



W.P.(MD)No.8695 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.8695 of 2024

and

WMP(MD)No.7945 of 2024

Central Higher Secondary School,
Kayalpatnam- 628 204,
Tuticorin District,
Rep. By its Correspondent.

.. Petitioner

Vs.

The Chief Educational Officer,
Tuticorin District,
Tuticorin- 628 002.

... Respondent

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 impugned order passed by the respondent in his proceedings in Oo.Mu.No. 969/Aa3/2024 dated 14.03.2024 and quash the same as illegal and consequently direct the respondent to approve the appointment of one M.S.Yusuf Kani as Night Watchman in the petitioner school with effect from 01.09.2020 within the period that may be stipulated by this Court.



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For Petitioner : Mr.M.Jerin Mathew

For Respondent : Mr.T.Amjadkhan
Government Advocate

ORDER

This Writ Petition has been filed to quash the proceedings of the respondent in Oo.Mu.No.969/Aa3/2024 dated 14.03.2024 and consequential direction to the respondent to approve the appointment of one M.S.Yusuf Kani as Night Watchman in the petitioner school.

2. By consent of both the parties, this writ petition is taken up for final disposal.

3. Heard Mr.M.Jerin Mathew, learned counsel for the petitioner and Mr.T.Amjadkhan, learned Government Advocate for the respondent.

4. The petitioner was appointed one M.S.Yusuf Kani to the post of Night Watchman on 01.09.2020 and the proposal dated 13.10.2020 was sent to the respondent for approval. The same was rejected stating that there were surplus of two posts in the same cadre and without deploying them, no approval can be given for fresh appointments. Now the petitioner has filed this writ petition



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challenging the order of rejection dated 14.03.2024.

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5. For the sake of convenience, the relevant portion of the impugned order is extracted below:

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வெறப்பட்ட கருத்துரு பரிசீலனை செய்யப்பட்டதில், பணியாளர் நிரணயத்திற்
ஆய்வுப்பணியில் இரவுக் காவரை பணியிடம் அனுமதிக்கப்பட்ட போதிலும் காவரை
பணியிடம் வருவாய் மாவட்ட அளவில் 1 (ஒன்று) உபரி உள்ளது. அவ்வகையில் உபரியாக
உள்ள பணியாளரை காப்பப்பட்டணம், சென்ட்ரல் மேல்நிலைப் பள்ளியில் ஏற்பட்டுள்ள
இரவுக் காவரை காலிப்பணியிடத்தில் ஈர்த்துக்கொள்ள நிர்வாகம் இசைவு அளிக்கத்
பட்சத்தில் மாணவர்கள் கல்வி நலன் கருதி, உபரி பணியாளரைக் கொண்டு திரட்டி
அனுமதி வழங்கப்படும். இந்நிலையில் புதிய நியமனம் மேற்கொள்வதால் அரசுக்கு
கூடுதல் நிதியிழப்பு ஏற்படும் என்பதனை கருத்தில் கொண்டு, திரு. M.S.ஆசுப் கனி
என்பாரை இரவுக் காவரராக பள்ளி நிர்வாகம் நியமனம் செய்தமைக்கு ஒப்புதல் வழங்க
இப்போது என நிராகரித்து ஆணை வழங்கப்படுகிறது.

முதன்மைக் கல்வி அலுவலர்
7/4/24
தூத்துக்குடி

6. In the above impugned order, it is stated that there are two surplus posts in the revenue District and those surplus posts should be accommodated in the vacancy of the petitioner's school and only for such a proposal the respondent can give approval. So far as the petitioner's school is concerned it is



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an aided minority school. So, the question of filling up the vacancy by deploying in minority schools in the revenue district will not arise in view of the special status of minority schools and the autonomy assured to them under Article 30 of the Constitution of India. The other reference that is seen in the impugned order is about the G.O.Ms.No.238 School Education Department dated 13.11.2018. Even the above G.O speaks about the surplus posts of the District Level and the petitioner's school which is a minority institution cannot be expected to accommodate the surplus posts even in accordance with G.O.Ms.No.238 School Education Department dated 13.11.2018.

7. Mr.T.Amjadkhan, learned Government Advocate for the respondent submitted that legality of G.O.238 School Education Department dated 13.11.2018 has been upheld by this Court in W.P(MD)No.13428 of 2020. In the said order, the applicability of the above said Government Order relating to the minority institutions have also been dealt and is held as under:

"9.Article 30 of the Constitution of India guarantees right to establish and administer educational institutions by minorities. The impugned G.O does not in any way constitute an inroad into that right. The management can very well appoint as many persons as they want. All that the G.O states is that the government will not be in a position to fund such appointments beyond what has been already provided. In Chandana Das v. State of W.B (2015) 12 SCC 140, it was noted that grant-in-aid is



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not included in the guarantee contained in the Constitution to linguistic and religious minorities for establishing and running their educational institutions. Of course, such grant cannot be denied to such institutions only because the institutions are established by linguistic or religious minority. Grant-in-aid cannot be made subservient to conditions which deprive the institution of their substantive right of administering such institutions. This proposition was affirmed when reference was made to a larger bench [(2020) 13 SCC 411]. The above proposition was approvingly quoted in Christian Medical College Vellore Association v. UOI (2020) 8 SCC 705. The petitioners cannot complain of discrimination. The aforesaid G.O applies across the board to all educational institutions receiving aid irrespective of whether they are minority institutions or non-minority institutions. There is no infraction of the equality principle enshrined in Article 14 of the Constitution of India."

8. However, the subject matter was pending in W.A(MD)No.816 of 2023 which has been filed by some other petitioner and in which a portion of School Education Department dated 13.11.2018 has been stayed. The respondent has got no quarrel with regard to the vacancy position of Office Assistant and that it is a sanctioned post during the relevant academic year and that was objected with regard to the implication of G.O.No.238 School Education Department dated 13.11.2018. Since the matter is *subjudice*, the respondent can give approval to the proposal submitted by the petitioner subject to the outcome of W.A.(MD)No.816 of 2023.



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WEB COPY 9. With the above observation, this writ petition is **disposed of**. No Costs.

Consequently, connected miscellaneous petition is closed.

05.04.2024

NCC:yes/no
Index:yes/no
Internet:yes/no

PJL

To
The Chief Educational Officer,
Tuticorin District,
Tuticorin- 628 002.



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R.N.MANJULA, J.

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