

(2010) 12 MAD CK 0251

In the Madras High Court

Case No : Writ Petition No. 14645 of 2008

K.C.S. Nadar Higher Secondary School

APPELLANT

Vs

The Secretary School Education Department Government,
The Director of School Education and The District Educational
Officer

RESPONDENT

Date of Decision : 09-12-2010

Acts Referred:

Citation : (2010) 12 MAD CK 0251

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

**Advocate : P. Nagaraju, for the Appellant; K.H. Ravikumar, Government
Advocate, for the Respondent**

Judgement

M.M. Sundresh, J.—The writ petition has been filed by the Petitioner seeking a writ of mandamus, directing the Respondent No. 3 to grant approval to the appointments of Mr. Kannan and Mrs. Devanesan in the sanctioned posts of Library Clerk and Record Clerk respectively with effect from their appointments from 26.07.2007.

2. It is the case of the Petitioner that in pursuant to the Resolution dated 25.07.2007, interview was conducted to fill the posts of Library Clerk and Record Clerk. Accordingly in the sanctioned posts available for Library Clerk and Record Clerk, Mr. Kannan and Mrs. Devanesan have been appointed. The Petitioner sought for the approval with the Respondent No. 3. The Respondent No. 3 has not approved the appointments made by the Petitioner and therefore the Petitioner has come forward to file the present writ petition.

3. The learned Counsel for the Petitioner submitted that the issue involved in the Writ Petition has been covered by the two judgments of this Court rendered in W.P. No. 4221 of 2009 etc., dated 29.07.2010 and W.P. No. 4223 of 2009, dated 24.09.2010. The learned Counsel submitted that this Court has considered in the Writ Petition in W.P. No. 4221 of 2009 etc. for the very same post of Library

Clerk. The learned Counsel further submitted that subsequently another vacancy has arisen, since the appointed person namely Mrs. Devanesan left the service as Record Clerk on 30.04.2010 which post was thereafter filled and permission was given by the Respondent No. 2 in and by his proceedings dated 09.11.2010. Therefore, the learned Counsel submitted that in view of the stand taken by the Respondent No. 2 subsequently, the Writ Petition will have to be allowed in so far as the post of Library Clerk is concerned.

4. The learned Government Advocate (Education) appearing for the Respondents based upon the counter affidavit submitted that there is no dispute on facts that the posts sought to be filled are sanctioned posts. However, there was a ban imposed by the Government for the recruitment of non-teaching posts in the Aided Schools as per the Government Order in G.O. Ms. No. 212, Personnel and Administrative Reforms(P) Department, dated 29.11.2001. The said ban was lifted by subsequent Government Order passed in G.O. Ms. No. 14, Personnel and Administrative Reforms(P) Department, dated 07.02.2006. Thereafter, another Government Order was passed in G.O. Ms. No. 115, School Education (D2) Department, dated 30.05.2007 which clearly prohibits certain non-teaching posts from being filled up. The clarification issued by the Respondent No. 2 dated 12.08.2008 does not make any mention about the regularisation in the appointment of the posts of Library Clerk and Record Clerk. The learned Government Advocate submitted that the proposals will have to be forwarded to the Chief Educational Officer, Chennai, instead of Respondent No. 3.

5. It is not in dispute that the vacant posts available which were filled up later by the Petitioner as Library Clerk and Record Clerk are sanctioned posts. The very same issue as to whether the subsequent Government Orders are applicable to the post of Library Clerk has been considered by this Court in W.P. No. 4221 of 2009 etc. dated 29.07.2010. Moreover, the said position is no longer in dispute in view of the order passed by the Respondent No. 2 in Na. Ka. No. 87216-D1-E4-2009 dated 09.11.2010.

