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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

WP (MD) Nos.8506 and 8507 of 2019

and

WMP (MD) Nos.6652,6653, 6656 and 6657 of 2019

The Correspondent,
St.James High School,
Valiyavilai - 629 157,
Kanyakumari District.

... Petitioner in WP(MD)No.8506 of 2019

The Correspondent,
Mars Gregarious MSC, High School,
Kirathorr, Kanyakumari District 629 181.

... Petitioner in WP(MD)No.8507 of 2019

Vs.

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

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

3.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

... Respondents in both petitions

PRAYER in WP(MD)No.8506 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned Proceedings issued by the 3rd respondent District Educational Officer in O.Mu.No. 1343/Aa2/18 dated 01.06.2018, quash the same and further direct the 2nd and 3rd respondents to approve forthwith the appointment of P.Vijila as Pre-Vocational Instructor (Sewing) in the petitioners school w.e.f. 08.06.2017 with all attendant benefits including the arrears of salary and allowance.

PRAYER in WP(MD)No.8507 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of calling for the records relating to the impugned proceedings issued by the 3rd respondent District Educational Officer in O.Mu.No.3860/A4/18 dated 28.08.2018, QUASH THE SAME and further DIRECT the 2nd and 3rd respondents to approve forthwith the appointment of Tmt.M.Omana as Pre-Vocational Instructor (Science) in the petitioner's school w.e.f. 01.06.2017 with all attendant benefits including the arrears of salary and allowance.



For Petitioner : Mr.M.J.Shabu Jose
For Respondents : Mrs.S.Srimathy,
Special Government Pleader
in both Wps

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COMMON ORDER

These writ petitions have been filed seeking to quash the impugned Proceedings and further direct the 2nd and 3rd respondents to approve forthwith the appointment of the of one P.Vijila and M.Omana, with all attendant benefits including the arrears of salary and allowance.

2.The grievance of the petitioners is that the petitioner schools appointed one P.Vijila as pre Vocational Instructor (Sewing) on 08.06.2017 and one Omna as B.T.(Assistant) on 01.06.2019 respectively. The petitioners submitted a proposal seeking approval of appointment of the above said persons for the purpose of disbursing grant-in-aid towards their salary. However, the proposal was rejected vide impuged orders stating that the proposals can be considered only after issuance of general instructions with regard to the surplus posts in the Minority and Non-minority aided High and Higher Secondary Schools. Aggrieved against, the same, the petitioner Schools are before this Court, seeking to quash the same with consequential directions.

3.The learned Counsel for the petitioners submitted that the issue involved in this writ petition had already been settled by a decision of this Court, in the case of K.Vijila Vs The Secretary to Government, School Education Department and four others, in WP(MD) No.8110 of 2018 on 25.04.2018. The relevant portions of the above order read as follows:

"7.On perusal of the impugned order dated 26.02.2018, it is found that no other reason has been cited by the fourth respondent. As the reasons that the petitioner, who has been appointed, is not a qualified Teacher nor the way in which the appointment was made by the fifth respondent is not an approved method of appointment nor any other acceptable reason were given except to state that awaits the general guideline to be issued in this regard to the staff fixation and therefore, this proposal cannot be considered.

8.It is a fundamental principle that, once the Authority is acting in any particular issue, the date on which action is taken and order is passed what is the available legal position in law, rules, regulations, guideline etc., alone shall be a matter and in anticipation of any rule, law, guideline etc., no Authority can be expected to act.

9. Therefore, the impugned order also discloses as on date, all the impugned order (dated 26.02.2018) no



such guideline as expected by the fourth respondent has been issued by the Government. Even today, it seems that no such guideline has been issued. Therefore, in anticipation of issuance of the guideline, the proposal of appointment of the petitioner can neither be withheld nor be rejected. Therefore, this Court has no hesitation to hold that the reason cited in the impugned order can stand in the legal scrutiny. Hence, the same is liable to be quashed. Accordingly, it is quashed".

Hence, the learned Counsel for the petitioners prayed for a similar direction in these writ petitions also.

4.The learned Special Government Pleader appearing for the respondents has no serious objection on the above submissions made by the learned Counsel for the petitioners.

5.Taking into consideration the submissions made on either side, and following the aforesaid order, the impugned orders are quashed and the matters are remitted back to the 3rd respondent for reconsideration of the proposal submitted by the petitioners. It is open to the 3rd respondent to verify the educational qualification and other suitability of the said persons for appointment in the petitioner School, on the basis of the rules available as on date and accordingly, pass orders thereon, within a period of six weeks from the date of receipt of a copy of this order.

6.The writ petitions are disposed of, on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)

dsk

To

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

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



3.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

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+2CC TO MR.ISAAC CHAMBERS, Advocate Sr. No.60041 & 60040
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 60241 & 60245

WP(MD)Nos.8506 and 8507 of 2019

09.04.2019

PM(CO)

TR (09.07.2019) 4P 7C