



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.09.2019
CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.5129 of 2018
and
W.M.P. (MD)No.5108 of 2018

M.Selvi

... Petitioner

-Vs-

1. The District Elementary Educational Officer,
Ramanathapuram, Ramanathapuram District.
2. The Additional Assistant Elementary Educational Officer,
Kadaladi, Ramanathapuram District.
3. The Correspondent,
R.C. Primary School, Narippaiyur,
Kadaladi Taluk, Ramanathapuram District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for entire records relating to the impugned proceedings of the first respondent in Na.Ka.No.3918/A1/2017, dated 06.03.2018 and quash the same as illegal and consequentially to direct the respondents 1 and 2 herein to grant approval for the appointment of the petitioner as Secondary Grade Teacher in third respondent school from the date of appointment ie., 12.01.2017 with salary and all other attendant benefits.

For Petitioner : Mr.S.Manikandan
For Respondents : Mr.M.Karuppasamy,
Government Advocate.

ORDER

The order of the first respondent dated 06.03.2018, is sought to be quashed in the present Writ Petition and further direction is sought for to direct the respondents 1 and 2 herein to grant approval for the appointment of the petitioner as Secondary Grade Teacher in the third respondent school from the date of his appointment i.e., 12.01.2017 with salary and all other attendant benefits.

2.The third respondent is the religious minority educational institution which is run by the R.C. Diocese of Sivagangai. The

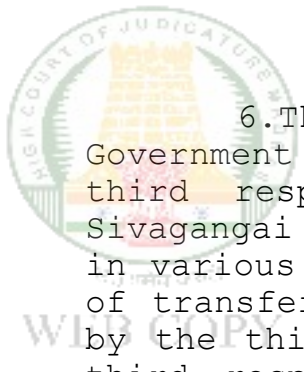


school was recognized by the Government of Tamil Nadu and receives teaching grants under Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules.

3.The learned counsel appearing on behalf of the petitioner submitted that one Secondary Grade Teacher post fell vacant, on account of transfer of one M.Kuzhanthai Theras to another school, run by the same management on 16.06.2016. Though prior permission is not necessary for filling up the said post, the third respondent sought permission from the respondents 1 and 2 to fill up the said vacancy. The first respondent, after scrutinizing the documents and staff fixation order, granted permission to fill up the said post. Therefore, the third respondent issued a notification, calling for the application from the eligible candidates for selection and appointment in the said post. The petitioner was considered along with other candidates for selection and after interview, the petitioner was selected and appointed as Secondary Grade Teacher with effect from 12.01.2017 by the third respondent. The petitioner is now working in the said post.

4.According to the petitioner, she has passed TET examination and she is fully qualified for the post of Secondary Grade Teacher. The third respondent submitted proposal for approval of the appointment of the petitioner. The first respondent did not pass any order on the proposal submitted by the third respondent for approval of the appointment of the petitioner. Therefore, the petitioner filed W.P.(MD)No.15583 of 2017, seeking for a direction to direct the respondents 1 and 2 to approve the appointment of the petitioner as Secondary Grade Teacher in the third respondent school from the date of his appointment i.e., 12.01.2017 with salary and other attendant benefits. This Court, by order dated 21.08.2017, directed the respondents 1 and 2 to consider the proposal submitted by the third respondent school, within a period of four weeks from the date of receipt of a copy of the order. However, the respondents 1 and 2 did not pass any order on the proposal submitted by the third respondent, even after passing of the order of this Court. Therefore, the petitioner filed Cont.P.(MD)No.315 of 2018. On receipt of notice issued by this Court in the Contempt Petition, the first respondent rejected the proposal submitted by the third respondent, by the impugned proceedings dated 06.03.2018.

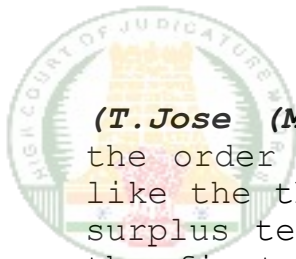
5.The learned counsel appearing for the petitioner contended that with an illegal intention to circumvent the contempt proceedings, the first respondent rejected the proposal of the third respondent, in spite of the order of this Court. The first respondent erred in rejecting the proposal submitted by the third respondent for approval of the appointment of the petitioner and prayed for allowing this Writ Petition.



