



W.P(MD)Nos.5677 & 5678 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)Nos.5677 & 5678 of 2024

The Secretary,
S.H.N.Esthel Harvey Girl's Higher Secondary School,
Sattur, Virudhunagar District.

... Petitioner
(In both cases)

Vs.

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

... Respondents
(In both cases)

Prayer in W.P(MD)No.5677 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 1st respondent in his proceedings in Mu.Mu.No.4890/A1/2021, dated 15.02.2022 and consequential order passed by the 2nd respondent in proceedings Oo.Mu.No.1813/A5/2020, dated 23.02.2022 and quash the same and direct the respondents to approve the appointment of K.Karuppasami as Junior Assistant from the date of appointment i.e. from 01.11.2019 with salary and all consequential benefits.



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Prayer in W.P(MD)No.5678 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 1st respondent in his proceedings in Mu.Mu.No.4891/A1/2021, dated 15.02.2022 and consequential order passed by the 2nd respondent in proceedings Oo.Mu.No.1812/A5/2020, dated 23.02.2022 and quash the same and direct the respondents to approve the appointment of M.Mercy Kiruba Rani as Lab Assistant from the date of appointment i.e. from 01.11.2019 with salary and all consequential benefits.

For Petitioner : Mr.V.Panneer Selvam
(In both cases)

For Respondents : Mr.M.Sarangan
Additional Government Pleader
(In both cases)

COMMON ORDER

The present writ petitions have been filed to call for the records pertaining to the order passed by the 1st respondent, dated 15.02.2022 and consequential order passed by the 2nd respondent in proceedings, dated 23.02.2022 and quash the same and direct the respondents to approve the appointment of the concerned staffs as Junior Assistant and Lab Assistant respectively from the date of their appointment i.e. from 01.11.2019 with salary and all consequential benefits.



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2. The petitioner school is a single management non-minority school. The school has 6 sanctioned posts under non-teaching category, namely Junior Assistant, Record Clerk, Lab Assistant, Office Assistant, Waterman-Assistant cum Sweeper and Scavenger. On 01.06.2017, a vacancy had arisen in the post of Junior Assistant due to the voluntary retirement of the erstwhile incumbent one Padma. Thereafter, the petitioner school made an application for prior permission seeking to fill up the said post. The 2nd respondent forwarded the proposal to the 1st respondent and the 1st respondent had granted permission to fill up the post on 11.09.2019. Following which, the petitioner effected paper publication calling for candidates from open market as well as employment exchange for the said post on 19.09.2019. After conducting proper selection process in accordance with the rules and regulations, one K.Karuppasamy was appointed in the post of Junior Assistant on 01.11.2019. Thereafter, the management had sent a proposal to the 2nd respondent on 01.11.2019 itself for approval. The same was rejected by the 1st respondent on 15.02.2022 referring W.P.No.31575 of 2019, dated 08.11.2019, W.A(MD)No.76 of 2019, Government Letter dated 04.12.2019 and SLP Diary No.22676 of 2021. The said order was communicated by the 2nd respondent on 23.02.2022. Challenging



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the aforesaid impugned order, dated 15.02.2022 which was served upon the petitioner on 23.02.2022, W.P(MD)No.5677 of 2024 came to be filed.

3. In the same school, on 04.08.2018, another post of Lab Assistant fell vacant due to the death of the erstwhile Lab Assistant, namely G.Paramasivam. Following which, the petitioner has sent a proposal to get prior permission to fill up the post of Lab Assistant. Following which, the 2nd respondent forwarded the proposal to the 1st respondent and the 1st respondent had granted permission to fill up the post on 05.09.2019. Following which, the petitioner effected paper publication calling for candidates from open market as well as employment exchange for the said post on 19.09.2019. After conducting a proper selection process in accordance with the rules and regulations, one M.Mercy Kiruba Rani was appointed in the post of Lab Assistant on 01.11.2019. Thereafter, the petitioner had sent proposal to the 2nd respondent on 01.11.2019 itself for approval. The same was also rejected by the 1st respondent on 15.02.2022 referring W.P.No.31575 of 2019, dated 08.11.2019, W.A(MD)No.76 of 2019, Government Letter dated 04.12.2019 and SLP Diary No.22676 of 2021. The said order was communicated by the 2nd respondent on



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23.02.2022. Challenging the aforesaid impugned order, dated 15.02.2022, W.P(MD)No.5678 of 2024 came to be filed.

4. The learned counsel for the petitioner submitted that the grounds on which the impugned orders came to be passed rejecting the proposals seeking approval of appointment of 2 non-teaching staffs are fully unsustainable in any way either the judgment of the Hon'ble Division Bench in W.A(MD)No.76 of 2019 or the order passed by this Court in W.P.No.31575 of 2019 and the SLP Diary No.22676 of 2021 is connected to the appointment of non-teaching posts and all those cases were pertaining to teaching posts. On that ground sought for interference of this Court and pressed for allowing the writ petition.

5. Per contra, the learned Additional Government Pleader submitted that even before the district wise surplus came to be exhausted, the appointments came to be made. He further contended that G.O.Ms.No.238, dated 13.11.2018 pertaining to non-teaching posts has already been stayed by the Hon'ble Division Bench of this Court in C.M.P(MD)No.6675 & 6677 of 2023 in W.A(MD)No.816 of 2023. In view of the same, the respondents' hands are tied in grant of approval of the appointments and he pressed for dismissal of the writ petition.



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6. Heard the learned counsel on either side and perused the materials available on record.

7. It is significant to mention that the 1st respondent has granted permission to fill up the posts of both the Junior Assistant and Lab Assistant as early as on 11.09.2019 and 05.09.2019 respectively. Only after properly obtaining permission to fill up the posts, the petitioner school had appointed the 2 persons, namely K.Karuppasamy and M.Mercy Kiruba Rani in the said posts as Junior Assistant and Lab Assistant respectively. Having granted permission to fill up the posts, the respondents ought not to have passed the impugned order rejecting the petitioner's application seeking approval of the aforesaid appointments.

8. The petitioner school is a stand alone non-minority school. It is an admitted fact that there is no surplus in the petitioner school. The existence of surplus in other schools is irrelevant as far as single management stand alone institutions. That apart, as far as non-teaching posts are concerned, prior permission to fill up the post is not required under relevant statutes. Despite the same, the petitioner school sought for prior permission and only pursuant to the permission accorded, duly appointments were made in the said posts. The impugned order of rejecting approval for appointment would amount to



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cancellation of the prior permission granted for making appointments and such an exercise is absurd and impermissible.

9. In view of the same, the impugned orders are hereby quashed and the 1st respondent is directed to grant approval of the appointments to the post of Junior Assistant and Lab Assistant to the concerned staffs, namely K.Karuppasami and M.Mercy Kiruba Rani within a period of twelve (12) weeks from the date of receipt of copy of this order.

10. With the above said observations, both the Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.03.2024

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

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To

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



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L.VICTORIA GOWRI, J.

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