



W.P.(MD)No.16947 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 03.01.2022

Pronounced on : 08.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16947 of 2022

and

W.M.P.(MD)No.12348 of 2022

T.U.N.S.V. Higher Secondary School,
Rep. by its Secretary, Tiruchuli,
Virudhunagar District.

... Petitioner

Vs.

1.The Chief Educational Officer,
Virudhunagar,
Virudhunagar District.

2.The District Educational Officer,
Aruppukottai,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to impugned order in A.Thi.Mu.No.4702/A2/2021 dated 28.10.2021 of the 2nd respondent herein and quash the same and consequently direct the respondents herein to approve the appointment of Mr.M.Sathiyaraj as Watchmen, w.e.f. 8.07.2021 with all attended and consequential benefits.



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For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.R.Baskaran,
Addl. Advocate General,
Assisted by Mr.S.Shaji Bino,
Spl. Government Pleader.

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ORDER

Heard both sides.

2.The writ petitioner is an aided non-minority institution. The petitioner is having a sanctioned post of watchmen. It was not filled for a very long period. The petitioner approached the second respondent on 21.12.2020 for filling up the said post. The second respondent had not passed any order on the proposal. In anticipation of permission, the petitioner after complying with the usual procedure, appointed one M.Sathiyaraj as watchmen on 08.07.2021. Proposal was submitted to the second respondent for approval. It was rejected only on the ground that prior permission was not appointed. Challenging the order dated 28.10.2021 passed by the second respondent, the present writ petition came to be filed.

3.The issue raised in this writ petition is no longer *res integra*. The Hon'ble First Bench in the decision reported in **2021 SCC Online Mad 7536**



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(Director of School Education and Others Vs. S.Murugan and Another) held

as follows:-

“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



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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 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.”

4.The Hon'ble First Bench confirmed the order passed by the learned Single Judge. Respectfully following the same, the order impugned in this writ



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petition is set aside and the respondents are directed to approve the petition mentioned appointment. The consequential financial and other benefits shall be disbursed as expeditiously as possible.

5.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

08.02.2023

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

- 1.The Chief Educational Officer,
Virudhunagar,
Virudhunagar District.
- 2.The District Educational Officer,
Aruppukottai,
Virudhunagar District.



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G.R.SWAMINATHAN, J.

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