



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.4341 of 2018
and
W.M.P. (MD) .No.4453 of 2018

S.Rathnabala

...Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

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

3.The Chief Educational Officer,
Madurai District at Madurai.

4.The District Educational Officer,
Usilampatti, Madurai District.

5.The Administrator,
The Tamil Evangelical Lutheran
Church (TELC), P.B.NO.86,
Tranquebar House, Trichy-620 001.

6.The Correspondent / Advocate Administrator,
TELC Girls Higher Secondary School,
Usilampatti, Madurai District-625 532. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the fourth respondent District Education Officer to approve the appointment of the petitioner as BT Assistant in English with effect from 09.08.2017 in the sixth respondent school namely, TELC Girls Higher Secondary School. Usilampatti, Madurai District and disburse grant-in-aid towards her salary and other monetary benefits.

For Petitioner : Mr.S.Xavier Rajini

For R1 to R4 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

For R5 & R6 : Mr.S.Karthikei Balan

**ORDER**

Heard the learned counsel on either side.

2. By consent of both parties, the main Writ Petition itself is taken up for final disposal.

3. Mr. S. Karthikeibalan, learned counsel, appearing for the Judge Administrator / sixth respondent seeks time. He submitted that some complaints have been received with regard to the appointment in question and therefore it is proposed to conduct verification exercise.

4. This Court is of the view that in as much as the petitioner was appointed by the earlier Judge Administrator and since the appointment is in respect of a sanctioned post and considering the fact that the petitioner is qualified to be so appointed, a Writ of Mandamus can very well be issued.

5. The writ petitioner was appointed as B.T. Assistant in English with effect from 09.08.2017 in the sixth respondent/School. It is a minority institution. For several years, it has been administered by a retired Hon'ble Judge of this Court. The Judge Administrator submitted a proposal to the Department on 06.06.2017. Since no approval has been given till date, this Writ Petition came to be filed.

6. The learned counsel appearing for the petitioner placed reliance on an un-reported judgment dated 31.07.2013 passed by a Division Bench of this Court in W.A.No.652 of 2013. Paragraph 4 of the said Judgment reads as under:

"The issue as to whether a person appointed in a sanctioned post by a minority school can be denied approval of appointment was considered by a Division Bench of this Court in W.A.(MD).No.16 of 2011, wherein in Paragraph Nos.3 to 5, it is held thus:-

3. Learned counsel appearing for the first respondent submits that one of the special teacher post (Sewing) became vacant and in the said vacancy, the first respondent was appointed from 15.07.2004 and she is serving in the second respondent school all these years. Learned counsel for the first respondent also submitted that the said sanctioned post is in existence and the appellants neither declared the said post as surplus nor resume the post till date from the second respondent school. To prove the availability of the post, the staff fixation order of the school is filed. The reasons stated by the District Elementary Educational Officer for rejecting the request for approval was



that there is reduction of student strength. The very same issue was considered by the Division Bench in W.A.No.1263 of 2001 by order dated 22.01.2004 wherein this Court has held that if a person is appointed in a sanctioned post the approval cannot be rejected and if there is fall in strength and the post become surplus after granting approval to the post the said teacher along with post could be transferred/deployed to a needy school. The same is the view taken by the learned single Judge in this case by relying upon the various other judgments.

4.Learned counsel for the first respondent also submitted that an identical case was allowed by the learned Singly Judge in W.P.No.7218 of 2008 by order dated 04.08.2008 and without filing an appeal against the said order, the said order was implemented by the very same second appellant in this appeal by order dated 18.09.2009.

5.The said fact is also not disputed by the learned Special Government Pleader appearing for the appellants."

7.The case on hand is similar. The fact that the school is under the direct payment system, cannot make any difference.

8.The fourth respondent is therefore directed to approve the petitioner's appointment as B.T. Assistant in English in the sixth respondent school with effect from 09.08.2017 and disburse the salary and monetary benefits forthwith and in any event, within a period of four weeks from the date of receipt of a copy of this order.

9.The Writ Petition stands allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Department of School Education,
Fort St.George, Chennai-600 009.

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



3.The Chief Educational Officer,
Madurai District at Madurai.

4.The District Educational Officer,
Usilampatti, Madurai District.

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.58942

+1CC TO M/S.S.KARTHICKEL BALAN, ADVOCATE, SR NO.59356

W.P. (MD) .No.4341 of 2018
27.03.2018

tsg

MS/SKN-RSK/SAR-2/18.04.2018/4P.7C