



W.P.(MD)No.2685 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2685 of 2021

D.Joseph

... Petitioner

Vs.

1.The State of Tamilnadu,
Rep by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600009.

2.The Director of School Education,
College Road, Chennai - 600009.

3.The Chief Educational Officer,
Madurai, Madurai District.

4.The District Educational Officer,
Melur, Madurai District.

5.The Correspondent,
O.C.P.M.Girls Higher Secondary School,
Tallakulam, Madurai - 625002,
Madurai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Government order issued by 1st respondent in



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G.O.Ms.No.64, School Education (Pa.Ka.6(1) Department dated 03/04/2018 and the consequential impugned proceeding issued by the 3rd respondent CEO in O.MU.No.9595/A4/2019 dated 16/03/2020 and the subsequent impugned proceeding issued by the 4th respondent DEO in Na/Ka/No.4995/A4/2020 dated 19/06/2020, quash the same and further Direct the 3rd respondent Chief Educational Officer herein to approve forthwith the petitioner's appointment as Gardener in the 5th respondent school w.e.f., 03/06/2019 with salary and all attendant benefits from the said date.

For Petitioner : Mr.T.Cibi Chakaraborthy

For Respondents : Mr.N.Satheesh Kumar,
Addl. Government Pleader for R1 to R4.
No appearance for R5.

ORDER

Heard the learned counsel for the writ petitioner and the learned Additional Government Pleader for the respondents.

2.The petitioner was appointed as Gardener in the fifth respondent school on 03.06.2019. The fifth respondent is an aided minority educational institution. The management submitted proposal for approving the said appointment. Approval was denied. Challenging the same, this writ petition has been filed.



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3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He pointed out that the impugned order is based entirely on G.O.(Ms)No.64 School Education Department dated 03.04.2018. Drawing my attention to the said government order, the learned counsel contended that it merely calls upon the Director of School Education to submit proposal in the light of what has been set out in the said government order. Since no such proposal has been so far submitted, the said government order cannot be applied adversely against the petitioner. He also pointed out that though in the reference column G.O.(Ms)No.238, dated 13.11.2018 has been mentioned, the order is not based on it. He relied on the settled principle that a public order must be tested in the light of the reasons set out therein and it is not open to the authority to supplement reasons in the form of counter affidavit. He called upon this Court to set aside the impugned order and direct the respondents to approve the petitioner's appointment.

4.The third respondent has filed counter affidavit and learned Additional Government Pleader took me through its contents. He called upon this Court to dismiss the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record. The fact remains that the petitioner has been appointed in a non-teaching post ie., Gardener. The appointment was made on 03.06.2019 that is after issuance of G.O.(Ms)No.238 dated 13.11.2018. The validity of the said government order has been upheld by me vide order dated 07.02.2023 in W.P.(MD)Nos.13428 of 2020 and etc. The said government order specifically mentioned the following posts namely, Junior Assistant, Assistant, Record Clerk, Office Assistant and Watchman. Clause 3(ix) of the said government order specifically states that the posts not mentioned in the said government order will lapse following the retirement / demise or promotion of the incumbent. In this case, the fifth respondent had a sanctioned post of Gardener. But the incumbent Pushparaj retired as early as on 31.07.2009. If only the petitioner had been appointed in the said vacancy prior to 13.11.2018, this Court would have probably directed the authority to approve the appointment. Since the petitioner's appointment was subsequent to G.O. (Ms)No.238, it is not possible for this Court to direct the respondents to approve the appointment. In fact, G.O.(Ms)No.64 dated 03.04.2018 also states that the post of Gardener will lapse following the retirement /



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demise / promotion of the incumbent. In these circumstances, the question of interfering with the impugned order in favour of the petitioner does not arise. The writ petition stands dismissed. No costs.

13.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:-

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G.R.SWAMINATHAN,J.

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