



W.A.No.3147 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

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1.The Director of School Education,
College Road,
Chennai.

2.The Chief Educational Officer,
Collectorate Campus,
Salem-636 001.

3.The District Educational Officer,
Collectorate Campus,
Salem-636 001.

.. Appellants

Vs

The Correspondent & Headmistress,
Fathima Girls Higher Secondary School,
Omalur-636 455,
Salem District.

.. Respondent

Prayer: Appeal filed under Section 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.23167 of 2021, dated 26.9.2023.



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For the Appellants : Mr.U.M.Ravichandran
Special Government Pleader

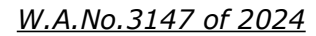
For the Respondent : Mr.Mutharasu
for M/s.S.Amala Irudhaya Mary

JUDGMENT

(Delivered by *D.Krishnakumar, J.*)

This intra-Court appeal is filed by the appellants against the order of the learned Single Judge dated 26.9.2023 passed in W.P.No.23167 of 2021.

2. The respondent had filed the writ petition for issuance of a writ of certiorarified mandamus calling for the records relating to the staff fixations in Na.Ka.No.18945/P3/2018 dated 27.12.2018 and Na.Ka.No.14491/A3/2019 dated 12.11.2019 respectively for the years 2018-2019 and 2019-2020 and the order in Na.Ka.No.5814/B4/2019 dated 4.9.2019 issued by the second appellant and quash the same and further direct the second appellant herein to approve forthwith the appointment of



3. The learned Single Judge quashed the orders impugning the writ petition and directed the second appellant to approve the appointment of R.Paul Raj as Waterman in the respondent school with effect from 1.12.2009 with all attendant benefits, including arrears of salary and allowances, within a period of six weeks from the date of receipt of a copy of the order. Aggrieved by the same, the appellants have filed the present appeal.

4. Assailing the order of the learned Single Judge, learned Special Government Pleader for the appellants submitted that the Management of the respondent school has not obtained prior permission to fill up the vacant post. The respondent school has been intimated through the Staff Fixation Orders from 2009 to



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2017 that though the Gardner, Waterman, Watchman, Scavenger and Sweeper, who are currently rendering service in their school, are declared surplus, they are allowed to work in the same school till their retirement with grant-in-aid and on their retirement, these posts may not be filled up in reference to G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007 and, in case the school Management wishes to fill up these posts, they may do so on condition that the school Management itself should bear the expenditure incurred towards hiring, as it has been in the case of Government run schools. Thus, the respondent school had been informed sufficient number of times the stand of the Government in the matter of approval of appointment of non-teaching staff such as Waterman/Sweeper. It is only the respondent school which did not pay heed to what has been communicated to the school Management.

5. Learned Special Government Pleader would submit that the learned Single Judge ought to have considered the fact that



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the second appellant has acted in strict compliance of the law in force and the Government Orders in G.O.Ms.No.238, School Education Department, dated 13.11.2018 and G.O.Ms.No.64, School Education Department, dated 3.4.2018 are unequivocal in this regard. It is only the respondent school which has given a go-by to what is stated in Serial Number 18 of the Staff Fixation Orders issued by the second appellant right from the year 2009. The learned Single Judge failed to consider the said aspects in proper perspective.

6. Learned Special Government Pleader further submitted that the learned Single Judge ought to have considered the fact that the alleged appointment of R.Paul Raj was never approved by the authorities and the respondent had furnished wrong and misleading information to the Court. When there was no approval from the authorities to an appointment by the respondent Management, the respondent cannot claim that the appointment of R.Paul Raj is much earlier than the Government



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Orders. The appointment process reaches its fruition only when the proposal is duly approved by the competent authorities.

7. Learned Special Government Pleader next submitted that the learned Single Judge ought to have considered the fact that it is wrong on the part of the respondent to claim that neither any notice nor any opportunity of hearing was provided before issuance of the impugned orders. The respondent school has been annually informed of the position of the department over a period of nine years since 2009 through the Staff Fixation Orders. The claim of the respondent is not only illegitimate, but also misleading.

8. Adding further, learned Special Government Pleader submitted that by accepting to the respondent's claim, the Government may have to incur a huge loss by way of salary and other benefits to the one who is attempting to pull the wool over everyone's eyes and hoodwink his way to undue benefits. This is



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nothing, but an attempt with malafide intent to avail an unwarranted benefit at the cost of the public exchequer. Thus, learned Special Government Pleader prayed for setting aside the order of the learned Single Judge and dismissing the writ petition filed by the respondent school.

9. Supporting the order of the learned Single Judge, learned counsel for the respondent submitted there is no error in the order of the learned Single Judge and the present appeal has been preferred only to drag on the proceedings. He would submit that R.Paul Raj has been appointed as early as 1.12.2009 and, therefore, G.O.Ms.No.238, dated 13.11.2018 may not be applicable. In fact, G.O.Ms.No.238 in no way bans the approval of R.Paul Raj, as his post is already a sanctioned one and the issue of surplus never arose in the respondent school. The learned Single Judge, after referring to the earlier decisions of this Court, rightly allowed the writ petition and the same warrants no interference. Thus, he prayed for dismissal of the



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appeal.

