



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2018

CORAM:

WEB COPY

THE HONOURABLE **MR. JUSTICE G.R. SWAMINATHAN**

Writ Petition(MD) Nos.1078 and 1079 of 2018
and

W.M.P(MD) Nos 1126 to 1128 of 2018

The Correspondent

St. Joseph's Higher Secondary School

Kovilpatti - 628 501,

Tuticorin District.

... Petitioner both petitions

Vs.

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

2. The Chief Educational Officer,
Tuticorin, Tuticorin District.

3. The District Educational Officer,
Kovilpatti,
Tuticorin District.

... Respondents in both petitions

PRAYER in W.P(MD)No.1078 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 2nd respondent Chief Educational Officer in Mu.Mu.No. 5521/a3/2016 dated 19.01.2017 insofar as condition No.17 is concerned and the consequential proceedings in O.Mu.No. 2762/A3/2017 dated 26.09.2017 quash the same and further direct the 2nd and 3rd respondents to approve forthwith the promotion of T.Thusnevis Savariammal as BT Assistant (Science) in the petitioner school with effect from 01.06.2015 and disburse the grant in aid towards her salary and other attendant benefits.

PRAYER in W.P(MD)No.1079 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 2nd and 3rd respondents to approve forthwith the appointment of R.Mercy as Tamil Pandit in the petitioners school with effect from 26.06.2015 and disburse the grant-in-aid towards her salary and other attendant benefits.



In both petitions:

For Petitioner

: Mr.K.Prabhu for
for M/s Isaac Chamber

For Respondents

: Mrs.S.Srimathy
Spl. Govt. Pleader

COMMON ORDER

Both the writ petitions have been filed by a Minority Educational Institution receiving aid from the State. The school was originally a Primary School and it became a Middle School and then High School and then Higher Secondary School. It got upgraded as Higher Secondary School in the year 2011. The school is receiving aid upto 8th standard. The high school section and the higher secondary section are being run on self financing basis. As per G.O.Ms.No.79, dated 14.06.2002, if the secondary grade teacher post falls vacant, then it has to be ungraded and filled up by a BT Assistant. In the present case, one Antony Xavier Arockiamary retired on 31.05.2015. In that vacancy, the petitioner in W.P(MD)No.1078 of 2018 Thusnevis Savariammal was appointed as BT Assistant with effect from 01.06.2015 and she is a Science Teacher. The said Thusnevis Savariammal was already working as Secondary Teacher in the very same school. Consequent to her promotion as BT Assistant in Science, a vacancy arose and the same was filled up by R.Mercy with effect from 26.06.2015 as Tamil Pandit.

2.The stand taken by the Department is that concurrence for upgradation of Secondary Grade Teacher post into that of BT Assistant was given only on 19.01.2017 and that therefore, approval for appointment of the said Thusnevis Savariammal as BT Assistant in Science and Mercy as Tamil Pandit can be given only from the said date. Such a stand was specifically dealt with and negatived by the Hon'ble Division Bench of this Court while dismissing W.A.No.828 of 2014 and 129 to 132 of 2015, by order dated 22.04.2016. The Hon'ble Division Bench held that approval has to be granted only from the date of appointment and not from a later date, namely, from the date on which permission for post conversion was granted. It was observed that the post of Secondary Grade Teacher was very much available for appointment in the school in question and conversion was only for the said post. Necessarily the earlier appointment should be recognized on account of the fact that there was a sanctioned post. In this case, in view of the upgraded status of the school, the post of Secondary Grade Teacher had to be necessarily filled up by the BT Assistant. Mrs.Antony Xavier Arockiamary retired as Secondary Grade Teacher on 31.05.2015. The resulting vacancy has to be necessarily filled up only by a BT Assistant. The school took the



view that it was in need of a science teacher and therefore, promoted Thusnevis Savariammal as BT Assistant in the resulting vacancy. Thusnevis Savariammal was already working as secondary grade teacher in the very same institution. On account of her promotion as B.T Assistant in Science, her post became vacant and the same had to be filled up only by a Tamil Pandit. Therefore, both these appointments will have to be approved from the date on which they were appointed. The Department was clearly taking a wrong stand that it will grant approval from the date when it gives concurrence for post-conversion and the order impugned in the writ petition in W.P(MD)No.1078 of 2018 is clearly bad in law. They run counter to the Division Bench decision of this Court dated 22.04.2016 in W.A.No.828 of 2014 and 129 to 132 of 2015, dated 22.04.2016,

3. Accordingly, both the writ petitions stand allowed. The third respondent is directed to approve the appointment of Thusnevis Savariammal as BT Assistant (Science) in the petitioner's school with effect from 01.06.2015 and R.Mercy as Tamil Pandit in the petitioner's school with effect from 26.06.2015 and disburse the salary and other consequential benefits immediately and without any delay. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

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

+ 2 ccs TO M/S.Isaac Chambers , Advocate in SR No. 49948,4994
+ 1 cc TO The Special Government Pleader in SR No. 50204

skn

AE/SKN/SAR2/25.07.2018/3P/7C

Writ Petition(MD)Nos.1078 and 1079 of 2018
and