



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.21065 of 2019

and

W.M.P(MD) .No.17694 of 2019

Jaihind Primary School
M.Karisalkulam
Melapasalai Post, Manamadurai Taluk
Sivagangai District
Represented by its Secretary
Mr.P.S.Senthil ... Petitioner

-Vs-

- 1.The Chief Educational Officer
Office of the Chief Educational Office
Sivagangai
Sivagangai District
- 2.The District Educational Officer
Sivagangai
Sivagangai District
- 3.The Block Educational Officer
Manamadurai
Sivagangai District ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned returned note in Athimu.No.002856/A1/2019, dated 27.08.2019 by the 2nd respondent and the consequential impugned return endorsement dated 17.09.2019 made by the 3rd respondent in Athimu.No.955/A1/2019 and quash the same as illegal and consequently direct the respondents 2 and 3 to reconsider the proposal dated 08.07.2019 submitted by the petitioner for approval of the appointment of Mr.M.Vijayakumar as Secondary Grade Teacher in the petitioner School and approve the same with effect from the date of the appointment ie. 01.07.2019 with all consequential monetary benefits within the time limit fixed by this Court.



For Petitioner
For Respondents

: Mr.M.Dinesh
: Mr.A.Thiyagarajan
Government Advocate

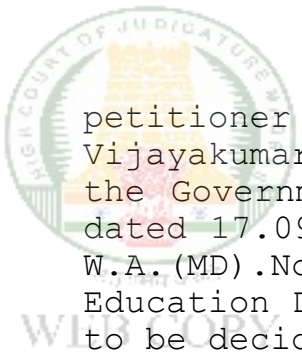
ORDER

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This Writ petition has been filed to call for the entire records relating to the impugned returned note in Athimu.No.002856/A1/2019, dated 27.08.2019, by the 2nd respondent and the consequential impugned return endorsement dated 17.09.2019, made by the 3rd respondent in Athimu.No.955/A1/2019 and quash the same as illegal and consequently, direct the respondents 2 and 3 to reconsider the proposal dated 08.07.2019, submitted by the petitioner for approval of the appointment of Mr.M.Vijayakumar as Secondary Grade Teacher in the petitioner School and approve the same with effect from the date of the appointment ie. 01.07.2019, with all consequential monetary benefits, within the time limit fixed by this Court.

2.The petitioner School is a recognized private Government aided non minority School. In the said School, one post of Secondary Grade Teacher fell vacant on 04.06.2018. The petitioner School applied for prior permission to fill up the said post before the competent authority. After securitizing the documents and staff fixation order, the competent authority granted permission to fill up the said post on 06.03.2019. The petitioner School issued notification, after obtaining permission. The petitioner School, by following the process of selection, appointed one M.Vijayakumar in the post of Secondary Grade Teacher on 01.07.2019 and the petitioner School forwarded the proposal dated 08.07.2019, for granting approval of appointment of said Vijayakumar as Secondary Grade Teacher in the petitioner School and for grant-in-aid. The third respondent forwarded the proposal to the second respondent, stating that as per direction issued by the Division Bench of this Court in W.A.(MD).No.76 of 2019 etc.batch, no appointment shall be made in the aided private School till the surplus teachers are deployed. The second respondent returned the proposal on 27.08.2019, stating that the proposal submitted by the petitioner, is not properly recommended as per rules in force. The second respondent, by order dated 27.08.2019, directed the third respondent not to forward the proposals without any clarity in future. The second respondent instead of rectifying the clarification raised, mechanically returned the proposal to the petitioner. Challenging the said order, the petitioner has come up with the present Writ petition.

