as referred to above. It is irrelevant that the vacancy arose in 2014 and the attempt to fill the vacancy was undertaken in 2018. Since there was no Rule to seek prior permission from the District Educational Officer before the appointment procedure was undertaken, the School cannot be blamed. The appointment cannot be denied merely because there was surplus staff which the School was not made aware of before the School undertook the appointment procedure.”



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11. In view of the above factual matrix of the case and the ratio laid down by the Division Bench of this Court in W.A.No.42 of 2021 dated 03.08.2021, this Court is of the considered view that the impugned order G.O.Ms.No.238 dated 13.11.2018, School Education [Pa.6(1)] Department, on the file of the first respondent in respect of the petitioner and the impugned rejection of approval dated 07.03.2019 in Na.Ka.No.1082/A2/2019, on the file of the fourth respondent is liable to be quashed and the same is hereby quashed. Consequently, the respondents are directed to approve the appointment of the petitioner R.Mary Isabel, working as a Record Clerk in the fifth respondent school with effect from 20.04.2018 on the file of the fourth respondent with all service and monetary benefits, within a period of six weeks from the date of receipt of a copy of this order.

12. In the result, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

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Index : Yes/No
Speaking Order : Yes/No

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J.SATHYA NARAYANA PRASAD,J.

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