



W.P.(MD).No.20345 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.20345 of 2023

and

W.M.P(MD)Nos.16781 & 16783 of 2023

N.Ayyappan,
Office Assistant,
S.M.R.V. Higher Secondary School,
Vadasery, Nagercoil-629 001,
Kanyakumari District.

... Petitioner

Vs.

- 1.The Director of School Education,
College Road, Chennai-600 006.
- 2.The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.
- 3.The District Educational Officer (Secondary),
Nagercoil, Kanyakumari District.
- 4.The Secretary,
S.M.R.V. Higher Secondary School,
Vadasery, Nagercoil-629 001,
Kanyakumari District.

... Respondents



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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 records relating to the impugned proceedings issued by the third respondent District Educational Officer (Secondary), Nagercoil in O.Mu.No. 1506/A4/2023, dated 05.07.2023, quash the same and further direct the respondents to approve forthwith the appointment of the petitioner as Office Assistant in the fourth respondent School namely, S.M.R.V. Higher Secondary School, Vadasery, Nagercoil, Kanyakumari District with effect from 04.06.2018 and disburse grant-in-aid towards the petitioner's salary with all attendant benefits.

For Petitioner : Mr.S.Xavier Rajini

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present writ petition has been filed for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the third respondent District Educational Officer (Secondary), Nagercoil in O.Mu.No.1506/A4/2023, dated 05.07.2023, quash the same and further direct the respondents to approve forthwith the appointment of the petitioner as Office



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Assistant in the fourth respondent School, namely, S.M.R.V. Higher Secondary School, Vadasery, Nagercoil, Kanyakumari District with effect from 04.06.2018 and disburse grant-in-aid towards the petitioner's salary with all attendant benefits.

2. Heard the learned Counsel for the petitioner and the learned Government Advocate for the respondents and carefully perused the materials available on record.

3. The petitioner is now working as Office Assistant in the fourth respondent School, namely, S.M.R.V. Higher Secondary School, Vadasery, Nagercoil, Kanyakumari District and the same is a recognized and private aided School. The post of Office Assistant in which the petitioner is serving fell vacant in the fourth respondent School on 27.08.2010 due to the promotion of then incumbent one Mr.P.Suresh as Record Clerk. In that vacancy, the fourth respondent School appointed the petitioner as Office Assistant with effect from 04.06.2018. On 28.06.2018, the School submitted a proposal to the third respondent District Educational Officer, requesting to approve his appointment



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as Office Assistant and disburse grant-in-aid towards the salary. The said proposal was returned for want of certain documents and the requirements were duly fulfilled and the proposal was re-submitted again by the fourth respondent School on 28.02.2023. However, vide the impugned order, dated 05.07.2023, the said proposal was returned and challenging the same, this writ petition came to be filed.

4. The learned Government Advocate for the third respondent has filed a counter and he submitted that the proposal has been returned for the reason that the fourth respondent School has failed to submit the proposal along with the permission granted by the Chief Educational Officer to make an appointment in the post of Office Assistant. Since the said permission has not been enclosed, the said proposal came to be returned. If the fourth respondent School encloses and forwards the proposal any further, the same will be considered and until and unless the said exercise is done, the proposal cannot be considered and on that basis, he pressed for dismissal of this writ petition.



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5. However, the crux of the case is no more *res integra* and this Court has dealt with the similar case in ***W.P(MD)No.9898 of 2006 (A.Murugesan Vs. State of Tamil Nadu, Represented by its Secretary, Department of School Education, Chennai and Others and Others)*** reported in ***2007 (4) MLJ 561***, wherein a favorable order has been granted to the petitioner thereat and the relevant portion of which is extracted as follows:

"6.As per the said appointment order also, the vacancy in which, the petitioner was appointed on a regular basis. As per Rule 15 of the Tamil Nadu Private Schools (Regulation) Rules, 1974 any regular vacancy should be filled on regular basis alone. That apart, as rightly contended by the learned Counsel for the petitioner, under Rule 15 there is a specific provision with regard to the seeking of the prior permission for the teaching staff. As far as non-teaching staff are concerned, as rightly contended by the learned Counsel for the petitioner, there is no provision for seeking prior permission for making an appointment....."

6. Following the said order in the same line, in yet another writ petition in W.P(MD)No.2990 of 2013, a learned Single Judge of this Court had passed favourable order to the petitioner thereat. A writ appeal was preferred as against



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W.P(MD)No.2990 of 2013 and the same was dismissed by the Hon'ble Division Bench of this Court on 26.02.2014 in W.A(MD)No.213 of 2014 and the relevant portion of which is extracted as follows:

"3. The learned Single Judge relied upon Rule 15 of the Tamil Nadu Private Schools (Regulation) Rules, 1974 which states that a prior approval is required for appointment of teaching staff and not in respect of non teaching staff which was upheld by the learned Single Judge as per the decision of this Court in A.Murugesan Vs. State of Tamil Nadu, Represented by its Secretary and Others reported in 2007 (4) MLJ 561, and allowed the writ petition on the same lines."

7. Fully in consonance to the aforesaid orders of the respective learned Single Judges and the judgment of the Hon'ble Division Bench of this Court, I have no hesitation to hold that prior approval is not required for the appointment of non-teaching staff and the same is required only in the case of appointing teachers. On that ground, the impugned order of return of the proposal is hereby quashed and the fourth respondent School is further directed to forward the proposal to the second and third respondents with immediate effect on the receipt of the copy of this order and the second and third



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respondents on receipt of the same shall approve the appointment of the petitioner forthwith within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. This writ petition stands allowed, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

26.09.2023

NCC : Yes
Index : Yes
Internet : Yes
BTR

To

- 1.The Director of School Education,
College Road, Chennai-600 006.
- 2.The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.
- 3.The District Educational Officer (Secondary),
Nagercoil, Kanyakumari District.



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4.The Secretary,
S.M.R.V. Higher Secondary School,
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L.VICTORIA GOWRI, J.

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