



W.P(MD)No.20178 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.11.2022

DELIVERED ON : 08.02.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20178 of 2021

M.James Benjamin

... Petitioner

Vs

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

2.The District Educational Officer,
Sankarankovil, Tenkasi District.

3.The Manager,
C.M.M.L.High School,
Vadamalapuram P.O - 627 755,
Mullikulam Via,
Kadayanallur Taluk,
Tenkasi District.

... 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 impugned order of the second respondent in Na.Ka.No. 1795/A5/2021 dated 27.10.2021 and consequently direct the respondents 1 and 2 herein to approve the appointment of petitioner as Junior Assistant in the third respondent school w.e.f.16.06.2021 with all consequential monetary benefits.



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For Petitioner : Mr.T.Pon Ramkumar
For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.J.Ashok
Additional Government Pleader

ORDER

The petitioner was appointed as Junior Assistant in the third respondent school. The incumbent retired on 16.06.2021. The petitioner was appointed in the resulting vacancy on the same day. When proposal was submitted for approving the appointment, the management was informed that the question of approval will be considered after the issue of surplus non-teaching staff is resolved. Challenging the said proceedings dated 27.10.2021, this writ petition came to be filed.

2.The issue raised in this writ petition is no longer res integra. The Hon'ble First Bench in the decision reported in **2021-1-Writ L.R 665 (The Director of School Education DPI Campus v. S.Murugan)** had held as follows :

“2. The respondent School has a sanctioned post of an Office Assistant. Upon such post falling vacant, the appointment process was initiated in and about 2018 and the writ petitioner qualified. However, in accordance with the Rules or pursuant to relevant notifications issued in such regard, the appointment could only be made upon



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seeking the permission of the District Educational Officer. The respondent School sought permission. No immediate response was forthcoming.

3.The first respondent herein was constrained to institute proceedings under Article 226 of the Constitution in 2019 upon the appellants' failure to consider the School's request for the appropriate permission. Such writ petition, W.P.No.29812 of 2019, was disposed of by this Court with a direction to the respondent authorities in that case to dispose of the request made by the School.

4.Ultimately, the permission was declined and it is such order of December 12, 2019, which was challenged in the present proceedings. In essence, the learned Single Judge held that there was no room for seeking permission for appointment of any non-teaching staff of a Government-aided School. The other ground indicated in the impugned order is that there was no requirement to engage only surplus staff posted at other Government-aided Schools in the District or of the nearby locality, once the post was sanctioned for the relevant School.

5.On behalf of the appellants, it is contended that the post became vacant in 2014 and the exercise to fill up the vacant post was undertaken belatedly in 2018. Such aspect of the matter is utterly irrelevant in the present context.

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



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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 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



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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.

10. For the reasons above, the judgment and order impugned are not interfered with. W.A.No.1022 of 2020 fails.”

3. The case on hand is absolutely similar. The order impugned in this writ petition is set aside. The respondents 1 and 2 are directed to approve the petitioner's appointment with effect from 16.06.2021. All the monetary benefits shall be disbursed to the petitioner as expeditiously as possible. It is however open to the department to issue general communications to all the aided school managements informing them that they cannot make appointments



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till the issue of surplus non-teaching staff is resolved.

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4. With this observation, this writ petition is allowed. No costs.

08.02.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
SKM

To

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Tenkasi,
Tenkasi District.

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G.R.SWAMINATHAN, J.

MGA

Pre-delivery Order made in
W.P(MD)No.20178 of 2021

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