



W.P.(MD)No.12383 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.02.2024

PRONOUNCED ON : 21.05.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.12383 of 2022

and

W.M.P.(MD)Nos.8798 and 8799 of 2022

The Correspondent
Providence Higher Secondary School,
Ritapuram-629 159,
Kanyakumari District.

... Petitioner

Vs.

1.The Director of School Education,
College Road, Chennai-600 006.

2.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

3.The District Educational Officer,
Thuckalay, Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to call for



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the records relating to the impugned proceedings issued by the 2nd respondent CEO in O.Mu.No.7500/Aa1/2020 dated 09.09.2021 denying approval to appointment of K.Fathima Gladis as BT Assistant (Maths) w.e.f. 05.07.2017 and the consequential proceedings of DEO in Mu.Mu.No.3985/A1/2019 dated 17.09.2021 returning the proposal, quash the same as illegal and further direct the respondents 2 and 3 herein to approve forthwith the appointment of K.Fathima Gladis as BT Assistant (Maths) in the petitioner's School w.e.f., 05.07.2017 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Mr.K.Ragatheesh Kumar,
For Isaac Chambers

For Respondents : N.Ramesh Arumugam,
Government Advocate (Civil)

ORDER

This Writ Petition has been filed to quash the impugned proceedings issued by the 2nd respondent CEO in O.Mu.No.7500/Aa1/2020 dated 09.09.2021 denying approval to appointment of K.Fathima Gladis as BT Assistant (Maths) w.e.f. 05.07.2017 and the consequential proceedings of DEO in Mu.Mu.No.3985/A1/2019 dated 17.09.2021 returning the proposal and further directing the respondents 2 and 3 herein to approve forthwith the appointment of K.Fathima Gladis as BT Assistant (Maths) in the



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petitioner's School w.e.f., 05.07.2017 with all attendant benefits including the arrears of salary and allowance.

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

21. The Petitioner School is a recognized Minority Educational Institution administered and owned by the Congregation of Sisters of Cross of Chavanad, a society registered under the Tamil Nadu Registration Societies Act. The petitioner School was initially established as a Primary School in the year 1937 and thereafter upgraded as Middle School in the year 1978, as High School in the year 1982 and was further upgraded as Higher Secondary School in the year 2007. Later the School was bifurcated as Primary School and Higher Secondary School. One post of B.T. Assistant(Maths) in the school fell vacant on 01.06.2017 due to the retirement of the then incumbent one Tmt.M. Franciscal on 31.05.2017. In the said vacancy, the petitioner School appointed one fully qualified candidate namely Tmt. K. Fatima Gladis as B.T.Assistant(Maths) with effect from 05.07.2017. Following which, the petitioner School submitted a proposal to the 3rd respondent / D.E.O., on 07.02.2018 requesting to approve her appointment and disburse grant-in-aid towards her salary.



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However, the D.E.O., returned the proposal, vide proceedings in O.MU.No.806/A/2018 dated 22.02.2018, directing to resubmit the proposal along with the No Objection Certificate from the Chief Educational Officer granting permission to fill up the post. Since the petitioner School is a Minority Educational Institution, there is no requirement for getting NOC for filling up the sanctioned vacancy.

2.2. Hence, the petitioner School challenged the said proceedings of D.E.O. before this court in W.P.(MD)No.5576 of 2018 and this court was pleased to dispose of the writ petition, by an order dated 23.04.2019 setting aside the impugned order with the following directions:

“5. In this case, the respondents are insisting to get 'No Objection Certificate' for approving such proposal, which act is unsustainable. The learned Special Government Pleader appearing for the respondents fairly conceded the submissions made on the petitioner's side.

6. In view of the above, the impugned order of the third respondent, dated 22.02.2018 is set aside and the third respondent is directed to consider the said proposal and pass appropriate orders on the said proposal, within a period of four weeks from the date of receipt of a copy of this order.



