



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2018

CORAM:

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.8110 of 2018

and

W.M.P. (MD) Nos.7690 & 7691 of 2018

K.Vijila

... Petitioner

Vs.

- 1) The Secretary to Government,
School Education Department,
St.George Fort, Chennai.
- 2) The Director of School Education,
DPI Campus, College Road,
Chennai 600 006
- 3) The Chief Educational Officer,
Kanyakumari District,
Nagercoil.
- 4) The District Educational Officer,
Kuzhithurai,
Kanyakumari District - 629 175
- 5) The Correspondent,
St.Francis Higher Secondary School,
Vavarai,
S.T.Manakad Post,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the 4th respondent pertaining to its order bearing Oo.mu.No.503/A2/2018 dated 26.02.2018 and to quash the same and consequently, directing the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (Science) from the date of appointment that is on 01.06.2015 by considering the proposal resubmitted by the petitioner dated 29.06.2017 and to disburse monetary and other attendant service benefits, including payment of arrears of salary from the date of appointment that is 01.06.2015 with interest within a time frame that may be fixed by this Court.



For Petitioner : Mr.S.C.Herold Singh
For Respondents : Mr.D.Muruganantham,
Additional Government Pleader.

ORDER

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The prayer sought for in this Writ Petition is to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 4th respondent pertaining to its order bearing Oo.mu.No.503/A2/2018 dated 26.02.2018 and to quash the same and consequently, direct the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (Science) from the date of appointment (i.e.,) on 01.06.2015 by considering the proposal resubmitted by the petitioner dated 29.06.2017 and to disburse the monetary and other attendant service benefits, including payment of arrears of salary from the date of appointment (i.e.,) from 01.06.2015 with interest within a time frame that may be fixed by this Court.

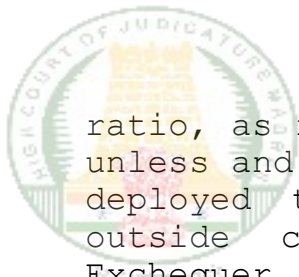
2. Heard Mr.S.C.Herold Singh, learned counsel for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents.

3. The short facts, which are required to be noticed for the disposal of the Writ Petition, are as follows:-

The petitioner was appointed as BT Assistant (Science) at the fifth respondent School in the sanctioned vacancy by order of appointment dated 01.06.2015, with effect from the said date. From the said date of appointment, the petitioner has been working in the 5th respondent School. When the said appointment of the petitioner as BT Assistant (Science) was sent for approval to the fifth respondent School, the fourth respondent, vide impugned order dated 26.02.2018, signed on 05.03.2018, rejected the same, by citing the reason that, unless a general guideline is issued with regard to the cadre strength, appointment etc., in Government aided, Private, Minority and Non-Minority High Schools and Higher Secondary Schools, the approval proposal cannot be considered and therefore, it was returned. Aggrieved over the same, the petitioner has approached this Court with the present Writ Petition with the aforesaid prayer.

4. I have heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner, who would submit that, the post, where the petitioner was appointed is a sanctioned post and the petitioner is also having necessary qualifications to hold the post. Therefore, the present reason cited in the impugned order will not stand in the way for approving the appointment of the petitioner and therefore, the impugned order is liable to be interfered with and quashed.

5. Per Contra, Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents, who would submit that, since in a number of schools run by the fifth respondent Management, excess posts are available based on the Pupil-Teacher



ratio, as fixed by the Governmental Authority, from time to time and unless and until, those excess posts are identified and the same are deployed to the needy schools, making fresh appointments from outside candidates would unnecessarily burden the Government Exchequer as in each of the appointment, the Government is giving aid for the salary of the Teacher concerned every month. Therefore, in this regard, the Government wanted to issue guideline and since the process of issuance of guideline is on, till such guideline are issued, the approving authority has taken a decision not to decide any approval proposal and only on that basis, the present rejection order has been made and once such general guideline are issued by the Government, based on which, the proposal of the 5th respondent School for appointing the petitioner would be considered.

6. I have considered the said submissions made by both the counsel appearing for the petitioner as well as the respondents.

7. On perusal of the impugned order dated 26.02.2018, it is found that no other reason has been cited by the fourth respondent. As the reasons that the petitioner, who has been appointed, is not a qualified Teacher nor the way in which the appointment was made by the fifth respondent is not an approved method of appointment nor any other acceptable reason were given except to state that awaits the general guideline to be issued in this regard to the staff fixation and therefore, this proposal cannot be considered.

8. It is a fundamental principle that, once the Authority is acting in any particular issue, the date on which action is taken and order is passed what is the available legal position in law, rules, regulations, guideline etc., alone shall be a matter and in anticipation of any rule, law, guideline etc., no Authority can be expected to act.

9. Therefore, the impugned order also discloses as on date, all the impugned order (dated 26.02.2018) no such guideline as expected by the fourth respondent has been issued by the Government. Even today, it seems that no such guideline has been issued. Therefore, in anticipation of issuance of the guideline, the proposal of appointment of the petitioner can neither be withheld nor be rejected. Therefore, this Court has no hesitation to hold that the reason cited in the impugned order can stand in the legal scrutiny. Hence, the same is liable to be quashed. Accordingly, it is quashed.

10. In the result, the following orders are passed:

- (i) the impugned order is quashed;
- (ii) the matter is remitted back to the 4th respondent for reconsideration of such representation. It is open to the fourth respondent to verify the educational qualification and other suitability of the petitioner for the appointment to the post of BT Assistant (Science) in the fifth respondent School, on the basis of the rules



available as on date and accordingly, pass orders thereon with regard to the appointment in the 5th respondent School within a period of six weeks from the date of receipt of a copy of this order.

11. This Writ Petition is allowed to the extent indicated above. However, there shall be no order as costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-II)

To

- 1) The Secretary to Government,
School Education Department,
St.George Fort, Chennai.
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Kanyakumari District.

+ 1 CC TO Mr.S.C.HEROLD SINGH, ADVOCATE IN SR No. 63576
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 63642

STS
TE/RSK/SAR-2 : 27/11/2018 : 4P/8C

Order in
W.P. (MD) No.8110 of 2018
25.04.2018