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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.8787 of 2018 and
W.M.P.(MD)No.8231 of 2018

C.Esther Roseline ... Petitioner

-Vs-

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

2. The Assistant Elementary Educational
   Officer, Tuticorin (Town),
   Tuticorin District.

3. The Correspondent,
   St. Aloysiu's Primary School,
   Tuticorin- 628 001. ... 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 A.Thi.Mu/224/A1/18 dated 10.04.2018, quash the same and further direct the 1st respondent herein to approve the appointment of the petitioner as Secondary Grade Teacher in the 3rd respondent school w.e.f., 21.07.2017 and disburse grant-in-aid towards salary and other attendant benefits.

For Petitioners : 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 A.Thi.Mu/224/A1/18 dated 10.04.2018 and to quash the same and further to direct the first respondent herein to approve the appointment of the petitioner as Secondary Grade Teacher in the third respondent school with effect from 21.07.2017 and to disburse the grant-in-aid towards salary and other attendant

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benefits.

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

3.The short facts, which are required to be noticed for the disposal of this writ petition is that in the third respondent school, a Secondary Grade Teacher post fell vacant due to the retirement of one Mrs.Karpaga Elizabeth, on 31.05.2017. Due to the said vacancy, the petitioner was appointed on 21.07.2017 at the third respondent School as Secondary Grade Teacher. The appointment of the petitioner was sent for approval to the second respondent by the third respondent School. The second respondent returned the proposal sent by the third respondent school for approval of the appointment of the petitioner, by his proceedings dated 08.01.2018. In the said return memo, the second respondent had stated two reasons that the staff allotment for the year 2017-18 should be submitted and certificate from R.C. Diocese of Tuticorin regarding no surplus staff available in the school under their management, should be annexed.

4.Since the said certificate from the common management need not be annexed by the School, such proposal was resubmitted on 02.04.2018 by the third respondent School. However, once again by the impugned order dated 10.04.2018, the same was rejected by the second respondent reiterating the very same reason. Challenging the same, the present writ petition has been filed.

5.I have heard the learned counsel for the petitioner, who would submit that the said reason insisting the third respondent School to annex the certificate from the management is concerned, such kind of requirement shall not be required as the School is giving staff sanction based on the Teacher-Pupil ratio of the same school hence the reason shall not be considered to be a lawful reason and therefore, the same cannot be stand in the legal scrutiny.

6.I have heard the learned Special Government Pleader appearing for the respondents 1 and 2 in this regard.

7.The issue, with regard to the demand of certificate or No Objection Certificate from the common management, like R.C. Diocese, Tuticorin, has already been dealt with in W.P.(MD)No.7072 of 2018.

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

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"5.In the said judgment cited above, this Court has

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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 post should be considered.

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

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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 writ petition is allowed as prayed for and 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."

9.In view of the said order passed by this Court, the only reason cited now 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.

10.In view of the above, this Court is of the considered opinion that the said rejection order passed by the second respondent, is liable to be quashed accordingly, the same is quashed.

11.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 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.

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12.It is made clear that if at all any excess teaching staff is available in other school 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 staff and that process shall not be hampered because of this order. No costs.Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

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

2. The Assistant Elementary Educational
   Officer, Tuticorin (Town),
   Tuticorin District.

3. The Correspondent,
   St. Aloysiu's Primary School,
   Tuticorin- 628 001.

+1cc to Mr.A.Ajith Geethan, Advocate Sr.No.62579
+1cc to SPECIAL GOVERNMENT PLEADER, Sr.No.62725
Ta
MK/SV MMS/SAR 4/26.06.2018/5P/6C

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