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W.P.(MD)No.12714 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12714 of 2018
and
W.M.P.(MD)No.11594 of 2018

Kaiwath Syed Abdul Khader

... Petitioner

vs.

- 1.The Secretary to Government,
Education Department,
State of Tamil Nadu,
Secretariat, St. Fort George,
Chennai-9.
- 2.The Director of School Education,
College Road, Chennai-6.
- 3.The District Educational Officer,
Tirunelveli.
- 4.The Correspondent,
The Muslim Higher Secondary School,
Tirunelveli-5.

... Respondent



W.P.(MD)No.12714 of 2018

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders passed by the 3rd respondent in his proceedings in O.Mu.No.6384/A5/2013 dated 19.08.2013 and to quash the same and consequently, direction may be issued to respondents to approve the petitioner's appointment as Office Assistant in 4th respondent school from the date of the petitioner's appointment on 15.09.2005 and grant service and monetary benefits along with arrears from 15.09.2005 to 13.01.2010 within stipulated time.

For Petitioner : Mr.T.A.Ebenezer

For R1 to R3 : Mr.V.Omprakash
Government Advocate

For R4 : No appearance

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 19.08.2013 passed by the 3rd respondent and consequently, direction may be issued to respondents to approve the petitioner's appointment as Office Assistant in 4th respondent school from



W.P.(MD)No.12714 of 2018

WEB COPY

the date of the petitioner's appointment on 15.09.2005 and grant service and monetary benefits along with arrears from 15.09.2005 to 13.01.2010 within stipulated time.

2. The brief facts of the case are that the 4th respondent school is an Aided Minority School. The petitioner was appointed as Office Assistant in the retirement vacancy on 15.09.2005 and is continuing in the service. The contention of the petitioner is that the government had imposed ban on fresh recruitment by issuing G.O. Ms. No. 212, P & AR Department, dated 29.08.2001 and the same was lifted by G.O.Ms.No.14 (Personnel and Administrative Reforms (P) Department), dated 07.02.2006. The 4th respondent submitted a proposal on 24.02.2006, which was returned by the proceedings of 3rd respondent, dated 25.05.2006, stating that there is no Government order for appointment of non-teaching staff. Thereafter, the 2nd respondent issued proceedings permitting the 4th respondent to join the petitioner's school from 04.01.2010 onwards. Based on the



W.P.(MD)No.12714 of 2018

WEB COPY

permission, subsequently, the respondents have granted approval from 13.01.2010, vide proceedings, dated 22.02.2010.

3. The petitioner relies on the order, dated 06.03.2009, passed in W.P. No. 1722 of 2009 stating that G.O.Ms.No.212, P & AR Department, dated 29.08.2001, is not applicable to aided schools. Against the said order, W.A.No.267 of 2009 was preferred by the Government and the Hon'ble Division Bench of this Court directed the respondents to grant approval for the non-teaching staff from the date of their appointment and has held that the G.O., is not applicable to the private aided schools. Therefore, the petitioner is claiming to grant approval from the date of his appointment, i.e., 15.9.2005 and had stated that the respondents have wrongly granted approval from 13.01.2010. The petitioner submitted a representation to grant approval from 15.09.2005 to 13.01.2010 along with monetary benefits. However, the same was rejected. Aggrieved over the same, the present writ petition is filed.



WEB COPY



W.P.(MD)No.12714 of 2018

4. The 3rd respondent has filed counter affidavit stating that the G.O.Ms.No.212, P & AR Department, dated 29.08.2001, was passed imposing ban in filling up of vacant posts. Subsequently, after lifting the ban through G.O.Ms.No.14, P & AR Department, dated 07.02.2006, there is no specific Government order to fill up the vacant posts of non-teaching staff in aided schools. Hence, the approval was rejected. Subsequently, the Director of School Education, Chennai, vide proceedings, dated 04.01.2010, permitted the filling up of the post of Office Assistant in the 4th respondent School. Therefore, the appointment of the petitioner as Office Assistant in the 4th respondent School was approved from 13.01.2010. The 4th respondent school was approved eight staffs and grant-in-aid from the Government and the grant-in-aid can be paid based on the orders of the Department issued from time to time. When the Director of School Education, Chennai, is permitted to fill up the said post from 2010 onwards, the petitioner cannot seek approval



W.P.(MD)No.12714 of 2018

WEB COPY

prior to the orders passed by Director of School Education. Moreover, the granting of non-teaching staff is covered under several G.O.s., and circulars. The respondents have taken some policy decision that Sweepers, Scavengers and some other posts cannot be appointed in regular post, since the said posts ought to be outsourced, that too as part time job. Therefore, the 3rd respondent prayed to dismiss the writ petition.

