

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM :

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.34036 of 2019
and W.M.P.Nos.34635 and 34636 of 2019

S.Manikandan

..Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

2.The Chief Educational Officer,
Tiruvarur District, Tiruvarur.

3.The District Educational Officer,
Tiruvarur Education District,
Tiruvarur District.

4.The Secretary,
T.T.Narasimhan Swamy Dayanandha
Higher Secondary School,
Manjagudi 612 610
Tiruvarur District.

..Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings issued by the 3rd respondent bearing O.Mu.No.3302/A30/2019 dated 04.10.2019 and to quash the same and consequently directing the respondents to approve the appointment of the petitioner in the sanctioned post of B.T.Assistant (English) in the 4th respondent school, as per the permission granted by the 2nd respondent in Mu.Mu.No.8102/A2/2019 dated 15.10.2018, from the date of appointment on 27.11.2018, with all consequential and attendant benefits including the payment of salary from the date of appointment along with interest, within a time frame to be fixed by this Hon'ble Court.

For Petitioner

: Mr.G.Sankaran

For Respondents 1 to 3

: Mrs.V.Annalakshmi

Government Advocate

ORDER

This writ petition has been filed challenging the proceedings of the third respondent dated 04.10.2019 and for consequential direction to direct the respondent to approve the appointment of the petitioner in the sanctioned post of BT Assistant (English) in the fourth respondent school.

2.The petitioner acquired all the qualifications and made himself eligible to be appointed to the post of BT Assistant (English). The fourth respondent is a Government aided School and a vacancy arose to the post of BT Assistant (Science) during the year 2016. A proposal was submitted by the fourth respondent school to the second respondent seeking for permission to fill up the post of BT Assistant. The second respondent issued necessary orders on 15.10.2018 and granted permission to the school to fill-up the post.

3.The fourth respondent issued a notification for direct recruitment to the post of BT Assistant (English) through paper advertisement and through Employment Exchange. The petitioner applied for selection and he was selected and appointed to the post of BT Assistant on 26.11.2018 and since then he has been working for the fourth respondent School.

4.The fourth respondent School forwarded the proposal to the second respondent for approval of appointment. It was returned to the fourth respondent School stating that the approval cannot be granted in view of the orders passed by the High Court (Madurai Bench). The rejection made by the second respondent is now the subject matter of challenge in the present writ petition.

5.Mr.G.Sankaran, learned counsel appearing for the petitioner submitted that the petitioner was appointed pursuant to the permission granted by the second respondent and after duly complying with provision of Tamil Nadu Recognized Private Schools (Regulation Rules) 1974. The learned counsel further submitted that the petitioner has already joined the post on 27.11.2018 and he has been working for the last one year. The learned counsel submitted that the respondents could not be permitted to turn around and refuse the approval of the appointment on the ground that priority must be given for the surplus teachers for deployment in aided schools. The learned counsel concluded his arguments by submitting that in the present case, the judgment of the High Court cannot be put against since the appointment itself had taken place in the year 2018.

6.Ms.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents 1 to 3 submitted that the impugned order passed by the third respondent is well within the interim order passed by the Division Bench of this Court in W.P.No.31575

of 2019 dated 08.11.2019. The learned counsel submitted that the third respondent had to pass such an order since a Division Bench of this Court had specifically directed the authorities to deploy surplus teachers in all aided schools and till such deployment is completed, no aided school must be permitted to make any recruitment for the vacant post. The learned counsel submitted that in view of the orders of the Division Bench, the third respondent had no other option except to refuse sanction to fill up the post of Secondary Grade Teacher.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.The fourth respondent School is an aided school and it has proceeded to conduct the selection process to fill up the post of BT Assistant (English), only after obtaining permission from the second respondent. The second respondent has permitted through his proceedings dated 15.10.2018, the fourth respondent School to fill up the post of BT Assistant(English). The petitioner has also been appointed and he is continuing in the fourth respondent School from 27.11.2018 onwards. Thereafter, when the second respondent has approached for approval of appointment through the third respondent, the impugned proceedings came to be passed.

9.At this juncture, it will be relevant to take note of the interim order of the Division Bench of this Court in W.P.No.31575 of 2019 dated 08.11.2019. The relevant portion of the interim order is extracted hereunder:

"7.A perusal of the information which has been placed before this Court and as made available by the concerned Department would disclose that there are very many surplus teachers available for deployment and despite that recruitments are taking place and as a consequence, the Government is put to heavy financial burden.

