



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.22263 of 2019

and

W.M.P. (MD)No.19048 of 2019

WEB COPY

A.Vinnarasi Mala

... Petitioner

-Vs-

1.The District Educational Officer,
Devakottai,
Sivagangai District.

2.The Block Educational Officer,
Devakottai,
Sivagangai District.

3.The Correspondent,
St. Joseph's Middle School,
Sarugani,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in his proceedings No.Nil dated 18.09.2019 and quash the same and direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher from the date of appointment i.e., 25.07.2018 with all the consequential benefits.

For Petitioner: Mr.V.Panneer Selvam

For R1 & R2 : Mr.M.Karuppasamy,
Government Advocate

ORDER

The order of the second respondent dated 18.09.2019, is sought to be quashed in the present Writ Petition and further direction is sought for to direct the respondents 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., 25.07.2018 with all consequential 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, due to



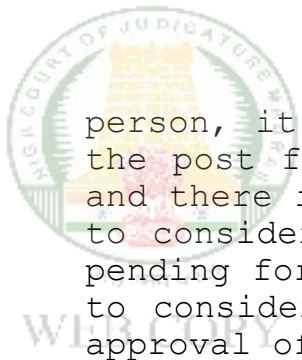
resignation of J.Josphin Kavitha on 21.04.2018. The third respondent institution is having every right of administration including appointments under Article 30(1) of the Constitution of India. Therefore, the petitioner was appointed in the above said permanent sanctioned vacancy as Secondary Grade Teacher on 25.07.2018. 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 04.01.2019 by referring the G.O.Ms.No.39, dated 21.03.2003 and also to produce certificate mentioning that there is no surplus in some other school under the same management. The third respondent resubmitted the proposal on 09.08.2019 stating that there is no surplus in the school and also enclosing letter to the first respondent dated 03.05.2019 through the second respondent. Immediately, after receiving the same, by the impugned order dated 18.09.2019, the second respondent inspected the institution and passed an order refusing to approve the appointment of the petitioner on the ground of surplus teachers are working in R.C.Management 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.

4.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 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.

5.Heard Mr.V.Panneer Selvam, learned counsel appearing on behalf of the petitioner and Mr.M.Karuppasamy, learned Government Advocate appearing on behalf of the respondents 1 & 2.

6.It is an admitted fact that one sanctioned post of Secondary Grade Teacher fell vacant in the third respondent school on account of resignation of J.Josphin Kavitha. 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 Secondary Grade Teacher on 25.07.2018.

7. 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.

8. 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 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 second respondent, dated 18.09.2019, 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 her appointment i.e., 25.07.2018 and pay the salary from 25.07.2018. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

am

To

1.The District Educational Officer,
Devakottai,
Sivagangai District.

2.The Block Educational Officer,
Devakottai,
Sivagangai District.

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-96652[F]

+1 CC to M/s.SPL GP (SR-96676[F] dated 07/11/2019)

SMA/26/12/19/3P/5C

W.P. (MD)No.22263 of 2019

06.11.2019