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*7. The Writ Petition is disposed of accordingly. No costs.
Consequently, connected Miscellaneous Petition is closed.”*

2.3. On receipt of the said order of this Court, the petitioner School communicated the same to the D.E.O., vide letter No. 75 of 2018 dated 27.06.2019 with the request to approve the appointment of K. Fatima Gladis as B.T.Assistant (Maths) with effect from 05.07.2017. However, the Chief Educational Officer vide impugned proceedings in O.Mu.No. 7500/Aa1/2020 dated 09.09.2021 declined to approve the appointment stating that there are surplus Secondary Grade Teachers in the school and it is not acceptable to approve the appointment made directly without giving promotion to the surplus Secondary Grade Teachers. Consequently, the District Educational Officer, vide impugned proceedings in Mu.Mu.No. 3985/A1/2019 dated 17.09.2021 returned the proposal seeking approval to the appointment of K. Fatima Gladis as B.T. Assistant (Maths) with effect from 05.07.2017. Challenging the impugned proceedings of the 2nd respondent dated 09.09.2021 and the consequential proceedings of the 3rd respondent dated 17.09.2021, this writ petition came to be filed.



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3. The learned counsel appearing for the petitioner Mr. K.Ragadeesh Kumar submitted that the impugned orders exhibit clear non-application of mind. The C.E.O. and D.E.O. ought to have seen that the present appointment has been made against a sanctioned post of B.T. Assistant in Maths. The said post is still available in the rolls of the School as per the annual staff fixation order settled by the D.E.O. himself. The availability of surplus Secondary Grade Teacher has no relevance for approval of appointment made against a sanctioned BT Assistant post. Further, no surplus Secondary Grade Teacher in the petitioner School is eligible to get promotion as B.T.Assistant (Maths). He further insisted that the Secondary Grade Teachers are only permitted to handle primary level and there is no surplus graduate teacher in High School level. The Secondary Grade Teacher does not possess qualification for taking Mathematics in the High School level and no Rule permit Secondary Grade Teacher in primary section to take classes for High School section. He further submitted that the school is sanctioned with only two B.T. Assistant in Maths. The said posts are very much available in the school and the incumbent K. Fatima Gladis has been appointed against the sanctioned vacancy which had occurred to the second post. The said two teachers are handling Maths subject for all the five sections in the High School level. Under such



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condition, the learned counsel appearing for the petitioner insisted that the availability of the post of B.T. Assistant (Maths) being undisputed by C.E.O. in the impugned order, he is bound to have approved the appointment of K. Fatima Gladis as BT Assistant(Maths) with effect from 05.07.2017 and pressed for allowing the writ petition.

4. Per contra, the 3rd respondent has filed a counter affidavit and the learned Government Advocate Mr.N.Ramesh Arumugam submitted that Rule 15 of the Tamil Nadu Recognized Private School Regulations mandates that the Government can sanction a post only after taking into consideration the overall financial implication. Therefore, whenever surplus teachers are available, the School ought not to have appointed the person through direct recruitment, instead should have sought for approval for promoting the existing eligible Secondary Grade Teachers and thereby reducing the number of surplus teachers. In view of the same, he pressed for dismissal of the writ petition.

5. The petitioner school has appointed a qualified candidate namely K.Fatima Gladis only in a sanctioned B.T.Assistant (Maths) post. It is



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pertinent to mention here that the petitioner School has no Secondary Grade Teacher eligible to be promoted as BT Assistant (Maths). That apart, time and again, this Court has held in several cases that the procedure contemplated in Rule 15(4) of the Tamil Nadu Recognized Private Schools Regulations are not required to be followed by minority institutions and the act of the respondents in insisting to follow the same would amount to violative of Article 30(1). The Hon'ble Division Bench of this Court in the case of ***Eka Ratchagar Sabai Higher Secondary School represented by its Correspondent Tuticorin District and others .Vs. K. Sumathi and another reported in (2008) 1 MLJ 322*** has dealt with a similar case and the relevant portion of which is extracted as follows:

*“15. Judged in light of the observations made by the Supreme Court in **Secretary, Malankara Syrian Catholic College v. T.Jose (supra)**, the provisions which lay down qualification for appointment of teachers are obviously required to be followed; whereas the procedure contemplated in Rule 15(4) of the Rules severely constricting the scope of the discretion of the Management in appointment of teachers and confining the same to a particular source would be violative of Article 30(1). Therefore, such provisions are not required to be followed by the minority institutions. In view of the above, we cannot agree with the view expressed by the learned single Judge under the impugned*



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judgment and such decision is liable to be over-turned.”

