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W.P.No.15965 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.15965 of 2020
and W.M.P.No.19873 of 2020

D.Albina Mary

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus,
College Road,
Chennai – 600 006.

2.The Chief Educational Officer,
Chennai Educational District,
Egmore,
Chennai-600 008.

3.The District Educational Officer,
Chennai East,
Chennai-600 094.

4.The Correspondent,
St.Anne's Girls Hr. Sec. School,
115/50, Mannarsamy Koil Street,
Royapuram,
Chennai – 600 013.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying

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for issuance of Writ of Mandamus directing the respondents 1 to 3 to approve the appointment of petitioner in the regular sanctioned post of Sweeper in the fourth respondent school from the date of appointment on 02.12.2013 and to make the payment of salary with interest and other service benefits.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents 1 to 3 : Mr.S.Silambannan
Additional Advocate General,
Assisted by,
Mr.Babu Barveez,
Government Advocate

For Respondent 4 : No Appearance

ORDER

The relief sought by the petitioner in this writ petition is to direct the respondents 1 to 3 to approve the appointment of petitioner in the regular sanctioned post of Sweeper in the fourth respondent school from the date of appointment on 02.12.2013 and to make the payment of salary with interest and other service benefits.

2. The case of the petitioner is that the the petitioner was selected and appointed to the post of Sweeper on 02.12.2013 in the fourth respondent



School under the regular sanctioned post and she was joined on the same day.

Subsequently, the fourth respondent has forwarded the proposal to the third respondent on 02.03.2018, seeking approval of appointment for the aforesaid post with all requisite documents, however, no order has been passed by the respondents till date. Hence, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that the fourth respondent has made the appointment of the petitioner in the non-teaching post, only in the sanctioned vacancy after due selection and as per the staff fixation order issued by the second respondent over the year. Therefore, when the sanctioned vacancy to the non-teaching post being filled up by the fourth respondent, the same ought to be approved by the department.

4. Learned counsel for the petitioner further submitted that the petitioner was selected and appointed for the post of Sweeper for the entire school and there is only one post of Sweeper. Moreover, the petitioner has been appointed as early as on 02.12.2013 and therefore, G.O.Ms.No.238,



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dated 13.11.2018 may not be applicable to the petitioner. Though, the petitioner was appointed on 02.12.2013, due to non-approval of her appointment, she was not paid with salary.

5. Learned Additional Advocate General appearing for the respondents 1 to 3 submitted that now Government have regulated by authorizing the Chief Educational Officer to accord prior permission for filling up the non-teaching staff in Aided High and Higher Secondary Schools as per G.O.(Ms) No.101, School Education Department, dated 18.05.2018. Following this, the Government reiterated its decision in G.O.(Ms)No.238, School Education Department, dated 13.11.2018. Hence, prior permission should be obtained from the educational authority to fill up the non-teaching post in the Government Aided High and Higher Secondary Schools.

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

7. The case of the petitioner is not in dispute. The petitioner was



appointed as Sweeper in the fourth respondent School on 02.12.2013. After the appointment, the proposal was sent to the third respondent on 02.03.2018, furnishing all the relevant particulars and documents of the petitioner, however, the same was not considered by the respondents, till date.

8. At this juncture, it is pertinent to extract the judgment passed by the Division Bench 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, in W.A.No.268 of 2021 dated 03.08.2021***, 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



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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 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



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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.”

9. 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.268 of 2021 dated 03.08.2021, this Court directs the respondents 1 to 3 to approve the appointment of petitioner in the regular sanctioned post of sweeper in the fourth respondent school from the date of appointment on 02.12.2013 and to make the payment of salary with interest and other service benefits, within a period of two weeks from the date of receipt of a copy of this order.

10. In the result, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.



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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

vm

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