



WP.(MD).No.8840 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.8840 of 2023

and

W.M.P.(MD)No.22183 of 2023

The Secretary,
Kshatriya Nadar Girls Higher Secondary School,
Kamuthi,
Ramanthapuram District. ... Petitioner

Vs.

1.The Joint Director of School Educational,
(School Educational),
Chennai - 6.
(R1 is amended as per order of this Court
dated 11.03.2024)
2.The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, Calling for the records pertaining to the proceedings of the second respondent in Moo.Mu.No.9406/Aa6 dated 20.12.2022 and quash the same and consequently direct the respondents to approve the appointments of Mrs.A.Muthuselvi and Mr.P.Kamaladasan.

For Petitioner	: Mr.P.Gunasekaran
For Respondents	: Mr.N.Ramesh Arumugam Government Advocate



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ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the second respondent in Moo.Mu.No.9406/Aa6 dated 20.12.2022 and to direct the respondents to approve the appointments of Mrs.A.Muthuselvi and Mr.P.Kamaladasan.

2.The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(I)The petitioner School is a non minority aided girls higher Secondary School. The School has been sanctioned with one Record Clerk post and one Office Assistant post. The post of Record Clerk, which was earlier occupied by one R.Muthuselvi has become vacant in view of her promotion as Junior Assistant on 21.06.2017. Likewise the post of Office Assistant fell vacant due to the retirement of the previous incumbent P.Dhayalamani on 31.05.2017. Since the said post of Record Clerk and Office Assistant in the petitioner School fell vacant, a resolution was passed by the School Committee to fill up the post of Record Clerk and Office Assistant. As such one A.Muthuselvi was appointed as



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Record Clerk on 23.06.2017 and one P.Kamaladasan was appointed as Office Assistant on 23.06.2017. Subsequently the proposals seeking approval of appointment of Muthuselvi as Record Clerk and Kamaladasan as Office Assistant were submitted by the petitioner on 20.09.2021. But those proposals were returned by the second respondent raising certain queries vide proceedings dated 11.03.2022. With appropriate explanation, the proposal were once again submitted by the petitioner School before the second respondent.

(II) Even thereafter, the second respondent rejected and returned the proposals vide proceedings dated 31.05.2021, on three grounds namely no prior permission was obtained, no communal roaster was followed and no paper publication was effected. As against the same, the petitioner preferred an appeal before the first respondent during July 2022. The first respondent in turn remitted back the appeal to the second respondent to take a decision based on the extant Rules and Government orders vide proceedings dated 31.10.2022. Following which, the second respondent has once again passed the impugned order rejecting and returning the proposal submitted by the School vide impugned



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proceedings dated 20.11.2022 on four grounds I.e., (i)prior permission was not obtained from the respondents before appointment, (ii)paper publication was not effected as far as the vacant positions are concerned, (iii)interview was not conducted and (iv) no roaster was followed. Challenging the same, this Writ Petition came to be filed.

3.The learned counsel for the petitioner submitted that due proper notification was made through advertisement in various dailies and interview was also conducted and the details of the same has been maintained by the petitioner School and the same has been produced before the respondent Authorities. As far as the question of obtaining prior permission is concerned, it is not necessary for obtaining prior permission for appointment made in sanctioned vacant post.

4.Relying upon the judgment of the Hon'ble Apex Court in the case of ***Post Graduate Institute of Medical Education and Research v. Faculty Association and others*** reported in ***(1998) 4 SCC 1***. The learned counsel for the petitioner submitted that in a single cadre post, reservation at any point of time on account of



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rotation of roaster need not be followed. On that basis, he pressed for allowing the Writ Petition.

5.Per contra the second respondent has filed a counter and the learned Government Advocate appearing for the respondents submitted that without obtaining prior permission, the petitioner School Management has filled up the non Teaching post more particularly without receiving list of eligible candidates from employment exchange and without effecting paper publication in this regard. That apart proper interview was also not conducted and the posts were filled up without following communal roaster. Each and every action of School Management ought to be approved by the Department as specifically mandated in G.O.Ms.No.101 School Education (Budget-1) Department, dated 18.05.2018.

6.He further insisted that Section 51 of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, give delegation of power to the Government for issuing any G.Os. or regulations. Only on exercising the power under the said provision, the Government had made prior permission mandatory. Therefore, the reason assigned by the Department in the impugned order for



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rejection and returned the proposal are just and the same need not be interfered by this Court and pressed for dismissal of the Writ Petition.

7.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents and carefully perused the entire materials available on record.

8.Having taken into account the learned counsel for the petitioner's categorical submission that, proper notification and advertisement with respect to vacancies were duly made and the interview was also conducted. This Court has to decide as to the question whether prior permission for appointment of Non Teaching post in a sanctioned vacant post from the respondents is necessary.