8.In the light of the above facts and circumstances, the respondents 4 to 6 are directed to take immediate and necessary steps to deploy the surplus teachers in Government run Middle Schools and High Schools and till such deployment is completed, there cannot be any recruitment to the said post, until further orders. Since a comprehensive Writ Petition in the form of Public Interest Litigation has been filed. Registry after obtaining appropriate orders. Tag W.A(MD). No.76 of 2019 along with this writ petition."

10. In view of the specific directions given by this Court, the 3rd respondent had no other option except to fill up the posts by deploying the surplus teachers who are available. Therefore, this Court does not find any illegality in the impugned communication of the 3rd respondent dated 04.10.2019. However, the petitioner school has already appointed a B.T. Assistant (English) and they are in the middle of the academic year. By now, the entire deployment of surplus teachers must have been completed. Therefore, in the absence of any surplus teacher being available for being deployed in the petitioner school, it will be in the interest of the school as well as the students to permit the teacher who has already been appointed to continue as a B.T. Assistant (English) in the school. Such a pragmatic approach has to be made in cases of this nature.

11. It must also be taken note that the permission granted by the second respondent and the appointment made by the fourth respondent School had happened much prior to the interim order passed by the Division Bench. The fourth respondent School had submitted the papers for approval in the month of January 2019 itself and it was kept pending and thereafter, the second and third respondents have proceeded to reject the approval by citing the interim order, which came to be passed only on 09.04.2019. In the considered view of this Court, the interim order passed by this Court should not be given a retrospective effect since it will have a serious impact in the appointments that have already been done.

12. In the result, the fourth respondent School is directed to make their representation to the second respondent along with a copy of this order and seek for the approval of the appointment of the petitioner to the post of BT Assistant (English). If the deployment of the surplus teachers has already been completed for this academic year, the second respondent shall approve the appointment of the petitioner and pass appropriate orders within a period of four weeks from the date of receipt of the representation from the fourth respondent School.

13. This writ petition is disposed of with the above directions. There shall be no order as to costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

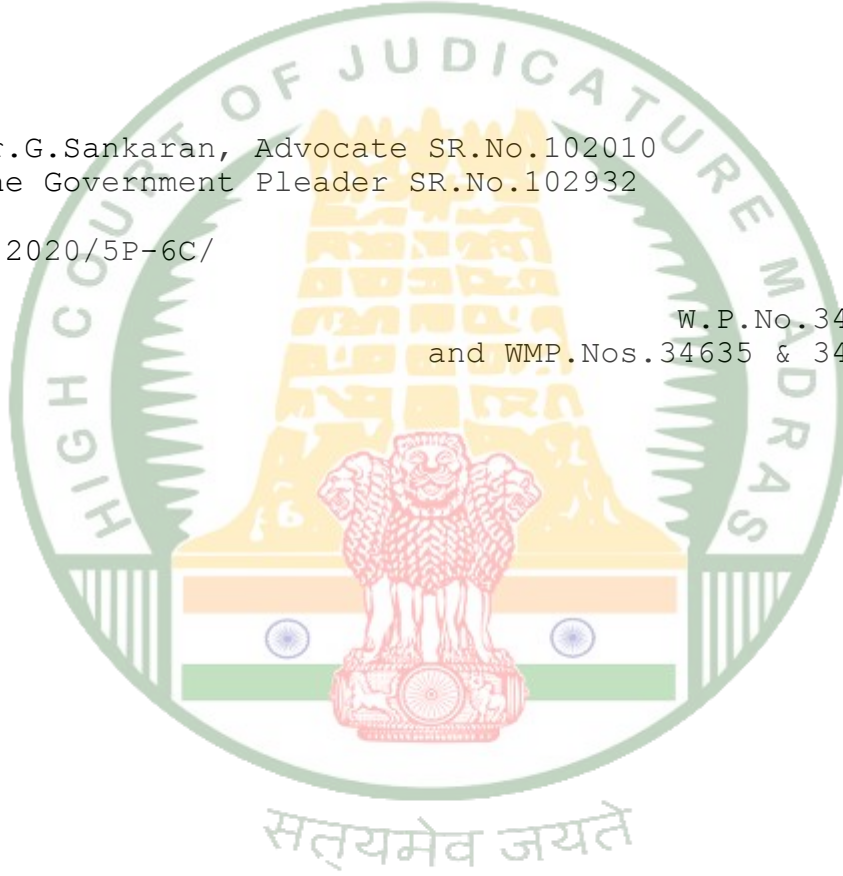
2.The Chief Educational Officer,
Tiruvarur District, Tiruvarur.

3.The District Educational Officer,
Tiruvarur Education District, Tiruvarur District.

+lcc to Mr.G.Sankaran, Advocate SR.No.102010
+lcc to The Government Pleader SR.No.102932

akm/20.01.2020/5P-6C/

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