5. Heard Mr.T.A.Ebenezer, learned Counsel appearing for the petitioner and Mr.V.Omprakash, learned Government Advocate appearing for respondents 1 to 3 and perused the records.

6. The claim of the petitioner is that he should be approved from the date of original appointment, i.e., 15.09.2005 or atleast from the date of lifting up of the ban i.e., from the date of G.O.Ms.No.14 (Personnel and Administrative Reforms (P) Department), dated 07.02.2006.



WEB COPY



W.P.(MD)No.12714 of 2018

7. It is seen that the Government allows “grant-in-aid” to the non-teaching staffs as per G.O. Ms. 583 Education Department and Public Health Department dated 23.04.1966. In the said G.O. the non-teaching staffs was granted as under:

Categories of Non-Teaching Staff	Number Strength			
	Below 250	More than 250 but below 1000	More than 1000 but below 1500	More than 1500
Clerks	Nil	Nil	2	3
Librarian or Clerks for Library	Nil	1	Nil	Nil
Attenders for Office	1	1	1	1
Peons	1	1	2	3
Watchman	1	1	1	1
Waterman	-	-	-	-
Gardener Cum Sweeper	-	-	-	-
Gardener	-	-	-	-
Sweeper	1 part time	1 part time	1 part time	1
Scavengers	1 part time	1 part time	1 part time	1



W.P.(MD)No.12714 of 2018

WEB COPY

8. The Government has issued another G.O. Ms. No. 245 Education Department dated 21.02.1970 modifying the date of implementing the G.O. Ms. No. 583. In the above said two G.O.'s it has been clearly stated that the educational institutions are not eligible for post of **Waterman, Gardener cum Sweeper and Gardener**. Therefore, if any proposal is submitted for the aforesaid three posts, then the approval cannot be granted. The G.O. has not sanctioned any Lab Assistant post. As far as Sweeper and Scavengers are concerned the G.O. has sanctioned only part time post based on student strength. If the student strength is below 1500 and one post of full time Sweeper and Scavenger if the student strength is above 1500. As far as the post of Clerks, Librarian, Attenders for Office, Peons are concerned the G.O. prescribes based on the student strength. Therefore, the approval depends upon the particular post of non-teaching staff.



WEB COPY



W.P.(MD)No.12714 of 2018

9. Thereafter the government has framed Rules under the Tamil Nadu Private Schools (Regulation) Act, 1974. The government has power to restrict the grant-in-aid after considering the overall financial considerations under Rule 15 of the Tamil Nadu Private Schools (Regulation) Rules 1974 wherein it has been stated that the number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by Director of School Education from time to time with reference to the academic requirements, teacher-pupil ratio and **overall financial considerations**.

10. In the meanwhile the general ban for recruitment came into effect vide G.O. Ms. No. 212 Personnel and Administrative Reforms Department dated 29.11.2001. The ban is applicable to non-teaching staffs and the schools ought not to have been appointed during this period. The G.O. Ms. No. 49 Personnel and Administrative Reforms



W.P.(MD)No.12714 of 2018

WEB COPY

Department dated 14.05.2002 was issued wherein it has been directed to outsource the “D” Category Posts, such as Sweeper, Scavenger, Cleaner, Gardener, Office Assistants, etc., have to be outsourced and entrusted on contract basis. The general ban was lifted vide G.O. Ms. No. 14 Personnel and Administrative Reforms Department dated 07.02.2006. In spite of ban, when proposals were received from the Aided Private Schools to approve appointments of non-teaching staff made during the ban period, the authorities concerned sought clarification from the Director of School Education. The Director of School Education had issued a circular vide Letter No. 11462 / d2 / 06-1 dated 25.05.2006, wherein it is clarified that the government would issue a revised norm in fixing the non-teaching posts in aided schools and till the revised norms are issued **there is no need to lift the ban imposed for filling up of the non-teaching posts**. Therefore, the ban was not lifted as far as the appointment of non-teaching staffs are concerned. Then the G.O. Ms.



