



W.P.No.16809 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N. MANJULA

W.P.No.16809 of 2020

and

W.M.P.Nos.20841 & 20843 of 2020

C.Abdul Hakkim,

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 009.
3. The Chief Educational Officer,
Coimbatore, Coimbatore District.
4. The District Educational Officer,
Coimbatore, Coimbatore District.
5. The Correspondent,
Manbaul Uloon Higher Secondary School,
Kottai, Coimbatore – 641 001.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 3rd respondent Chief Educational Officer in O.Mu.No.3795/A4/2019 dated 12.02.2020 and the consequential proceedings of DEO in Na.Ka.No.492/A2/2019 dated 19.03.2020, quash the same and further direct the 3rd respondent Chief Educational Officer and 4th respondent District Educational Officer to approve forthwith the appointment of petitioner as Watchman in the 5th respondent school namely, Manbaul Uloom Higher Secondary School, Kottai, w.e.f. the date of appointment viz., 02.01.2019 with all attendant benefits including the arrears of salary and allowances.

For Petitioner : Mr.A.Maheshnath

For Respondents : Mr.P.Sanjeev Gandhi
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the third respondent/Chief Educational Officer in O.Mu.No.3795/A4/2019 dated 12.02.2020 and the consequential proceedings of District Educational Officer in Na.Ka.No.492/A2/2019 dated 19.03.2020 and for a consequential direction to the third respondent and fourth respondent to approve forthwith the appointment of petitioner as Watchman in the fifth respondent school



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namely, Manbaul Uloom Higher Secondary School, Kottai, with effect from the date of appointment viz., 02.01.2019 with all attendant benefits including the arrears of salary and allowances.

2. The petitioner was working as a Watchman in the fifth respondent school, namely, Manbaul Uloom Higher Secondary School, Kottai, which is a minority aided educational institution. One post of Watchman fell vacant on 01.08.2006 due to the promotion of the then Watchman. The fifth respondent school appointed the petitioner as Watchman w.e.f. 02.01.2019. The school submitted a proposal to the fourth respondent/District Educational Officer on 04.01.2019 and the fourth respondent has also forwarded the said proposal to the third respondent/Chief Educational Officer vide proceedings in Na.Ka.No.492/A2/2019 dated 27.03.2019. But the said proposal was returned by the third respondent vide proceedings in O.Mu.No.3795/A4/2019 dated 12.02.2020 by citing the reason that the vacancy of non teaching staff cannot be filled up by direct recruitment. The fourth respondent also returned the proposal citing reasons that in accordance with G.O.Ms.No.238 School (Pa.Ka.6(1)) Department dated 13.11.2018, it can only be filled up after obtaining prior permission. The



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petitioner claims that G.O.Ms.No.238 is not applicable to this case, since the vacancy was available even prior to the issuance of G.O.Ms.No.238. Hence, the petitioner has filed this writ petition with the above prayer.

3. Learned Government Advocate has filed his counter and submitted that the number of posts can be sanctioned only in accordance with the student strength in the respective schools and the post so sanctioned will be reviewed every year and in accordance with the strength. If any surplus staff is found out, the list should be sent to the Government and that surplus will be utilised for posting them in other aided school which have the sanctioned strength. The fifth respondent school has been sanctioned with the post of watchman for the academic year 2018-19 and the same post continued to be existing in the year 2019-2020 also. Even in the impugned order, the said fact was not denied. Even while rejecting the proposal, nothing is stated about any surplus post available to fill up the Watchman post at the fifth respondent school.

4. The learned counsel for petitioner attracted the attention of the Court to the judgment of this Court made in W.A.No.1022 of 2020 in the



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case of ***The Director of School Education and two others Vs. S.Murugan***

and another, wherein it is held 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 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



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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.”

5. In the case of the petitioner it is not the contention of the Government that the Watchman is not a sanctioned post for the fifth respondent school and the only contention is that as per G.O.Ms.No.238, such post can be filled up only from the surplus list available with the



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Government and the fifth respondent school is not eligible to take any direct recruitment. As on the date when the post was sanctioned, the Government has not stated anything about the availability of any surplus post for appointing in the post of Watchman in the fifth respondent school or whether the Government intended to appoint one such person to the said post.

6. In the absence of any appointment from the surplus list and also when the post remains a sanctioned post, the fifth respondent which is a private aided school can only opt to appoint a person to the sanctioned post by direct recruitment only. This is very much so in case of non teaching posts also. The post of Watchman is a non teaching post and the petitioner had exercised his right to fill it directly. There is no Government order which states that prior permission should be obtained before making such appointment for a sanctioned post. The above judgment of the Division Bench squarely applicable to the facts of this case.

7. Hence, the Writ Petition is allowed and the impugned order passed by the third respondent in O.Mu.No.3795/A4/2019 dated 12.02.2020 and the consequential proceedings issued by the fourth respondent in



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Na.Ka.No.492/A2/2019 dated 19.03.2020 are quashed and the respondents 3 and 4 are directed to approve the appointment of the petitioner as Watchman in the fifth respondent school, namely, Manbaul Uloom Higher Secondary School, Kottai, with effect from the date of appointment, viz., 02.01.2019 and consequently extend all other attendant benefits. No costs. Consequently, connected miscellaneous petitions are closed.

06.10.2023

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
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To

1. The Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 009.
3. The Chief Educational Officer,
Coimbatore, Coimbatore District.
4. The District Educational Officer,
Coimbatore, Coimbatore District.



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