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6. Yet another defense taken by the respondents is that in compliance to the order of interim direction of the High Court dated 09.04.2019, a Government Order in G.O.Ms.No. 165, School Education Department, dated 17.09.2019 was passed giving guidelines for utilizing the services of surplus teachers in Aided Minority Schools, Non-Minority Schools, Primary Schools, High Schools and Higher Secondary Schools. As per the instructions given in the Government Order, the list of surplus teachers shall be maintained by the Chief Educational Officers in each category. Among many instructions the C.E.Os have been authorized to issue orders to surplus teachers on deputation to the schools where vacancies arise in that category. The Government has issued G.O.Ms.No.165, dated 17.09.2019 in this regard and according to para 5 clause (vii), the vacant post should be filled from the list of surplus teachers which is maintained at the district level.

7. However, the Hon'ble Division Bench of this Court has dealt with a similar issue in *W.A.(MD)No.2119 of 2021 in the case of the Commissioner of School Education and others .vs. Aided Muslim*



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Committee Primary School, represented by its Correspondent S.Sheik

Shajakhan Sithik, by its order dated 23.06.2023 has dealt with a similar case and the relevant portion of which is applicable to the facts and circumstances of this case is extracted as follows:

“6.Even though an appeal has been filed by way of S.L.P., against the said judgment dated 31.03.2021, only Clause (i) of paragraph 95, where a direction was given with regard to the grant alone, was stayed by the Hon'ble Supreme Court and in respect of other aspects, there has been no stay. This has been in fact accepted on behalf of the appellant Department in a similar issue when came up before the learned Single Judge in a batch of cases on 18.04.2022 in W.P.Nos.3194 of 2020 etc., batch, where the following stand was taken by the appellant Department and that has been recorded by the learned Single Judge:-

“8.According to the learned Additional Advocate General, the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C)No. 15702 of 2021 as against the judgment passed by the Division Bench of this Court in the Batch of Writ Appeals in W.A. (MD)No.76 of 2019, etc., and obtained stay insofar as Clause (i) of paragraph 95 of the said judgment. Except the aforesaid clause (i) of paragraph 95, there was no stay in respect of remaining portion of the judgment. It is agreed by the learned Additional Advocate



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General that the writ petitioners were appointed prior to the G.O.Ms.No.165, dated 17.09.2019 and therefore, it can be considered and an appropriate order may be passed. 9. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.09.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.09.2019 and proposals for the said appointment were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.09.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.”

8. Moreover, the said G.O., was issued only on 17.09.2019, whereas the teacher was appointed well before the issuance of the said G.O., ie., 03.07.2018. Therefore, assuming if the said G.O., ultimately would be declared to be valid, that will have a prospective effect. Moreover, as on today, the said G.O., is no more available to the appellant department to say the reason that by virtue of G.O.Ms.No.165, the appointment made in respect of the teacher concerned at the 1st respondent school cannot be approved.”



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8. Even in the instant case the said K. Fatima Gladis was appointed as B.T. Assistant (Maths) with effect from 05.07.2017 by the petitioner School, that is, very well before the date of issuance of G.O.Ms.No. 165, dated 17.09.2019. In that view of the matter, I have no hesitation to hold that the order impugned orders passed by the CEO and DEO are liable to be quashed.

9. In the result, the impugned orders in proceedings 7500/Aa1/2020 dated 09.09.2021 and Mu.Mu.No.3985/A1/2019 dated 17.09.2021 are hereby quashed and consequently the second and third respondents are directed to forthwith approve the appointment of K. Fatima Gladis as B.T. Assistant (Maths) in the petitioner School with effect from 05.07.2017 with all attendant benefits including arrears of salary and allowance keeping in mind that this is the second round of litigation wherein this Court has already given positive directions in favour of the petitioner twice.



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10. Accordingly, this writ petition is allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

21.05.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

- 1.The Director of School Education,
College Road, Chennai-600 006.
- 2.The Chief Educational Officer,
Nagercoil, Kanyakumari District.
- 3.The District Educational Officer,
Thuckalay, Kanyakumari District.



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L.VICTORIA GOWRI, J.,

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