



W.P.No.23167 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.23167 of 2021
and W.M.P.Nos.24458 & 24462 of 2021

The Correspondent & Headmistress
Fatima Girls Higher Secondary School,
Omalur – 636 455,
Salem District.

... Petitioner

Vs.

1.The Director of School Education,
College Road,
Chennai.

2.The Chief Educational Officer,
Collectorate Campus,
Salem – 636 001.

3.The District Educational Officer,
Collectorate Campus,
Salem – 636 001.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned staff fixations in Na.Ka.No.18945/P3/2018 dated 27.12.2018 and Na.Ka.No.14491/A3/2019 dated 12.11.2019 respectively for the years 2018-2019 & 2019-2020 and the impugned order in



W.P.No.23167 of 2021

Na.Ka.No.5814/B4/2019 dated 04.09.2019, issued by the second respondent CEO, Quash the same and further direct the second respondent Chief Educational Officer herein to approve forthwith the appointment of Mr.R.Paul Raj as Waterman in the petitioner school w.e.f., 01.12.2009 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : S.Amala Irudhaya Mary

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

ORDER

The relief sought by the petitioner in this writ petition is to call for the records relating to the impugned staff fixations in Na.Ka.No.18945/P3/2018 dated 27.12.2018 and Na.Ka.No.14491/A3/2019 dated 12.11.2019 respectively for the years 2018-2019 & 2019-2020 and the impugned order in Na.Ka.No.5814/B4/2019 dated 04.09.2019, issued by the second respondent CEO, Quash the same and further direct the second respondent Chief Educational Officer herein to approve forthwith the appointment of Mr.R.Paul Raj as Waterman in the petitioner school w.e.f., 01.12.2009 with



W.P.No.23167 of 2021

all attendant benefits including the arrears of salary and allowance.

WEB COPY

2. The case of the petitioner is that the petitioner school was established in the year 1963 and administered by the Roman Catholic Congregation of “Immaculate Heart of Mary, Pondicherry”. Mr.R.Paul Raj was appointed as Waterman/Sweeper in the petitioner school with effect from 01.12.2009, the vacancy arising out of the retirement of one Mrs.D.Chenbagam on 30.11.2009. The petitioner school initially forwarded the proposal for appointment approval on 00.08.2010 to the third respondent in Na.Ka.No.158/2010-11. In the meantime, the second respondent vide his staff fixation order in Na.Ka.No.10552/P2/2010 dated 20.09.2010 held the aforesaid post as vacant. This being so, the proposal sent to the third respondent has been returned for want of higher officer's permission letter to fill up the post. As per the instruction of the third respondent, the petitioner school has sought for permission to fill up the post of Waterman w.e.f., 01.12.2009. However, no order has been passed and the said post is kept vacant upto the year 2018. Hence, Mr.R.Paul Raj, the concerned individual has filed a writ petition in W.P.No.2250 of 2019 before this Court.



WEB COPY

2.1. This Court vide order dated 05.03.2019 directed the third respondent to consider the representation of petitioner dated 20.06.2016. In the meantime, the second respondent vide Na.Ka.No.18945/P3/2018 dated 27.12.2018 and Na.Ka.No.14491/A3/2019 dated 12.11.2019 for the years 2018-2019 & 2019-2020 held the post of waterman as zero and not existing. This being so, on consideration of the order of this Court dated 05.03.2019, the second respondent vide Na.Ka.No.5814/B4/2019 dated 04.09.2019 rejected the proposal stating that the post is not eligible to be filled as per para (V) of G.O.Ms.No.64 School Education Department dated 03.04.2018 and as per G.O.Ms.No.238, School Education (Pa.Ka.6(1) Department, dated 13.11.2018. Aggrieved over the same, the petitioner school has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that Para (V) of G.O.Ms.No.64, School Education Department dated 03.04.2018 has no applicability with the appointment of the incumbent since it speaks about the future vacancies of non-teaching posts. It says that when the present non



W.P.No.23167 of 2021

teaching staff like Librarian, Library Assistant, Gardener and the Waterman get retired, the posts will be taken back. Whereas, the said Mr.R.Paul Raj has been continuously working since his appointment i.e., from 01.12.2009 and he has long years to retire.

4. Learned counsel for the petitioner further submit that G.O.Ms.No.238 dated 13.11.2018 is no way ban the appointment approval of Mr.R.Paul Raj as his post is already a sanctioned one and the issue of surplus is never arise in the petitioner school. Even, if there is surplus in other schools under the same management, it is the duty of the respondents to deploy the surplus staff.

5. Learned counsel for the petitioner further submitted that Mr.R.Paul Raj has been appointed as early as on 01.12.2009 and therefore, G.O.Ms.No.238, dated 13.11.2018 may not be applicable to him.

6. Heard the learned counsel for the petitioner and perused the



materials available on record.

WEB COPY

7. The case of the petitioner is not in dispute. The said Mr.R.Paul Raj was appointed as Waterman in the petitioner school with effect from 01.12.2009. Immediately, after the appointment, the proposal was sent to the third respondent and the same was returned for want of permission letter from the higher officer and later, the same was rejected as per para (V) of G.O.Ms.No.64 School Education Department dated 03.04.2018 and as per G.O.Ms.No.238, School Education (Pa.Ka.6(1) Department, dated 13.11.2018 and the same is questioned in the writ petition.

8. 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



WEB COPY



W.P.No.23167 of 2021

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 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.”



9. 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.



WEB COPY



W.P.No.23167 of 2021

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 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



WEB COPY



W.P.No.23167 of 2021

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.”

10. 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 staff fixations in Na.Ka.No.18945/P3/2018 dated 27.12.2018 and Na.Ka.No.14491/A3/2019 dated 12.11.2019 respectively for the years 2018-2019 & 2019-2020 and the impugned order in Na.Ka.No.5814/B4/2019 dated 04.09.2019 issued by the second respondent is liable to be quashed and the same is hereby quashed. Consequently, the second respondent is directed to approve forthwith the appointment of Mr.R.Paul Raj as Waterman in the petitioner school w.e.f., 01.12.2009 with all attendant benefits including the arrears of salary and allowance, within a period of six weeks from the date of receipt of a copy of this order.

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



WEB COPY



W.P.No.23167 of 2021

26.09.2023

vm

Index : Yes/No

Speaking Order : Yes/No

To:

1.The Director of School Education,
College Road,
Chennai.

2.The Chief Educational Officer,

Page No.11 of 13



W.P.No.23167 of 2021

Collectorate Campus,
Salem – 636 001.

WEB COPY

3.The District Educational Officer,
Collectorate Campus,
Salem – 636 001.

J.SATHYA NARAYANA PRASAD,J.

vm



WEB COPY



W.P.No.23167 of 2021

W.P.No.23167 of 2021

26.09.2023