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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) No.1100 of 2018

and

CMP (MD) No.8090 of 2018

Tamil Evangelical Lutheran Church (TELC),
rep.by its Administrator,
Justice K.Venkataraman (retd.)
P.B.No.86,
Tranquebar House,
Trichy - 620 001.

... Appellant

vs.

- 1.S.Rathnabala
BT Assistant in English,
TELC Girls Higher Secondary School,
Usilampatti,
Madurai - 625 532.
- 2.The State of Tamil Nadu,
rep.by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.
- 3.The Director of School Education,
College Road, Chennai - 600 006.
- 4.The Chief Educational Officer,
Madurai District at Madurai.
- 5.The District Educational Officer,
Usilampatti, Madurai District.
- 6.The Correspondent/Advocate Administrator,
TELC Girls Higher Secondary School,
Usilampatti,
Madurai District 625 532.

... Respondents



aside the order dated 27.03.2018 passed in W.P(MD)No.4341 of 2018 by this Court.

Prayer in WP(MD) . 4341/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the 4th respondent District Education Officer to approve the appointment of the petitioner as BT Assistant in English w.e.f. 09.08.2017 in the 6th respondent school namely, TELC Girls Higher Secondary School, Usilampatti, Madurai District and disburse grant-in-aid towards her salary and other monetary benefits.

For Appellant : Mr.S.Karthikei Balan
For R1 : Mr.S.Xavier Rajini
For R4 & R5 : Mr.A.K.Baskarapandian
Special Government Pleader

JUDGMENT

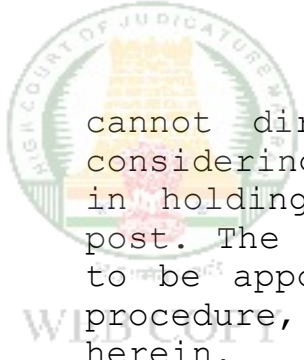
[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

The fifth respondent before the learned Single Judge is the appellant.

2.The learned counsel appearing for the appellant would submit that certain facts could not be placed before the learned Single Judge, since counter affidavit could not be filed. The authority who was in-charge earlier, committed certain mistakes in not following due procedure in appointing BT Assistant. The case of the first respondent/writ petitioner is one such incident. Therefore, the learned Single Judge is not correct in allowing the Writ Petition, since there was no interview conducted. In any case, the fifth respondent herein will have to consider the relevant materials and take a call and therefore, there cannot be any blanket mandamus to approve the appointment of the first respondent/writ petitioner.

3.The learned counsel appearing for the first respondent/writ petitioner would submit that the facts governing in the case will have to be seen. The first respondent/writ petitioner has been working pursuant to the death of her husband viz., N.Sundarapandian. She is also having a down syndrome child. Appointment has been made after following due procedures.

4.After hearing the submissions, we are of the view that the learned Single Judge is not correct in directing the fourth respondent therein to approve the appointment of the first respondent/writ petitioner. Concedingly, the fourth respondent herein is the competent authority to approve the appointment. When that is the position, this Court



cannot direct the aforesaid authority to approve it, without considering the merits of the case, while there is no difficulty in holding that the appointment was made only in a sanctioned post. The question as to whether the first respondent is entitled to be appointed and the appointment was made following the due procedure, is completely within the realm of the fifth respondent herein.

5. In such view of the matter, we modify the order of the learned Single Judge by directing the fifth respondent to consider the case of the first respondent on his own merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. Liberty is given to the appellant to put forth his views before the fifth respondent. The fifth respondent shall keep in mind the peculiar facts, especially the piquant situation, in which the first respondent/writ petitioner is placed, having a down syndrome child and also take note of the fact that the husband of the first respondent was working earlier in the same institution.

6. This writ appeal is ordered accordingly. No costs. Consequently, CMP(MD)No.8090 of 2018 is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

(CS-II)

mj
To

1. The Secretary,
The State of TamilNadu,
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.

<https://hccourtservices.in>
4. The District Educational Officer,
Usilampatti,
Madurai District.



+1cc to Mr.S.Xavier Rajini, Advocate in SR No.85831
+1cc to Mr.S.Karthikei Balan, Advocate in SR No.86072
+1cc to Spl Government Pleader SR No.83891

W.A. (MD) No.1100 of 2018

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NM/RP/SAR 2/28.09.18/3P/8C