



W.P.No.4215 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 05.02.2025

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.4215 of 2021

and

WMP.No.4814 of 2021

Vallal S.I.Alagarsamy Chettiar Higher Secondary School,
No.2 and 3 Adam Sahib street,
Royapuram, Chennai-600013.
Rep. by its Secretary G.Umapathy.

... Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
Fort St.George, Chennai-9.

2. The Director of School Education,
DPI Campus, College Road, Chennai-9.

3. The Chief Educational Officer,
Chennai District, Egmore, Chennai-8.

4. The District Educational Officer,
Chennai East, Chennai-5.

5.P.Narasaiah

... Respondents

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Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 4th respondent in his proceedings Oo.Mu.No. 1798/A2/2020 dated 18.11.2020 and quash the same and consequently direct the respondents to approve the appointment of 5th respondent in the post of sweeper cum scavenger from the date of his initial appointment (w.e.f 01.07.2019) with all other service and monetary benefits.

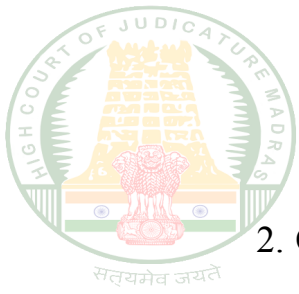
For Petitioner : M/s.Dakshayani Reddy
Senior Counsel
for M/s.Suneetha

For Respondents : Mr.L.S.M.Hasan Fazil
Additional Government Pleader
for RR1 to 4

Mr.R.C.Manoharan
for R5 dt.6/2/2023

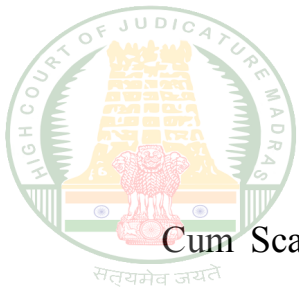
ORDER

The petitioner aggrieved by the impugned order dated 18.11.2020, declining approval for appointment of the 5th respondent as Sweeper Cum Scavenger in the petitioner school has filed the above writ petition for the aforesaid relief.



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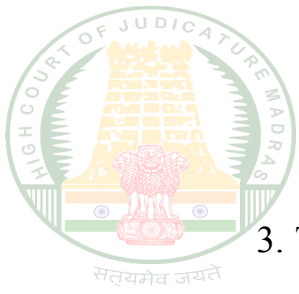
2. On 14.08.1985, the petitioners school appointed one Pappiah as Sweeper Cum Scavenger against the sanctioned post and the same was approved by the competent authorities. As the said Pappiah was absent for a considerable period, the school committee decided to terminate his services and a resolution was passed to the effect on 25.05.1994. Based on the resolution, proceedings dated 17.11.1995, were passed by the school management for the termination of the said Pappiah. The proceedings of the school management were forwarded to the authorities, but the same was kept pending by the competent authorities. Further, the said Pappiah again remained absent unauthorisedly and therefore, a resolution was passed by the school committee on 31.01.2000, deciding to appoint a substitute in his place. The 5th respondent was therefore selected by following the procedure and 4th respondent also approved his appointment vide proceedings dated 25.02.2000, in a time scale of pay with effect from 01.02.2000 and service record was also opened in the name of the 5th respondent. Whiles, the said Pappiah approached this court in W.P.No.5451 of 1998 and this court gave him liberty to file an appeal to the official respondents with further direction to the official respondents to act upon the same. In pursuance of the orders passed by this court, the 2nd respondent passed an order reinstating the said Pappiah as a Sweeper



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Cum Scavenger, overlooking the school management's proposal to approve his

termination sent as early as on 25.05.1994 and which was pending with authorities. In any event, the said Pappiah was reinstated by the school management on 13.08.2002, and the 5th respondent was kept as a substitute. The said Pappiah continued to be irregular in his duties and so the 5th respondent was retained as a substitute with meagre salary. Meanwhile, the said Pappiah attained superannuation on 30.06.2019, and in his place, the 5th respondent who was working as a substitute was appointed in the sanctioned post with effect from 01.07.2019. A proposal was also forwarded to the 3rd respondent through the 4th respondent on 19.03.2020. While so, by the impugned order, the 4th respondent rejected the request of the petitioner school on the grounds that from 2019-2020, the post of Sweeper Cum Scavenger was withdrawn and that no permission was sought from the competent authorities before making appointment. The petitioner school filed an appeal before the 3rd respondent on 14.12.2020, and as no orders were passed, the petitioner school filed the present writ petition for the aforesaid relief.