9.The matter is no more *res integra*. This Court in W.P.No. 25639 of 2017 by its order dated 22.09.2017 has dealt with the similar case elaborately and passed favourable orders to the petitioner therein and the relevant portion of which is extracted as follows:-



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“5. Thus, the issue is well settled now that any school, either minority/Non-Minority/private/aided or unaided, is entitled to fill up the vacancy arising on account of promotion, retirement, removal, dismissal etc., against a sanctioned post already approved by the school authorities, without even obtaining prior permission from the Government. In the cases on hand, admittedly, the writ petitioner has been appointed against vacancies relating to sanctioned posts as Non-teaching staff in various cadres and therefore, by following the above cited case laws, this Court hereby directs the respective respondents to approve the appointments of the Non-teaching staff by the Private Aided Schools and to sanction the grant within a period of four weeks from the date of receipt of a copy of this order.”

10. Insisting the mandates of G.O.Ms.No.101, School Education Department dated 18.05.2018, the learned Government Advocate categorically submitted that prior permission is mandatory for any School management before making an appointment in any posts whether Teaching or non Teaching. The date of appointment of Muthuselvi as Record Clerk was 26.06.2017 and date of appointment of Kamaladasan as Office Assistant was on 26.06.2017. The proposals were sent for approval of their



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appointments. Since the same was pending, Kamaladasan filed a Writ Petition in W.P.(MD)No.11876 of 2018 before this Court seeking to direct the respondents to approve his appointment and this Court by order dated 06.09.2021, was pleased to direct the District Educational Officer, Ramanathapuram to consider the proposal submitted by the petitioner School as expeditiously as possible. Likewise, Muthuselvi has also filed another Writ Petition in W.P.(MD)No.11876 of 2018 before this Court seeking to direct the respondents to approve her appointment as Record Clerk and this Court by its order dated 06.09.2021, directed the District Educational Officer, Ramanathapuram to consider the proposal submitted by the petitioner School as expeditiously as possible.

11.Filing of those Writ Petitions would reveal the fact that the proposal has been forwarded to the respondents by the petitioner School as early as in the year 2018 itself. Hence, it has become clear that the date of appointment of both the incumbents as Record Clerk and Office Assistant respectively and the proposals seeking approval of their appointments were made by the petitioner School before the issuance of G.O.Ms.No.101 dated 18.05.2018.



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12.A critical perusal of the impugned order would further throw light on the fact that the respondents though have rejected and returned the petitioner's proposal on four grounds no where either in the reference or in content had referred the aforesaid G.O., by all means. However, the scope of the impugned order has been expanded by the learned Government Advocate at the time of argument relying upon the counter affidavit filed by the second respondent by citing the mandates of the aforesaid G.O. The Hon'ble Apex Court in the case of ***Mohinder Singh Gill and Others vs. The Chief Election Commissioner, New Delhi and Others*** reported in ***MANU/SUPREME COURT/0209/1977*** has categorically held that *'the public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'*



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13.In the instant case, the impugned order being a public order made publicly in the exercise of statutory authority, the second respondent has proceeded to subsequently explain the scope of the impugned order by enlarging the same relying upon the mandates of G.O.Ms.No.101 dated 18.05.2018, such an exercise is not permissible in view of the judgment passed by the Hon'ble Supreme Court as discussed supra.

14.Fully fortified by the order passed by this Court in W.P.No. 25630 of 2017 dated 22.09.2017 and the judgment of the Hon'ble Apex Court in the case of ***Post Graduate Institute of Medical Education and Research v. Faculty Association and others*** reported in ***(1998) 4 SCC 1***, I have no hesitation to hold that the prior permission for making appointment in a sanctioned vacancy from the respondent Authorities is not necessary and rejection on the said ground is unwarranted and issue of following communal roaster has been well settled by the mandates of the Hon'ble Supreme Court.

15.In view of the same, the impugned order dated 20.12.2022 is hereby quashed and the file is remitted back to the second



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respondent with a direction to forthwith consider the proposal of the petitioner with respect to the appointment of Tmt.Muthuselvi as Record Clerk and Thiru.Kamaladasan as Office Assistant, if otherwise qualified within a period of six weeks from the date of receipt of copy of this order.

16.At this juncture, the learned counsel for the petitioner represented that the position of the first respondent is wrongly mentioned. In view of the above, this Court is inclined to suo moto amend the first respondent as “The Joint Director of School Educational, (School Educational), Chennai - 6”.

17.Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No

Index : Yes / No

Internet : Yes

Mrn

Note : The Registry is directed to make necessary amendments.



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L.VICTORIA GOWRI, J.

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