W.P.(MD)No.12714 of 2018

WEB COPY

No. 91 Personnel and Administrative Reforms Department dated 06.07.2006 was issued wherein it has been stated that the estimated vacancies should be placed before Staff Committee. Then G.O. Ms. No. 37 School Education (R2) Department dated 08.02.2007 was issued granting permission to fill up the various categories of non-teaching staff to the extent stated in the said G.O. beyond that, ban continued in respect of all other categories. The G.O. states that certain posts shall be filled up through outsourcing only. The G.O. has stated that the rest of the posts would be considered after reviewing the issue.

11. Then G.O. Ms. No. 115 School Education (D2) Department dated 30.05.2007 and G.O. Ms. No. 203 School Education dated 23.07.2010 and Government Letter No. 8884 / D1 / 2011-2 dated 09.07.2012 was issued to fill up the post stated thereunder and rest of the post ought to be out sourced. A batch of writ petitions were filed in W.P.



W.P.(MD)No.12714 of 2018

WEB COPY

(MD) No. 11481 / 2008 batch in Deva Asir case reported in 2016-3-L.W. 152, wherein this Honourable Court has quashed the G.O. 115 School Education dated 30.05.2007 and G.O. 203 School Education dated 23.07.2010 and Government Letter No. 8884 / D1 / 2011-2 dated 09.07.2012. It is seen that except these two G.O.s, the other G.O.s stated above are not set aside.

12. Then the government had issued G.O. Ms. No. 189 School Education (D1) Department dated 29.07.2009, thereby granted permission to fill the post of 147 Junior Assistant post and 237 Office Assistant posts alone, since in these schools only one such sanctioned post is available. Thereafter vide Government Letter Ms. No. 275 School Education (D1) Department / 09 dated 26.10.2009 the government had clarified that as on 01.06.2009 the posts of 147 Junior Assistants and 237 Office Assistants are there and the 147 Junior Assistant posts and 237



W.P.(MD)No.12714 of 2018

WEB COPY

Office Assistant posts alone were permitted to be filled up.

13. Then G.O. Ms. No. 64 School Education Pa.6 (1) Department dated 03.04.2018 was issued wherein it has been stated that the approval shall be granted to the persons appointed in the sanctioned posts as stated in the order of Deva Asir's case. The G.O. also states that the concerned authority shall determine the surplus post based on student strength and intimate the institution that the post would get cancelled automatically after the incumbent's retirement or otherwise. The G.O. also states that the posts like Librarian, Library Assistant, Waterman and Gardener shall lapse and return back to the Government once the incumbent retires or otherwise.

14. Then G.O. Ms. No. 238 School Education (Pa. Ka. 6 (1))



W.P.(MD)No.12714 of 2018

WEB COPY

Department dated 13.11.2018 has issued, wherein the staff fixation of non-teaching staff is fixed as under:

Categories of Non-Teaching Staff	Students Strength			
	Until 250	From 251 to 1000	More than 1001	Remarks
Junior Assistant or Assistant or Record Clerk	Nil	1	2	Maximum 2
Office Assistant	1		2	Maximum 2
Watchman	1			Maximum 1

The salient features of the G.O. 238 are that,

i) Whatever be the nomenclature, the G.O. considers the Junior Assistant or Assistant or Record Clerk posts as



W.P.(MD)No.12714 of 2018

one post.

ii)The G.O. also states that if the above stated posts is already sanctioned to the school prior to 1991-1992, then alone the school is eligible to the said post.

iii)The Lab Assistant post if sanctioned prior to 1991-1992 then the school is eligible and not otherwise.

iv)The student strength ought to be calculated from the class and sections which was granted grant-in-aid prior to 1991-1992.

v)If there is surplus then the concerned authority shall deploy the said surplus post to the needy school within the Revenue District and submit the surplus list to the Director to be deployed to other Districts.



WEB COPY



W.P.(MD)No.12714 of 2018

vi)If any post is surplus without person then the post shall be surrendered to the Director's Common Pool.

vii)The Chief Educational Officer ought to ascertain that there is no surplus before granting any permission / approval to fill the post.

viii)The posts not stated in the tabulation shall be filled up through outsourcing as stated in the G.O. Ms. No. 77 School Education (Pa.Ka.1) Department dated 13.04.2015, G.O. Ms. No. 166 Municipal Administration and Water Supply Department dated 23.11.2016 and G.O. Ms. No. 79 Rural Development and Panchayat Raj Department dated 14.07.2017.

ix)If any person is working in any post, other than the posts stated in the above tabulation, the post would lapse



W.P.(MD)No.12714 of 2018

on the person retirement or otherwise. The school shall not appoint or transfer or promote in the said lapsed post.

x)If the posts stated in the above tabulation fell vacant, then the said post ought to be filled up with the surplus staff alone.

