



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2018

CORAM:

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.8789 of 2018

T.Dharshini

... Petitioner

-Vs-

1. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.

2. The Assistant Elementary Educational
Officer, Tiruchendur Union,
Tuticorin District.

3. The Correspondent,
Santhana Sama middle School,
Madathuvilai, arumuganeri,
Tuticorin District- 628 216

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd respondent herein vide O.Mu.No.1594 / A2 / 2017 dated 04.04.2018, quash the same and further direct the 1st respondent herein to approve the appointment of the petitioner as BT Assistant (Maths) in the 3rd respondent school w.e.f., 01.11.2017 and disburse grant-in-aid towards salary and other attendant benefits.

For Petitioner

: Mr.A.Ajith Geethan

For R1 and R2

: Mrs.S.Srimathy

Special Government Pleader

ORDER

The prayer sought for in this Writ Petition is for a writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent herein vide O.Mu.No.1594 / A2 / 2017, dated 04.04.2018 and to quash the same and further to direct the first respondent herein to approve the appointment of the petitioner as BT Assistant (Maths) in the third respondent school with effect from 01.11.2017 and to disburse the grant-in-aid towards salary and other attendant



benefits.

2. Heard Mr.A.Ajith Geethan, learned counsel, appearing for the petitioner, and Mrs.S.Srimathy, learned Special Government Pleader, appearing for the respondents 1 and 2.

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3. One post of Secondary Grade Teacher in the third respondent school fell vacant, due to the retirement of one Mrs. Lucia, on 31.10.2017. The said post automatically got upgraded as B.T. Assistant vide G.O. Ms. No. 49, Secondary Education-U1, dated 14.06.2002 and G.O. Ms. No. 99 (School Education) dated 27.06.2006. Only in the vacancy, the petitioner was appointed as B.T. Assistant (Maths) with effect from 01.11.2017 (Graduate Teacher was appointed against Secondary grade vacancy in view of G.O. Ms. No. 79 (Secondary Education -U1) dated 14.06.2002). The petitioner is also having necessary qualification of B.Sc., B.Ed., to serve as B.T. Assistant (Maths). The said appointment proposal was forwarded by the third respondent to the first respondent through the second respondent on 18.12.2017 seeking approval of the petitioner's appointment. However, the said proposal was rejected by the second respondent in his proceedings dated 04.04.2018 stating that the petitioner did not pass the Teacher Eligibility Test and moreover, since there are number of excess teachers available in the Schools run by R.C. Diocese, Tuticorin and unless the said excess teachers are deployed by the common management, no new appointment shall be made in the third respondent school. Challenging the same, the present writ petition has been filed.

4. I have heard the learned counsel for the petitioner, who would submit that, the petitioner was appointed in a sanctioned post as Secondary Grade Teacher in Maths. According to the learned counsel for the petitioner, the two reasons cited in the impugned order are unjustifiable. He would further submit that the first reason of requirement of Teacher Eligibility Test qualification is no more required, because, the school is the minority School and therefore, for the appointment made in a minority School, the Teacher need not have the qualification of pass in Teacher Eligibility Test. Insofar as the second reason of redeployment of excess staffs in various schools under the same management in R.C. Diocese, Tuticorin is concerned, the issue has already been decided by this Court and the reason cited in the impugned order shall not be considered to be a lawful reason and therefore, the same cannot stand in the legal scrutiny.

5. The learned Special Government Pleader, appearing for the official respondents submit that, the qualification of pass in Teacher Eligibility Test for the appointment of the Teacher in a minority School is not required. However, it is the fact that 180 teachers are found to be excess in the Schools run by the



Tuticorin R.C.Diocese and unless those excess teachers are deployed / redeployed in the needy place including the petitioner's school, making a fresh appointment by taking a candidate from the open market is totally unjustifiable and therefore, the reason for rejection made by the second respondent requires no interference.

6.I have heard the submissions made by the learned counsel on both sides.

