



W.P.(MD)No.24151 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.24151 of 2022

and

W.M.P(MD)No.18257 of 2022

Palaniappa Memorial Higher Secondary School,
Rep. by its Secretary,
Palanichettipatti,
Theni District 625 531.

... Petitioner

Vs.

- 1.The Director of School Education,
College Road, Chennai - 6.
- 2.The Chief Educational Officer,
Theni, Theni District.
- 3.The District Educational Officer,
Theni, Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned order passed by the second respondent vide A.thi.Mu.No.5039/Aa3/2022, dated 16.09.2022, and quash the same and direct the second respondent to grant permission to fill up post of record clerk, on the basis of proposal submitted by the petitioner school, dated 08.08.2022.



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For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

The writ petition has been filed challenging the order passed by the second respondent vide A.thi.Mu.No.5039/Aa3/2022, dated 16.09.2022, and directing the second respondent to grant permission to fill up post of record clerk, on the basis of proposal submitted by the petitioner school, dated 08.08.2022.

2. The case of the petitioner is that the petitioner school is an aided non-minority institution started as High School in the year 1963, with noble object to cater the need of education to the poor and downtrodden people in and around Palanichettipatti Village. The school was upgraded as Higher Secondary School in the year 1988. The school is governed by the provisions of Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 and various Government Orders issued from time to time. The School has 1007 students



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studying from VI to XII standard with 34 teaching staffs and four full time non-teaching staffs and two part time post of Sweeper and Scavenger, which is vacant as of now. A vacancy arose for the post of Record Clerk on 01.05.2022, due to voluntary retirement of one Mr.P.Kumaran, on 30.04.2022. The second respondent vide proceedings, dated 27.04.2022 granted approval for voluntary retirement of Mr.P.Kumaran, with a condition that resultant vacancy caused due to voluntary retirement shall not be filled up by the school management, for want of student strength. The eligible employees had relinquished the right of promotion of Record Clerk. Hence, the school sought approval for relinquishment vide letter, dated 01.07.2022.

3. The third respondent has sought clarification from the school vide proceedings, dated 29.07.2022. The school has sent proposal on 08.08.2022, to clarify the same contending that during 2019-2020, the student strength falls 941, due to Covid 2019 and as on date 1007 students are studying from VI to XII, as per G.O.Ms.No.238, dated 13.11.2018, the school is entitled for the post of Record Clerk and the school sought permission to fill up the vacant post from the second respondent.



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4. The second respondent vide impugned order, dated 16.09.2022, returned the proposal on the ground that the proposal could be considered only after getting order from the first respondent with regard to fill up the post of non-teaching and after fixation of staff strength for the current academic year.

5. As per Rule 15(4) of Tamil Nadu Private School (Regulations) Rule, 1974, no prior permission required to fill up the post of non-teaching post in the aided non-minority/minority school. The petitioner submits that during academic year 2019-2020, the school had 941 students, due to Covid 19 Pandemic. The post of Record Clerk is yet to be surrendered and the second respondent has not fixed staff strength for the year 2020-21 and 2021-22, for all the Aided School Managements in the State, for the reasons best known to them. As per G.O.Ms.238, dated 13.11.2018, the school is entitled the post of Record Clerk. Therefore, the reason assigned by the second respondent in the impugned order is unsustainable.

6. Aggrieved by the same, the petitioner has come forward with the present writ petition.



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7. The learned counsel for the petitioner submitted that the proposal was sent by the petitioner for the post of record clerk and the same was rejected by the Chief Educational Officer, Theni, who is the second respondent vide A.thi.Mu.No.5039/Aa3/2022, dated 16.09.2022.

8. The learned counsel for the petitioner further submitted that the matter may be remanded back to the second respondent for fresh consideration based on the strength of the school students.

9. The counter affidavit has been filed by the third respondent, dated 29.12.2022.

10. The learned Government Advocate for the respondents submitted that G.O.Ms.238, Education Department, dated 13.11.2018 governing the appointment and approval to the post of record clerk and the said Government Order has been stayed by the Division Bench of this Court in W.A(MD)No.816 of 2023, dated 14.06.2023.



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11. The learned Government Advocate for the respondents submitted that the second respondent has issued the staff fixation order to the petitioner on 20.03.2020 regarding the post of Record Clerk which fell as surplus in the petitioner's school, since the strength of the pupils fell down below one thousand as per G.O.Ms.No.238, dated 13.11.2018. The petitioner kept silence regarding this up to the voluntary retirement of the existing Record Clerk, namely, Mr.P.Kumaran on 30.04.2022.

12. The learned Government Advocate for the respondents further submitted that since the post of Record Clerk was declared surplus, the post should have been surrendered when the person Mr.P.Kumaran was retired or else the petitioner should have represented to the second respondent to sustain the post of the Record Clerk by mentioning the pupil's strength increased to 1011 on 01.08.2021. But the petitioner did not take such needed step on behalf of the school.

13. Heard both sides and perused the available materials on record.



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14. G.O.Ms.No.238, School Education Department, dated 13.11.2018 has been stayed by the Division Bench of this Court vide C.M.P(MD)Nos.6675 and 6677 of 2023 in W.A(MD)No.816 of 2023, dated 14.06.2023.

15. In view of the above, the matter is remanded back to the second respondent for fresh consideration based on the strength of the school as on date. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

16. In the result, the writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

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