6.The respondents filed counter affidavit. The learned Government Advocate appearing for the respondents contended that the third respondent management is running number of schools in Sivagangai and Ramanathapuram Districts. There are surplus teachers in various schools run by the third respondent management. Instead of transferring the surplus teachers in any one of the schools run by the third respondent, the appointment of the petitioner in the third respondent school is not valid. The appointment of the petitioner is contrary to the Government Order in G.O.231, dated 11.08.2010 and the circular issued by the Director of Elementary Education. By approving the appointment of the petitioner, the Government will incur additional expenses of Rs.22,825/- (Rupees Twenty Two Thousand Eight Hundred and Twenty Five Only) per month and the Government is paying Rs.1,53,38,400/- (Rupees One Crore Fifty Three Lakhs Thirty Eight Thousand and Four Hundred Only) every year, as salary for the surplus teachers and prayed for dismissal of the Writ Petition.

7.Heard Mr.S.Manikandan, learned counsel appearing on behalf of the petitioner and Mr.M.Karuppasamy, learned Government Advocate appearing on behalf of the respondents.

8.It is an admitted fact that one sanctioned post of Secondary Grade Teacher fell vacant in the third respondent school on account of transfer of one M.Kuzhanthai Theras to another school run by the third respondent management. According to the petitioner, though prior permission is not required, the third respondent sought prior permission to fill up the said vacancy. The first respondent also granted permission. Subsequently, by following the process, the petitioner was appointed as Secondary Grade Teacher with effect from 12.01.2017 in the third respondent school. The contention made by the petitioner in the affidavit filed in support of the Writ Petition, is not denied by the respondents 1 and 2. Having granted permission, it is not open to the respondents 1 and 2 to contend that the third respondent management must deploy any one of the surplus teachers from other school instead of appointing a fresh candidate. However, in the earlier Writ Petition in W.P.(MD)No.15583 of 2017, the respondents 1 and 2 have not taken such a stand. From paragraph No.5 of the order of this Court, dated 21.08.2017, made in W.P.(MD)No.15583 of 2017, it is seen that this Court has taken note of the fact that the post fell vacant on account of the transfer of another teacher and there is no impediment to direct the respondents 1 and 2 to consider the proposal of the third respondent, which is pending for long time and directed the respondents 1 and 2 to consider proposal submitted by the third respondent for approval of the appointment of the petitioner. The Division Bench, after considering various judgments of this Court and also the judgment of the Hon'ble Apex Court in the judgment reported in **2002 (8) SCC 481 (T.M.A. Pai Foundation Vs. State of Karnataka)** and the judgment reported in **2007 (1) SCC 386**



(T.Jose (Malankara Syrian Catholic College Vs. T.Jose), confirmed the order passed in the Writ Petition and held that the management like the third respondent can recruit fresh teachers, when there are surplus teachers in the school under the same management. However, the first respondent has not considered the paragraph No.5 of the said order, but extracted only Paragraph No.6 of the said order and rejected the proposal submitted by the third respondent. It is not denied that the petitioner is fully qualified to be appointed as Secondary Grade Teacher.

9.Considering the above materials and the order of this Court dated 21.08.2017 made in W.P.(MD)No.15583 of 2017, the impugned order of the first respondent, dated 06.03.2018, is quashed and this Writ Petition stands allowed, directing the respondents 1 and 2 to approve the appointment of the petitioner as Secondary Grade Teacher in the third respondent school from the date of his appointment i.e., 12.01.2017 and pay the salary from 12.01.2017. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The District Elementary Educational Officer,
Ramanathapuram, Ramanathapuram District.
- 2.The Additional Assistant Elementary Educational Officer,
Kadaladi, Ramanathapuram District.
- 3.The Correspondent,
R.C. Primary School, Narippaiyur,
Kadaladi Taluk, Ramanathapuram District.

+1 CC to SPL GP (SR-87226[F] dated 17/09/2019)

W.P. (MD)No.5129 of 2018
16.09.2019

myr

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