6. This Court in W.P. No. 4223 of 2009, dated 24.09.2010 after considering all the Government Orders has held as follows:

15. In W.A. Nos. 258, 271, 273, 683 and 1031 of 2009, preferred by the Government and other educational authorities, the Division Bench, at Paragraphs 5 and 6, held as follows:

5. When the matter was taken up for hearing, the learned Counsel appearing for the Respondent has submitted that in a connected matter, viz., Special Leave to (Secretary to Govt. and Ors. v. D. Samuel Raj Thomas and Anr. Appeal (Civil) Nos. 9837 and 9838 of 2010), the Supreme Court by order dated 26.03.2010 dismissed the Special Leave Petitions on the ground of delay and on merits and the question of law was left open. Producing a copy of the order in a connected matter in Special Leave to Secretary Education Department and Ors. v. S.D. Rajkumar and Anr. Appeal (Civil) 4734 of 2009 the learned Counsel for the

Respondent has also submitted that in the said case the Supreme Court has stayed the Contempt Proceedings, if any, and not the judgment passed in the Writ Appeal. Therefore, it is submitted that since the main issue has been dealt with by the Supreme Court, nothing remains in the present writ appeals and they are liable to be dismissed.

6. Learned Special Government Pleader appearing for the Appellants, though not disputed the above position, sought time for getting instructions. However, he submitted that the stay granted by the Supreme Court relates only to Contempt Proceedings and there is no stay of the judgment made in the Writ Appeals.

16. On more than one occasion, the Division Bench of this Court has directed the educational authorities to approve the appointment of non-teaching staff and the decisions are binding. In view of the above decisions, this Court is of the considered view that the impugned order is liable to be set aside and accordingly, set aside. The Petitioner is at liberty to re-submit the proposals returned by the District Educational Officer, Chennai (East), in his proceedings in Rc. No. 2816/A1/08, dated 21.08.2008, within a period of three weeks from the date of receipt of a copy of this order. On receipt of such proposals, the above said authority is directed to grant approval for the appointment to the post of Sweeper, in the light of the decisions stated supra, within a period of eight weeks thereafter.

7. Similarly, in W.P. No. 4221 of 2009 etc., dated 29.07.2010, this Court while considering the appointment of the Library Clerk has held as follows:

31. After G.O. Ms. No. 115, the school was permitted to fill the vacancy of Junior Assistant. In fact, there was some restriction in the matter of appointment of Junior Assistant as per G.O. Ms. No. 115. But there is no restriction as to the appointment of Library Clerk, Lab Assistant and Home Science Attender in Higher Secondary Schools. In my considered view those posts are very essential like teacher posts. Though they are classified as non-teaching posts, the students cannot be taught in higher secondary schools without these posts. Without a Lab Assistant and without a Home Science Attender, it is difficult for the school to impart education in science. Likewise, the Library Clerk is the only person who handles the entire Library and no other person is provided in the Library. I am stated that in Central Board Schools there are more persons provided to handle Library as per the CBSE regulations. There are 1400 students studying in the Petitioner's school and the school also has a Library for a long time and the post was sanctioned from 1966. Hence, the Respondents cannot now state that they could not approve the above three posts. Since, as stated above, G.O. Ms. No. 115 is not referred to in the impugned orders, the fourth Respondent cannot improve by advancing an argument now to sustain the impugned order by importing G.O. Ms. No. 115 to sustain the same.

32. It is well settled principles that the Respondents cannot give a new reason that is not stated in the impugned order as held by the Honourable Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner,

New Delhi and Others, .

33. In the result, the writ petitions are allowed and the impugned orders are quashed. The Respondents 2 to 4 are directed to approve/regularize the appointments of Tmt. J. Ramanibai, Tmt.A. Ponni and Mrs. B. Santhakumari as Lab Assistant, Home Science Attender and Library Clerk respectively from the date of joining the posts, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

8. In view of the reasoning rendered by this Court coupled with the order passed by the Respondent No. 2 dated 09.11.2010, this Court is of the view that the Writ Petition will have to be allowed. However, in view of the subsequent order dated 09.11.2010, the question of granting approval to the appointment of Mrs. Devanesan does not arise for consideration. Therefore, the only appointment to be approved is for the post in which Mr. Kannan is working as Library Clerk.

9. Considering the above said factual position, the Petitioner is directed to forward the proposals seeking approval of Mr. Kannan in the sanctioned post of Library Clerk to the Respondent No. 3. The Respondent No. 3 is directed to pass appropriate orders in the light of the discussions made above, within a period of two months from the date of receipt of a copy of the proposals.

10. The writ petition is disposed of accordingly. No costs.