



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.22072 of 2019

and

W.M.P. (MD) No.18840 of 2019

K.Shanthi

... Petitioner

-Vs-

1.The District Educational Officer
Office of the District Educational Officer
Sankarankovil
Tirunelveli District

2.Block Educational Officer
Office of the Block Educational Officer
Melaneelithanallur
Sankarankovil
Tirunelveli District

3.The Correspondent
R.C.Middle School
Melaneelithanallur
Sankarankovil
Tirunelveli 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 records on the file of the 2nd respondent in connection with the impugned order passed by her in her proceedings in O.Mu.No.873/A2/2017 dated 13.11.2017 and quash the same as illegal and arbitrary and consequently direct the respondents 1 and 2 to approve the petitioner's appointment as B.T.Assistant (History) in the 3rd respondent School with effect from 08.06.2017 with all service and monetary benefits within the time limit that may be stipulated by this Court.

For Petitioner : Mr.K.Sankar

For Respondents : Mr.A.Thiyagarajan
Government Advocate



ORDER

This Writ Petition is filed to call for the records on the file of the 2nd respondent in connection with the impugned order passed by her in her proceedings in O.Mu.No.873/A2/2017 dated 13.11.2017 and quash the same as illegal and arbitrary and consequently direct the respondents 1 and 2 to approve the petitioner's appointment as B.T.Assistant (History) in the 3rd respondent School with effect from 08.06.2017 with all service and monetary benefits within the time limit that may be stipulated by this Court.

2.The third respondent School is the Government Aided Minority School, which is run by the R.C. Management. The learned counsel appearing on behalf of the petitioner submitted that in the third respondent School, one B.T.Assistant (History) post fell vacant, due to transfer of one Mr.Anthony Rajadurai on 07.06.2017. The third respondent institution is having every right of administration including appointments under Article 30(1) of the Constitution of India. Therefore, the petitioner was appointed as B.T.Assistant (History) on 08.06.2017. The petitioner is now working in the said post. The third respondent sent proposal for approval of the appointment of the petitioner. The second respondent without considering the proposal submitted for approval properly, simply returned the same on 13.11.2017 in O.Mu.No.873/A2/2017, stating that there are surplus teachers in the R.C.Managment Schools. The second 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.

3.The learned Government Advocate appearing for the respondents 1 and 2 contended that 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 third respondent has appointed the petitioner in the school, which 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 and prayed for dismissal of the Writ Petition.

4.Heard Mr.K.Sankar, learned counsel appearing on behalf of the petitioner and Mr.A.Thiyagarajan, learned Government Advocate appearing on behalf of the respondents 1 & 2.

5.It is an admitted fact that one sanctioned post of B.T.Assistant (History) fell vacant in the third respondent school on account of transfer of one Anthony Rajadurai. The third respondent school is minority institution and the institution is



having every right of administration including appointments under Article 30(1) of the Constitution of India. Therefore, the third respondent appointed the petitioner as B.T.Assistant (History) on 08.06.2017.

6.In paragraph No.5 of the order of this Court, dated 21.08.2017, made in W.P.(MD)No.15583 of 2017 filed by another person, 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 therein to consider the proposal of the third respondent therein, which is pending for a long time and directed the respondents 1 and 2 therein to consider proposal submitted by the third respondent therein for approval of the appointment of the petitioner therein.

7.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 that Writ Petition and held that the management, like the third respondent therein can recruit fresh teachers, when there are surplus teachers in the school under the same management. It is not denied that the petitioner is fully qualified to be appointed as B.T.Assistant (History).

8.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 second respondent, dated 13.11.2017, is quashed and this Writ Petition stands allowed, directing the respondents 1 and 2 to approve the appointment of the petitioner as B.T.Assistant (History) in the third respondent school from the date of her appointment i.e., 08.06.2017 and pay the salary from 08.06.2017. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

msa

To

1.The District Educational Officer
Office of the District Educational Officer
Sankarankovil, Tirunelveli District.



2. Block Educational Officer
Office of the Block Educational Officer
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Sankarankovil
Tirunelveli District

3.The Correspondent
R.C.Middle School
Melaneelithanallur
Sankarankovil
Tirunelveli District

+1 CC to M/s.GP (SR-99011[F] dated 18/11/2019)

+1 CC to M/s.K.SANKAR, Advocate (SR-99212[F] dated 18/11/2019)

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JMN(13.12.2019) 4P : 6C