3.The learned counsel for the petitioner submitted that the respondents 2 and 3, by the impugned order, returned the proposal on wrong interpretation of the interim order of this Court, dated 09.04.2019, in W.A(MD).No.76 of 2019. The respondents failed to see that there is no surplus teacher in the petitioner School. The



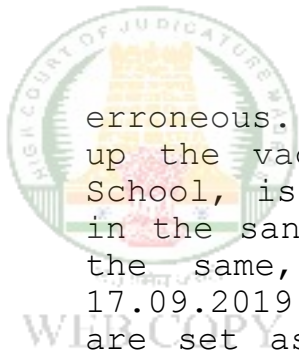
petitioner after obtaining prior permission only, appointed one Vijayakumar as Secondary Grade Teacher. Based on the interim order, the Government passed G.O.(Ms).No.165, School Education Department, dated 17.09.2019. The Division Bench of this Court in the very same W.A.(MD).No.76 of 2019 etc.batch, suspended G.O.(Ms).No.165, School Education Department, dated 17.09.2019 and held that each appeal has to be decided individually.

4.The respondents filed Counter affidavit and reiterated the averments made in the counter affidavit and further submitted that there are number of surplus teachers. Without deploying them, no fresh appointment can be made. The said post fell vacant on 04.06.2018. The petitioner School approached the respondents belatedly in the month of February-2019. The second respondent by his proceedings dated 06.03.2019, granted permission with a specific condition that to fill up the post within the academic year of 2018-2019. The petitioner appointed the said Vijayakumar only on 01.07.2019. Due to surplus teacher, the Government is spending huge amount as salary to the surplus teachers, when they are not doing any work. Hence, he prayed for dismissal of this Writ petition.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

6.From the materials on record, it is seen that the vacancy for the post of Secondary Grade Teacher has arisen in the petitioner School on 04.06.2018 itself. At request of the petitioner School, the respondents granted prior permission to fill up the said post. After obtaining permission from the respondents, the petitioner School appointed one Vijayakumar as Secondary Grade Teacher and forwarded the proposal for approval of appointment of the said Vijayakumar as Secondary Grade Teacher to the third respondent. The third respondent forwarded the said proposal to the second respondent stating that as per direction of the Division Bench of this Court in W.A(MD).No.76 of 2019, no appointment shall be made in the aided private School till surplus teachers are deployed. The second respondent returned the proposal forwarded by the third respondent on the ground that the proposal of the petitioner was not recommended by the third respondent in accordance with rules. The recommendation sent by the third respondent referring the order of this Court, dated 09.04.2019, in W.A(MD).No.76 of 2019, is erroneous. In the said order, this Court held that till the surplus teacher in the School under the same management are deployed, no fresh appointment can be made. Based on the interim order of the Division Bench of this Court, dated 09.04.2019, Government issued G.O.(Ms).No.165, School Education Department, dated 17.09.2019. A Division Bench of this Court by order dated 20.09.2019 in W.A(MD).No.76 of 2019, suspended G.O.(MD).No.165.

7.In view of the above materials, recommendation sent by the
<https://hdservices.courts.gov.in/hdservices> referring to interim order, dated 09.04.2019 is



erroneous. The respondents having granted prior permission to fill up the vacancy of the Secondary Grade Teacher in the petitioner School, is not entitled to now not to approve the appointment made in the sanctioned post, based on the prior permission. In view of the same, the impugned order of the third respondent dated 17.09.2019 and return of the second respondent, dated 27.08.2019, are set aside. The petitioner School is directed to resubmit the proposal within a period of two weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents 2 and 3 are directed to approve the appointment of Vijayakumar as Secondary grade Teacher in the Petitioner School within a period of eight weeks thereafter, if he is otherwise eligible.

8. In the result, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Chief Educational Officer
Office of the Chief Educational Office
Sivagangai
Sivagangai District

2.The District Educational Officer
Sivagangai
Sivagangai District

3.The Block Educational Officer
Manamadurai
Sivagangai District.

+1 CC to M/s.Special Govt.Pleader (SR-97262[F] 11/11/2019)

W.P. (MD) No.21065 of 2019
and

W.M.P (MD) .No.17694 of 2019
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msa

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<https://hcservices.ecourts.gov.in/hcservices/>