



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.1057 of 2019

and

W.M.P. (MD) No.899 of 2019

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Adi Dravidar Primary School,
Represented by its Secretary,
Moopanpatti, Kovilpatti Union,
Thoothukudi District.

... Petitioner

-Vs-

1.The Government of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Fort St. George, Chennai-600 009.

2.The Director of Elementary Education,
DPI Complex, College Road,
Chennai-600 006.

3.The District Educational Officer,
Thoothukudi District, Thoothukudi.
Respondents

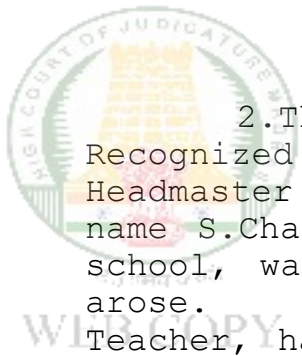
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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.27727/H4/2017, dated 16.04.2018 issued by the second respondent and quash the same and consequently direct the respondents to approve the appointment of C.Madasamy as Headmaster to the petitioner school with effect from 07.02.2011 and release all grants by paying his salary at the scale of Secondary Grade Teacher from 07.02.2011 to 06.02.2016 and then at the Headmaster scale till date with all other service, monetary and attendant benefits.

For Petitioner : Mr.AL.Kannan
For Respondents : Mr.M.Karuppasamy,
Government Advocate.

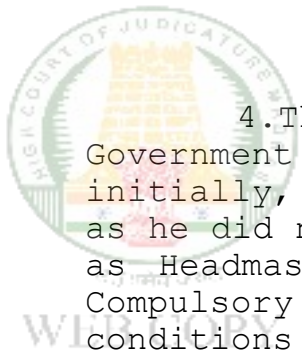
ORDER

This Writ Petition is filed to quash the order of the second respondent dated 16.04.2018 and consequently, to direct the respondents to approve the appointment of one C.Madasamy as Headmaster to the petitioner school with effect from 07.02.2011 and release all grants by paying his salary at the scale of Secondary Grade Teacher from 07.02.2011 to 06.02.2016 and then, at the Headmaster scale till date with all other service, monetary and attendant benefits.



2.The petitioner school is an Aided Non-Minority Private Recognized School. The staff strength of the school is one Headmaster and one Secondary Grade Teacher. The then incumbent by name S.Chandra, who was working as Headmistress in the petitioner school, was retired on 31.05.2010 and a vacancy to the said post arose. One Shenbagadevi, who was working as Secondary Grade Teacher, had relinquished her promotion to the post of Headmaster. The petitioner sought for prior permission from the third respondent to fill up the post by direct recruitment. The third respondent, by the proceedings dated 09.11.2010, has granted permission. Therefore, the petitioner called application by advertisement and four persons applied and attended interview. All the four persons did not possess required teaching experience of 5 years to be appointed as Headmaster. As per G.O.(D).No.97, School Education Department, dated 05.07.2001, if suitable candidates with 5 years experience are not available, Secondary Grade Teacher can be appointed as Headmaster, but he or she will be eligible for salary only to the post of Secondary Grade Teacher, till he or she acquired 5 years of teaching experience. The petitioner school appointed one C.Madasamy as Primary School Headmaster on 07.02.2011, who was more suitable among the four candidates, and sought for approval. The second respondent has rejected the proposal of the petitioner school, by order dated 26.06.2012, on the ground that the said C.Madasamy did not possess requisite qualification of 5 years teaching experience. The petitioner school filed W.P.(MD)No.16449 of 2012. This Court, by the order dated 02.12.2016, set aside the said order of the second respondent dated 26.06.2012 and allowed the Writ Petition and remanded the file to the second respondent for fresh consideration, in the light of the Government Order. However, the respondents did not pass any order. After receiving notice in the Contempt Petition filed in Cont.P.(MD)No.402 of 2018, the second respondent has passed the impugned order, rejecting the proposal on the ground that the said C.Madasamy did not possess certificate of pass in TET examination and also did not possess 5 years of teaching experience. Against the said order, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that the condition of possessing pass in TET examination was imposed by G.O.Ms.No.181, dated 15.11.2011. The said C.Madasamy was appointed on 07.02.2011 and he has completed 5 years on 06.02.2016 and he is entitled to salary payable to the post of Secondary Grade Teacher from 07.02.2011 to 06.02.2016 and thereafter, entitled to salary payable to the post of Primary School Headmaster. The Division Bench of this Court in the judgment reported in **2016 (5) CTC 639 (The Secretary to Government Vs. S.Jeyalakshmi and another)** held that the teachers employed in aided and unaided minority schools need not possess TET qualification and prayed for allowing the Writ Petition.



4.The respondents filed their counter affidavit. The learned Government Advocate appearing for the respondents submitted that initially, the appointment of the said C.Madasamy was not approved, as he did not possess 5 years of teaching experience to be appointed as Headmaster. Subsequently, the Right of Children to Free and Compulsory Education Act, 2009, came into force, imposing the conditions that a person possessing a certificate of pass in TET, is to be appointed as Teacher or Headmaster. However, the Government has power to relax the said condition in exceptional cases. The petitioner did not obtain any such relaxation from the Government and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents and perused the materials available on record carefully.

6.From the materials on record, it is seen that the petitioner school appointed one C.Madasamy as Headmaster of the school on 07.02.2011, after obtaining prior permission from the third respondent to fill up the sanctioned post by direct recruitment. The proposal sent by the petitioner for approval of the appointment of the said C.Madasamy, was rejected by the second respondent on the ground that he did not possess 5 years of teaching experience. When this Court set aside the said order of the second respondent and remanded the matter to the second respondent to consider the proposal afresh, the second respondent, by the impugned proceedings dated 16.04.2018, has rejected the proposal on the ground that the said C.Madasamy did not possess a certificate of pass in TET. The said reason given in the impugned order, is not valid and similarly, the contention of the learned Government Advocate that as per the Right of Children to Free and Compulsory Education Act, 2009, and G.O.Ms.No.181, dated 15.11.2011, the said C.Madasamy is not entitled to be appointed as Headmaster, is without merits. The Division Bench of this Court in the judgment reported in **2016 (5) CTC 639 (The Secretary to Government Vs. S.Jeyalakshmi and another)** held that the teachers employed in aided and unaided minority schools need not possess TET qualification.

7.In view of the above said judgment, the appointment of the said C.Madasamy in the petitioner school is valid and the application seeking approval for appointment is made prior to the date of G.O.Ms.No.181, therefore, the said C.Madasamy is entitled to salary from the date of appointment i.e., 07.02.2011 to 06.02.2016 payable as Secondary Grade Teacher and he is entitled to salary from 07.02.2016 to till date, as payable to the post of Primary School Headmaster. Therefore, the respondents are directed to pay salary to the petitioner from 07.02.2016 and approve the appointment of the said C.Madasamy.



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8. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)

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To

1. The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-600 009.
2. The Director of Elementary Education,
DPI Complex, College Road,
Chennai-600 006.
3. The District Educational Officer,
Thoothukudi District, Thoothukudi.

+1 CC to M/s.SPL GP (SR-92136[F] dated 16/10/2019)

W. P. (MD) No.1057 of 2019

15.10.2019

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