



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.23753 of 2017

and

W.M.P. (MD) .No.19944 of 2017

A.Caroline Pushpa

...Petitioner

Vs.

1.The State represented by
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.Bo.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 Maths with effect from 16.08.2017 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 Respondents : Mr.M.Jeyakumar for R1 to R4

Additional Government Pleader

: Mr.S.Karthilkeibalan for R5

ORDER

Heard the learned counsel on either side.

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

3. The petitioner was appointed as BT Assistant in Maths with effect from 16.08.2017 in the sixth respondent school. It is a Minority Institution. It is under the administration of an administrator appointed by this Court. At present, a Hon'ble Judge (retd) has assumed charge as administrator. It is true that the institution is presently under the direct payment system. But the fact remains that the appointment of the petitioner was in respect of a sanctioned post. It is also not in dispute that the petitioner is eligible to be so appointed. The petitioner has enclosed the copy of the appointment order dated 28.07.2017, issued by Mr. Justice J. Kanagaraj, Judge Administrator, TELC. But till date, the approval has not been granted. Therefore, this Writ Petition has been filed.

4. The learned counsel appearing for the petitioner placed reliance on an un-reported order dated 31.07.2013 passed by the Division Bench in W.A.No.652 of 2013. Paragraph 4 of the said order 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."

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

6.However, the learned Additional Government Pleader appearing for the respondents 1 to 4 would submit that it is the second respondent who will have the power to grant approval.

7.In these circumstances, the respondents 2 to 4 are directed to approve the petitioner's appointment as BT Assistant in the sixth respondent school with effect from 16.08.2017 and disburse the salary and monetary benefits forthwith and without any further delay.

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

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

- 1.The 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.

+1CC to Mr.S.Xavier Rajini, Advocate, SR.No. 50535

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