15. The comprehensive reading of all these above said Government Orders are that

- a. The school is not eligible to fill the post of Waterman, Gardener cum Sweeper and Gardener at all as per G.O. 583 from 1966 onwards.
- b. The school is eligible to appoint the Lab Assistant if the post is sanctioned post prior to the academic year 1991-1992.



W.P.(MD)No.12714 of 2018

c. The posts other than the posts of Junior Assistant or Assistant or Record Clerk, Office Assistant and Watchman would lapse, if the incumbent retires or otherwise. Then the school is not eligible to fill the lapsed post at all.

d. The posts of Junior Assistant or Assistant or Record Clerk, Office Assistant and Watchman shall be granted as per the student strength stated in the said G.O. 238 and the maximum limit as stated in the said G.O. 238.

e. Any appointments prior to G.O. Ms. No. 64 shall be approved as per the said G.O. 64, but the surplus staff ought to be deployed to the needy place within the Revenue District and then the



WEB COPY



W.P.(MD)No.12714 of 2018

surplus staff shall be submitted to Director for further deployment to other Districts.

f. The G.O. 64 was issued on 03.04.2018 and the G.O. 238 was issued on 13.11.2018 and in between the said G.O. any appointments are made, the same shall be approved. But the approval shall not be granted for the posts of Waterman, Gardener cum Sweeper and Gardener since the said posts was not granted even in G.O. 583 from 1966 onwards.

g. Except the posts of Junior Assistant or Assistant or Record Clerk, Office Assistant and Watchman, all other posts shall be filled up through out-sourcing and there is not grant-in-aid for the said



W.P.(MD)No.12714 of 2018

WEB COPY

posts.

16. Based on the above Government Orders the present case ought to be considered. The petitioner was appointed on 15.09.2005, but the respondents had granted approval from 13.01.2010. The government had issued G.O. Ms. No. 189 School Education (D1) Department dated 29.07.2009 granting permission to fill the post of 147 Junior Assistant post and 237 Office Assistant posts alone. Thereafter vide Government Letter Ms. No. 275 School Education (D1) Department / 09 dated 26.10.2009 the government had clarified that as on 01.06.2009 the posts of 147 Junior Assistants and 237 Office Assistants are there and the 147 Junior Assistant posts and 237 Office Assistant posts alone were permitted to be filled up. Based on the aforesaid G.O.Ms.No.189 the respondents have considered the petitioner's case. Since the petitioner's post is one of the posts in "237 Vacant Office Assistants" post notified under the Letter Ms. No. 275 School Education (D1) Department / 09



WEB COPY



W.P.(MD)No.12714 of 2018

dated 26.10.2009, thereafter based on the aforesaid G.O. and the clarification letter, the petitioner's appointment was processed and approval was granted from 13.01.2010.

17. It is pertinent to note that the Government was also contemplating to shift from old pension scheme to new contributory pension scheme. Therefore, the Government has imposed a ban from 2001 to 2006. The old pension scheme was shifted to contributory pension scheme in the year 2003. Therefore, Government being the appropriate authority to take policy decision cannot be forced to grant approval. As per Rule 6 of the Grant-In-Aid Code, the employee is entitled to salary under grant-in-aid only from the date of approval. When there was ban in recruitment, then the approval cannot be granted and when approval is not granted, as per Rule 6 of Grant-in-Aid Code the employee is not entitled to salary. Therefore, the claim of the petitioner



WEB COPY



W.P.(MD)No.12714 of 2018

cannot be considered. It is also pertinent to note that the respondents ought to assess the surplus staff and thereafter ought to grant approval.

18. This Court is not inclined to interfere in the policy decision of the Government wherein it will incur financial commitment to the Government. Therefore, this Court is inclined to reject the writ petition. The petitioner is at liberty to claim salary from the management for the particular period from 2005-2010. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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28.03.2023



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W.P.(MD)No.12714 of 2018

To

- 1.The Secretary to Government,
Education Department,
State of Tamil Nadu,
Secretariat, St.Fort George,
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- 2.The Director of School Education,
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- 3.The District Educational Officer,
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W.P.(MD)No.12714 of 2018

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Tmg

W.P.(MD)No.12714 of 2018

28.03.2023