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10. We have considered the rival submissions and also perused the materials available on record.

11. There is no dispute that the respondent school is a minority institution run by the Roman Catholic Congregation of Immaculate Heart of Mary Pondicherry and there arose a vacancy in the post of Waterman/Sweeper in the school on 1.12.2009 due to the retirement of the previous incumbent on 30.11.2009. One R.Paul Raj was appointed in the said vacant post with effect from 1.12.2009. The respondent school Management has sent a proposal to the educational authorities for approval of the said appointment, however, the same was returned by the authorities citing G.O.Ms.No.64, School Education Department, dated 3.4.2018 and G.O.Ms.No.238, School Education Department, dated 13.11.2018.



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12. It is the contention of learned Special Government Pleader that the learned Single Judge ought to have considered the fact that there arose a vacancy in the respondent school in the post of Waterman/Sweeper on 1.12.2009 due to the retirement of D.Chenbagam on 30.11.2009 and, in this regard, he has drawn our attention to Serial No.18 of the Staff Fixation Orders, which reads thus:

"18. In Column 6 of the Staff fixation order, though it is informed that the Gardener, Waterman, Watchmen, Scavenger and Sweeper who are currently rendering service are declared surplus, they are allowed to work in the same school till their retirement with grant-in-aid and on their retirement, these posts may not be filled up in reference to G.O.Ms.No.115, School Educational Department (D2) dated 30.05.2007 and in case the school management concerned wishes to fill up these posts viz. Watchman, Scavenger, Sweeper, Scavenger/Sweeper, they may do so on the condition that the school management itself should bear the expenditure incurred toward the hiring as



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it has been done in the case of government run schools.”

13. It is also the contention of learned Special Government Pleader that the learned Single Judge ought to have considered the fact that the Government has unequivocally announced its stand with regard to appointment of non-teaching posts in aided schools in Para (v) in G.O.Ms.No.64, School Education Department, dated 3.4.2018, wherein it is stated as under:

"(v) When the posts such as Librarian, Library Assistant, Gardener, Waterman are not approved even in respect of government schools, such incumbent posts in government aided schools may be withdrawn either when the incumbent employees retire or in the event of their promotion and as and when these posts become vacant. The approval granted to such schools should be withdrawn. The Director of School Education is instructed that the posts that become vacant in the above fashion should be informed to the government specifying the name of the school, the



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vacant post and the date on which a particular post is rendered vacant."

14. At the relevant point of time, the students strength of the respondent school is 2432. That apart, 51 teaching and 6 non-teaching staff were employed. One post of Waterman/ Sweeper in the school fell vacant on 1.12.2009 due to retirement of D.Chenbagam and in that vacancy, R.Paul Raj was appointed as Waterman with effect from 1.12.2009 and the incumbent had also joined duty on the same day. Thus, G.O.Ms.No.238, dated 13.11.2018 is of no avail to the case of the appellants, as the appointment of R.Paul Raj was made by the respondent school as early as 1.12.2009 and the non-teaching staff R.Paul Raj had joined duty on the same day, which is much prior to the issuance of the said Government Order.

15. So far as permission to be obtained before making appointment is concerned, the First Bench of this Court in the



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case of *Director of School Education and others v. S.Murugan and another*, W.A.No.1022 of 2020, dated 7.1.2021, held as under:

"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



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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 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.



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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."

16. It appears that G.O.Ms.No.115, dated 13.05.2007 referred to in the Staff Fixation Orders was already quashed by this Court in W.P.(MD) No.11481 of 2008 on the ground that the same was issued without jurisdiction and also violative of the scheme of the Tamil Nadu Recognized Private Schools Act, 1973. That apart, the Act also does not prescribe obtaining permission before making appointment in the sanctioned posts, whenever a vacancy arose against the same.



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17. In similar matters, (i) *The Director of School Education and others v. DBTR National Higher Secondary School, W.A.No.42 of 2021, decided on 3.8.2021* and (ii) *The Director of School Education and others v. St. Gabriel's Higher Secondary School, W.A.No.1645 of 2021, decided on 3.8.2021*, a Division Bench of this Court negated the argument of the State that prior permission ought to have been obtained by the school before the appointment is made of any non-teaching staff and surplus staff should have been engaged in view of G.O.Ms.No.238. The decision rendered in the aforesaid two cases is squarely applicable to the case on hand. Thus, both the grounds raised by the appellants herein have already been decided by this Court. Therefore, in the absence of any specific rule or regulation mandating that prior permission is required for appointing a non-teaching staff in a sanctioned post, the appointment made by the respondent school cannot be faulted with and the learned Single Judge rightly quashed the orders



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impugned in the writ petition and directed the second appellant to approve the same within the stipulated period. We see no reason to interfere with the same.

In the result, the writ appeal is dismissed and the order of the learned Single Judge is confirmed. The appellants are directed to comply with the directions issued by the learned Single Judge within a period of eight weeks from the date of receipt of a copy of this judgment. Consequently, C.M.P.No.24157 of 2024 is closed. No costs.

(D.K.K., J.) (P.B.B., J.)
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Index : Yes/No
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