



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

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THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P. (MD)No.11013 of 2016

and

W.M.P. (MD)Nos.8491 and 8492 of 2016

A.Arockia Rajeswari

... Petitioner

Versus

- 1.The Chief Educational Officer,
Thoothukudi District,
Thoothukudi.
- 2.The District Educational Officer,
Thoothukudi District,
Thoothukudi.
- 3.The Correspondent,
St. Joseph Girls Hr. Sec. School,
Sathankulam,
Thoothukudi District.
- 4.The Manager,
RC Schools,
Thoothukudi RC Diocese,
Catholic Bishops House,
Thoothukudi - 628 001.

5.Ragini Stella Bai, W/o.Joseph

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order in O.Mu.No.5518/A4/2015, dated 03.11.2015, on the file of the second respondent, quash the same as illegal and further directing the respondents 1 and 2 to accept the proposal from the third respondent, for petitioner's appointment as P.G. Assistant in the third respondent School and approve the same.

For Petitioner : Mr.T.A.Ebenezer

For R1 and R2 : Mrs.S.Srimathy
Special Government Pleader



For R3 and R4 : No Appearance

For R5 : Mr.M.P.Senthil

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ORDER

This Writ Petition has been filed seeking to quash the impugned order of the second respondent, in O.Mu.No.5518/A4/2015, dated 03.11.2015, and further direction to the respondents 1 and 2 to accept the proposal from the third respondent, for the petitioner's appointment as P.G. Assistant in the third respondent School and approve the same.

2.According to the petitioner, one M.Rajathi, who was working in the third respondent School as P.G. Assistant [English] retired from service on 31.05.2015 and the petitioner was appointed in the said post by the fourth respondent, vide his proceedings dated 01.06.2015. Being a minority institution, the fourth respondent can make appointment against such sanctioned vacancy, without reference to the Education Department. The third respondent submitted an application along with relevant records to the second respondent, requesting him to approve the appointment of the petitioner. The second respondent, by his communication dated 04.09.2015, sought for certain details from the third respondent, for which, the third respondent also, vide reply dated 16.09.2015, submitted those details. In the meanwhile, on 31.07.2015, the fifth respondent filed a suit in O.S.No.264 of 2015 before the Subordinate Court, Tuticorin, for declaration, declaring that she is qualified to be appointed in the post of P.G. Assistant [English]. After receiving summons in the said Suit, the petitioner appeared in the Suit and also filed a written statement. When there is no interim order in the said suit, the second respondent, vide his order 03.11.2015, returned the application for approval, quoting the pendency of the suit filed by the fifth respondent. In view of the same, the authorities are not releasing the salary of the petitioner and she has been working in the School without any salary for the past one year. Hence, she was constrained to approach this Court, by way of filing the present Writ Petition, for the relief stated supra.

3.The learned counsel appearing for the petitioner submitted that the Civil Court has no jurisdiction to entertain the suit. Further, there is no interim order in the said suit and therefore, the impugned order of the second respondent, dated 03.11.2015, rejecting the application for approval of the petitioner's appointment, is per se illegal and the same is liable to be quashed. The learned counsel further submitted that the petitioner has already filed C.R.P.(MD)No.1241 of 2019 before this Court seeking to strike off the plaint in the said Suit, which is now pending on the file of the Principal District Munsif Court, Tiruchendur. The



learned counsel also submitted that the contentions of the petitioner i.e., with regard to maintainability of the suit will be decided in the aforesaid Civil Revision Petition or in the said Suit.

4.The learned counsel appearing for the fifth respondent vehemently opposed the contentions of the learned counsel for petitioner and justified the stand of the second respondent, stating that the petitioner is not a qualified candidate, for such appointment and she has undergone Master's Degree in open University and the fifth respondent is fully eligible to the said post and she is also the senior-most candidate in the selection process. Without taking note of the said fact, the respondent Management has considered the petitioner for the abovesaid post and therefore, the fifth respondent has filed the said Suit. The learned counsel further submitted that the impugned order passed by the second respondent, dated 03.11.2015, may be quashed and liberty may be given to the fifth respondent to place all the materials before the second respondent at the time of granting approval to the appointment of the petitioner.

5.I have considered the submissions made by the learned counsel appearing for the parties and perused the materials available on record.

6.Considering the facts and circumstances of the case, this Court is not expressing any opinion on the maintainability of the suit, at this stage. Insofar as the instant impugned order passed by the second respondent, dated 03.11.2015, is concerned, the reason stated by the second respondent for rejection of application, i.e., pendency of the civil suit, is not a ground to reject the application for approval of the petitioner's appointment to the post of P.G. Assistant [English], when there is no interim order granted by the Civil Court. Therefore, this Court has no hesitation to quash the impugned order dated 03.11.2015. Accordingly, the impugned order passed by the second respondent, dated 03.11.2015, is quashed and the matter is remitted back to the second respondent to consider afresh and pass orders on merits and in accordance with law, after affording an opportunity of hearing to the writ petitioner as well as the fifth respondent and pass final orders as expeditiously as possible, in any event, not later than, 12 weeks from the date of receipt of a copy of this order.

7.This Writ Petition is allowed with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //



Sub Assistant Registrar(CS)

To
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+1 CC to M/s.M.P.SENTHIL, Advocate (SR-79894[F] dated 06/08/2019)
+1 CC to M/s.T.A.EBENEZER, Advocate (SR-79856[F] dated 06/08/2019)
+1 CC to M/s.SPL GP (SR-79938[F] dated 06/08/2019)

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