



WEB COPY

W.P.No.32945 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.32945 of 2023

and

W.M.P.Nos.32588 & 32589 of 2023

G.Helen Isabella

...Petitioner

Vs.

1.The Chief Educational Officer,
Presidency Girls Higher
Secondary School Campus,
Egmore, Chennai – 600 008.

2.The District Educational Officer,
Chennai North,
Chennai – 600 049.

3.The Secretary,
Singarampillai Boys Higher
Secondary School, Villivakkam,
Chennai – 600 049.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka.No.0560/A3/2023 dated 30.03.2023 and to quash the same and consequently directing the respondents to grant approval of appointment



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of petitioner in the sanctioned post of Sweeper in the 3rd respondent School from the date of appointment on 07.05.2018, with all consequential and other attendant benefits including payment of salary and other service benefits.

For Petitioner : Mr.S.Nedunchezhiyan
For R1 & R2 : Mrs.V.Yamuna Devi,
Special Government Pleader
For R3 : Mr.Vineeth Kumar

ORDER

With the consent of both the parties, this Writ Petition is taken up for final disposal.

2. The third respondent is an aided School. When a sanctioned vacancy arose on 28.03.2014 due to the death of a Sweeper, the School had appointed the petitioner herein on 04.05.2018. According to the petitioner, the appointment was made in a sanctioned post, as per the fixation order made for the year 2017-2018. However, the proposal was rejected through the impugned proceedings dated 30.03.2023, predominantly on the ground that since the School is a non-minority



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School, they had failed to obtain prior permission to fill up the post. The said order is under challenge in the present Writ Petition.

3. The learned counsel for the petitioner submitted that prior permission to fill up a non-teaching post is not required for an aided School, in view of various decisions of this Court and hence, the reason assigned in the impugned order cannot be sustained.

4. The learned Special Government Pleader appearing for the respondents 1 and 2 submitted that the School is not a minority school and therefore, such a prior permission is required. Even otherwise, the learned Special Government Pleader submitted that as per the fixation order made for the year 2023-2024, there was no sanctioned post of Sweeper and therefore, the approval cannot be granted.

5. The issue as to whether prior permission for appointment to a non-teaching post in a non-minority School is required or not is no more *res integra* and in various decisions of the Hon'ble Division Bench, as well as the learned Single Judges of this Court, it has been held that such



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prior permission for a non-teaching post is not required. In one such decision, in the case of ***The Director of School Education, Chennai and others vs. S.Murugan and another passed in W.A.No.1022 of 2020, dated 07.01.2021***, this view was taken in the following manner:-

“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



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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.”

The aforesaid extract is self-explanatory. As such, the reason assigned in the impugned order cannot be sustained.

6. The learned Special Government Pleader made an additional submission stating that there are not sanctioned vacancies in the School for the post of Sweeper, as per the fixation done for the year 2023-2024. The vacancy for the post of Sweeper, in which the petitioner was appointed, arose in the year 2014 and the petitioner was also appointed on 04.05.2018 itself. The relevant fixation that requires to be applied for such an appointment would be the fixation that stood as on 2017-2018. The present fixation, which is now relied upon by the respondents, is one



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that has been made after the impugned order was passed. Thus, the same would not be applicable to the petitioner's School and therefore, the appointment made at the relevant point of time in the year 2018, cannot be found fault with.

7. For all the foregoing reasons, the impugned order dated 30.03.2023 passed by the second respondent is quashed. Consequently, there shall be a direction to the second respondent herein to pass orders, approving the appointment of the petitioner with effect from the date of appointment and release the necessary grand-in-aid to the third respondent School. Such orders shall be passed within a period of four (4) weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes
Neutral Citation:Yes
Speaking order
hvk



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