7.As has been rightly pointed out by the learned counsel for the petitioner, the first reason of requirement of pass in Teacher Eligibility Test qualification is not a valid reason, since the third respondent School is the minority School. Therefore, the qualification of pass in Teacher Eligibility Test, as per the law laid down in this regard, is not required for an appointment of a Teacher in a minority School.

8.In respect of second reason, of deployment/ redeployment of excess teachers in the schools run by the very same management or common management, this Court has already decided the issue in W.P.(MD)No.7072 of 2018.

9.I have elaborately discussed the said issue and negotiated such kind of requirement on the side of the official respondents there in. The relevant portion of the said order reads thus, for better appreciation:-

“5.In the said judgment cited above, this Court has given the following direction at para 29, which reads thus:

“29. For the aforesaid reasons, we allow the various writ petitions by giving the following directions:-

(i)The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the

(ii)If it is found that any particular institution is entitled to receive any aid, decision should



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be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.

(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher-pupil ratio applicable during any particular period.

If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal."

9. In an identical circumstances a writ petition came for consideration before the Madurai Bench of this Court in W.P.No.3206/2007 and this Court by order dated 13.12.2007, considering the facts as well as the law laid down allowed the writ petition by following above referred decisions and directed the approval of the appointment of the petitioner therein making it clear if the post in which, she was found working is found surplus, it is open to the department to deploy, the petitioner therein to a needy school in accordance with G.O.Ms.No.525 dated 29.12.1997 and the arrears of salary was directed to be disbursed. Against the said order, the Department filed W.A.(MD). No.617/2008 before the Hon'ble Division Bench of the Madurai Bench and the Hon'ble Division Bench by Judgment dated 25.09.2008, dismissed the writ appeal and held that the issue raised is already covered by the Judgments reported in The State of Tamilnadu and Ors Vs. Pallivasal Primary School 2004 (2) LW 591 and M.Sundersingh Vs. Government of Tamil Nadu and others (2006) 2 M.L.J. 784.

10. Therefore, for all the above reasons, the petitioner is entitled to succeed and accordingly, the respondents are directed to approve the petitioner's appointment and pay the arrears of salary within a



period of eight weeks from the date of receipt a copy of this order. No costs.

6. In view of the said position that the issue raised in this writ petition is covered by the said decision and also there have been a number of decisions of this Court as has been pointed by the learned counsel for the petitioner and endorsed by the learned Special Government Pleader appearing for the respondents, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

10. In view of the aforesaid order passed by this Court, the second reason cited by the second respondent in the impugned order shall not be considered to be a lawful reason and therefore, the same cannot stand in the legal scrutiny.

11. In view of the above, this Court has no hesitation to quash the impugned order and accordingly, it is quashed. In the result, this writ petition is disposed of with the direction that the third respondent shall resubmit the proposal once again to the first respondent through the second respondent with all other relevant documents within a period of two weeks from the date of receipt of a copy of this order and on receipt of the such proposal from the third respondent through the second respondent, the same shall be considered by the first respondent and order with regard to grant of approval shall be passed within a period of four weeks thereafter.

12. It is made clear that if at all any excess teaching staff is available in other schools under the same management, it is open to the official respondents to take appropriate action in the manner known to law regarding redeployment / deployment of those staffs and that process shall not be hampered because of this order. No costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.

<https://hcservice.shera.gov.in/hcservice> District Elementary Educational
Officer, Tiruchendur Union,
Tuticorin District.



3. The Correspondent,
Santhana Sama middle School,
Madathuvilai, arumuganeri,
Tuticorin District- 628 216

+1cc to Mr.A.Ajith Geethan, Advocate Sr.No.62577

+1cc to SPECIAL GOVERNMENT PLEADER, Sr.No.62723

Ta

MK/SV MMS/SAR 4/26.06.2018/6P/6C

W.P.(MD)No.8789 of 2018

20.04.2018