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W.P.No.27563 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.27563 of 2021

and

W.M.P.Nos.29134 and 29136 of 2021

M.Rajkumar

... Petitioner

Vs.

1. The Chief Educational Officer,
Chennai District,
Presidency Girls Higher Secondary School Campus,
Egmore, Chennai – 600 008.
2. The District Educational Officer,
Chennai West,
DPI Campus, College Road,
Chennai – 600 006.
3. C.S.I. St.Matthia's Anglo Indian
Higher Secondary School,
Vepery, Chennai – 600 007
Rep. by its Correspondent.

... Respondents

PRAYER: This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned



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proceedings issued by the 1st respondent in O.Mu.No.3077/E4/2019 dated 26.08.2020 and to quash the same and consequently directing the Respondents to grant approval of appointment of Petitioner in the sanctioned post of Waterman in the 3rd Respondent School from the date of appointment on 22.10.2018, with all consequential and other attendant benefits including payment of salary and other service benefits.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.S.Silambannan
Additional Advocate General

Assisted by Mr.T.Chiziyan
Additional Government Pleader

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 1st respondent in O.Mu.No.3077/E4/2019 dated 26.08.2020 and to quash the same and consequently direct the respondents to grant approval of appointment of Petitioner in the sanctioned post of Waterman in the 3rd Respondent School from the date of appointment on 22.10.2018, with all consequential and other attendant benefits including payment of salary and



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other service benefits.

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2. The learned counsel appearing for the petitioner submitted that the third respondent school is a Government Aided Minority Institution coming under Church of South India – Diocese of Madras and the school is governed by Code of Regulations for Anglo – Indian Schools – Tamil Nadu State. There arose a vacancy to the post of Waterman due to sudden demise of incumbent Mr.Clement on 09.09.2017 and in the resultant vacancy, the petitioner was appointed as Waterman as per the appointment order issued as per the decision taken by the Central Recruitment Board held on 30.07.2018, followed by appointment order dated 19.10.2018, the petitioner also joined duty as Waterman in the 3rd respondent school on 22.10.2018 and working as such till date. The 3rd respondent school has forwarded the proposal to the official respondents through proper channel along with necessary documents including appointment order, order of sanctioning the post of Waterman as well as the staff fixation order issued for the year 2017-18 vide proceedings of Inspector of Matriculation Schools, Chennai dated 24.01.2018 wherein it is notified that the post of Waterman is the sanctioned post.



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3. He further submitted that the 2nd respondent forwarded the proposal to the 1st respondent and after a delay of 2 years, the 1st respondent vide impugned proceedings dated 26.08.2020 returned the proposal for approval of appointment of the petitioner in the post of Waterman as it is not sanctioned as per G.O.Ms.No.238 dated 13.11.2018 and therefore the post is liable to be surrendered to the department in the academic year 2019-20. Whereas G.O.Ms.No.238 dated 23.11.2018 cannot be put against the appointment already made on 22.10.2018 prior to the Government Order, as per the orders of this Court.

4. The learned counsel for the petitioner relied upon 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 judgement 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



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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 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



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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. Further the learned counsel referred to another decision of this Court in the case of *The Director of School Education DPI Campus, College Road, Chennai Vs DBTR National Higher Secondary School, Nagapattinam district*, wherein the above judgment of First Bench has been referred and this Court 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.



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6. The learned counsel for the petitioner further submitted that in the staff fixation order for the year 2018 dated 24.01.2018, the post of Waterman has been duly sanctioned. Any reference to staff fixation order 2019 would be of no use since it was actually issued on 02.07.2019 almost 9 months after the date of appointment of the petitioner and as per the impugned order it is stated that the post would be surrendered from the academic year 2019-20. Hence, the petitioner has approached this Court by filing the present writ petition.

7. The learned Additional Advocate General appearing for the respondents by relying upon the averments made in the counter affidavit filed by the 2nd respondent would contend that the petitioner was appointed as Waterman on 22.10.2018 i.e, after the issuance of the Government order in G.O.(Ms).No.64, School Education (SE 6(1) Department dated 03.04.2018 and as per G.O.Ms.No.238, School Education (SE 6(1) Department dated 13.11.2018 the post of Waterman has been abolished and the post has to be surrendered to the Department. Hence, the appointment of the petitioner could not be approved. He further submitted that the Government had studied



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the utility value and the actual work load and decided to abolish the certain categories of the non-teaching posts after the present incumbents vacate the posts and for the requirement of full time minimum work load students strength is taken as criteria and decided to sanction admissible non-teaching post, accordingly the Government have passed G.O.(Ms.)No.238, School Education Department, dated 13.11.2018. As per the above said Government Order, if a vacancy arises due to retirement, death etc., the vacant post could not be filled. Prior permission may be obtained from the Chief Educational Officer as per the G.O.(Ms).No.101, School Education (Budget) Department, dated 18.05.2018. If a person is working in a surplus post, the person may be deployed to the vacant post without approved post. After that the vacant post may be surrendered to the Department. The petitioner was appointed in the abolished post (Waterman) as per the G.O.(Ms).No.64, School Education (SE 6(1) Department, dated 03.04.2018 and G.O.(Ms)No.238, School Education (SE 6(1) Department, dated 13.11.2018. Hence the appointment of the petitioner could not be approved.

8. Heard both sides and perused the materials available on record.



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9. Insofar as the plea raised by the 2nd respondent that prior approval should have been obtained by the 3rd respondent school before making the appointment of the petitioner in the said post of Waterman in the 3rd respondent school is concerned, that issue is no more res-integra because insofar as the non-teaching staff post sanctioned in an aided school like the 3rd respondent school is concerned, such kind of prior approval is not required for making an appointment, **therefore, the appointment made in the post, which was a sanctioned one, where already one incumbent was working and due to his death on 09.09.2017, it has become vacant, the 3rd respondent school need not have obtained any prior approval. Though the post of Waterman has been abolished and has to be surrendered to the Department as per G.O.Ms.No.238 dated 13.11.2018, the petitioner has been appointed as early as 22.10.2018 and therefore the approval of appointment of the petitioner cannot be rejected citing the said Government Order. Therefore, this Court feels that the proposal sent by the 3rd respondent school with regard to appointment of the petitioner as a non-teaching staff, which is Waterman in the 3rd respondent school has to be considered on merits and decided by the official respondents within a time frame.**



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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.268 of 2021 dated 03.08.2021 and W.A.No.42 of 2021 dated 03.08.2021, this Court is of the considered view that the impugned proceedings in O.Mu.No.3077/E4/2019 dated 26.08.2020 of the 1st respondent is liable to be quashed and the same is hereby quashed.

11. In the result, this writ petition stands allowed and the respondent officials are directed to grant approval of appointment of the petitioner in the sanctioned post of Waterman with effect from the date of initial appointment on 22.10.2018 with all consequential and other attendant benefits including payment of salary and other service benefits and such order shall be passed and communicated to the 3rd respondent school within a period of six weeks from the date of receipt of a copy of this order. Consequently connected miscellaneous petitions are also closed.

27.09.2023

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Index :Yes/No

Speaking Order :Yes/No



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J. SATHYA NARAYANA PRASAD, J.

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