3. The respondents 1 to 4 filed detailed counter reiterating the entire history of the case. The respondents 1 to 4 submitted that vide G.O (MS).No. 64 (School Education) Department, dated 03.04.2018, instructions were issued that, the post of Library Assistant, Gardener, Sweeper, Scavengers etc. should not be filled where ever the incumbent in the said posts retired or promoted or died while in service. The respondents relying on the staff fixation orders for 2018-2019, and 2019-2020, submitted that, on superannuation of the said Pappiah on 30.06.2019, the petitioner school ought not to have filled the post, because the said post was indicated as 'Surplus' and it was absorbed to the 'Common pool'. The respondents 1 to 4 submitted that a ban was imposed on filling up of Non-Teaching post, vide G.O.Ms.No. 212 (P & AR) Department, dated 29.02.2002, however, the institutions approached this court challenging the ban and for permission to fill up the banned Non Teaching posts. The Government therefore constituted a Committee to look into the matter and after consultation with the stake holders, issued G.O.Ms.No. 238 (School Education) Department, dated 13.11.2018, laying down the ratio for filling up of certain categories of Non Teaching posts and abolishing certain categories of Non Teaching posts. According to the respondents, the aforesaid G.O. was applicable to all Aided Educational



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Institutions and therefore the petitioner's school could not be singled out by sanctioning the Non Teaching post, contrary to G.O.Ms.No.238, School Education Department, dated 13.11.2018. The respondents further submitted that the 5th respondent was appointed to the post of Sweeper Cum Scavenger as a substitute and hence the same could not be construed as regular appointment. The respondents conceded that the only reason for rejecting approval of appointment was that the appointment was made to an abolished post and not for the reason that prior approval was not obtained. The respondents therefore submitted that the writ petition lacked merits and same deserved to be dismissed.

4. The 5th respondent filed a counter and submitted that he had an unblemished service record in the school right from the year 2000 as Sweeper cum Scavenger. As he was 51 years of age with no other income to run the family, he prayed that the writ petition be allowed.

5. The learned counsel for the petitioner submitted that admittedly, the impugned order is based on G.O.(Ms).No.64 and the G.O.(Ms).No.238. G.O.(Ms).No.238 was stayed by the order of the Hon'ble Division Bench of this



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Court in CMP(MD).No. 6675 & 6677 of 2023 in W.A.(MD).No.816 of 2023, dated 14.06.2023. The learned counsel for the petitioner submitted that the post of Sweeper Cum Scavenger in the petitioners school was sanctioned as early as on 14.08.1985, and for the first time, vide G.O.(Ms).No.64, dated 03.04.2018, the Government issued instructions that the said post should not be filled, when the incumbent retired or promoted or died while in service. Thereafter G.O.(Ms).No.238, School Education Department, dated 13.11.2018, abolished certain categories of Non-Teaching post. The impugned order dated 18.11.2020, had been passed relying on the aforesaid two G.O's. According to the counsel, G.O.(Ms).No.64 has been superseded by G.O.(Ms).No.238 dated 13.11.2018, which is now stayed by the Division Bench of the court in CMP(MD).No. 6675 & 6677 of 2023 in W.A.(MD).No.816 of 2023. The counsel therefore submitted that as the said G.O. has been stayed, the impugned order rejecting the approval cannot be sustained and the same deserved to be set aside.

6. The learned Additional Government Pleader for the respondents 1 to 4 submitted that, though the G.O. had been stayed, the same would not affect the impugned order, in as much as the 5th respondent was appointed as a substitute and



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approval of his appointment as substitute could not be treated as regular appointment. The learned Additional Government Pleader further submitted that there was absolutely no infirmity in the impugned order and that as the prior approval was not obtained before appointing the 5th respondent, the approval was not granted. The learned Additional Government Pleader prayed that the writ petition be dismissed.

7. I have heard both the learned counsels and perused the materials available on record.

8. In the present case, the incumbent, Sweeper Cum Scavenger retired from service on 30.06.2019. The 5th respondent was initially appointed as a substitute and his appointment against a sanctioned post was approved by the respondents. Subsequently, the approval was rejected by invoking G.O(Ms).No.238, dated 13.11.2018. The said G.O. has been stayed by the Division Bench of this court in CMP(MD).No. 6675 & 6677 of 2023 in W.A (MD).No.816 of 2023. In a similar matter, the Hon'ble Division Bench in W.A(MD)No.1297 of 2024, observed that when the operation of a Government Order is stayed, it remains stayed for



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everyone. The Hon'ble Division Bench confirmed the order of the learned single judge in setting aside the impugned order refusing to accord approval to the appointment of office assistant citing G.O.Ms.No.238, dated 13.11.2018, by directing the respondents to implement the learned single judge's order. In the light of the above orders of the Hon'ble Division Bench, ***I am of the view, that the impugned order passed by the 4th respondent dated 18.11.2020, cannot be sustained and therefore the same is set aside.*** The learned Additional Government Pleader further submitted that as prior approval for appointing the 5th respondent was not obtained approval was not granted. The said contention goes against the statement in the counter that the approval was rejected only because the post was abolished and not because prior approval for appointing the 5th respondent was not obtained. I therefore have no hesitation in rejecting the said contention. In view of the above discussion the impugned order is set aside. The respondents 1 to 4 are directed to approve the appointment of the 5th respondent from the date of his initial appointment i.e. 01.07.2019, with all service and monetary benefits within a period of 12 weeks from the date of receipt of a copy of this order.



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Accordingly, Writ Petition is allowed. However, there shall be no order as

to costs. Consequently, connected WMP.No.4814 of 2021 is closed.

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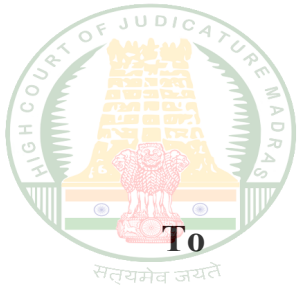
Index:Yes/No

Neutral Citation:Yes/No

Speaking Order:Yes/No

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N.MALA, J.

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