

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

WP.No.1417 of 2020
and
WMP.No.1676 of 2020

E.Rathinamala

... Petitioner

- Vs -

1. The Director of School Education,
DPI Compound, College Road,
Chennai-6.
2. The Chief Educational Officer,
Tiruvannamalai District.
3. The District Educational Officer,
Tiruvannamalai District.
4. The Correspondent,
Danish Mission Higher Secondary School,
Tiruvannamalai District.
5. The Central Manager & Chairman,
Education Board,
D.M.Elementary Higher Elementary School,
Parikkal, Cuddalore District.

सत्यमेव जयते...

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the third respondent pertaining the proceedings NA.KA.NO 4015/ A2/ 2018 dated 10.12.2018 quash the same and cosequently directing the Respondents to approve the appointment of the Petitioner in the post of B.T.ASSISTANT (History) from the date of initial appointment dated 01.03.2017 with all consequential and attendant benefits including payment of salary from the date of appoitment along with Interest, within a time frame to be fixed by this Court.

For Petitioner : Ms.T.Dharani

For Respondents : Mrs.V.Annalakshmi
Government Advocate for R1 to R3 & R5

O R D E R

This writ petition has been filed challenging the proceedings of the third respondent dated 10.12.2018 rejecting to grant approval to the appointment of the petitioner in the post of B.T.Assistant.

2. The case of the petitioner is that she was appointed as a B.T.Assistant Teacher in the fourth respondent-School in a regular vacancy on 01.03.2017. The fourth respondent-School had forwarded the proposal seeking for approval of appointment to the third respondent. The same was returned with certain queries. Thereafter, it was re-submitted to the third respondent. The third respondent, by his impugned proceedings dated 10.12.2018 has returned the proposal on the ground that there are Surplus Teachers available in the District, who can be deployed in the fourth respondent-School. Aggrieved by the same, the present writ petition has been filed before this Court.

3. The learned counsel for the petitioner submitted that the petitioner was appointed towards a sanctioned post on 01.03.2017. The learned counsel further submitted that the third respondent ought not to have taken into account the availability of the Surplus Teachers while considering the sanction for appointment since the relevant Government Order cannot be given retrospective effect and it will not cover cases, where the vacancy had arisen much before the Government Order and the appointment was also made.

4. The learned Government Advocate appearing on behalf of the respondents 1 to 3 and 5 submitted that the sanction cannot be accorded by the third respondent since there were Surplus Teachers available in other Government and Aided Schools and the Division Bench of this Court had already passed an order to the effect that the Surplus Teachers must first be accommodated in the regular vacancies and only thereafter, the sanction for appointment of fresh candidates can be considered.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The issue involved in this case is directly covered by the judgment of this Court in Thiruvavaduthurai Adheenam Middle

School Vs. The Director of Elementary Education and 2 others.
The relevant portion of the judgment is extracted hereunder:-

"6.It is an admitted case that the vacancies arose in the year 2014 and 2017 and the petitioner School has proceeded to fill up the vacancy of Secondary Grade Teacher and had sent proposal seeking for approval of the appointment and it was kept pending by the 2nd respondent. The 2nd respondent ought to have independently considered the approval sought for by the petitioner since, the post in question is a sanctioned post and it is a sanctioned vacancy. The 2nd respondent ought not to have relied upon the order passed by the Division Bench of this Court in the year 2019 and should not have given a retrospective effect for a sanctioned vacancy which arose in the year 2014 and 2017 respectively. That apart, the 2nd respondent failed to take note of the fact that the operation of G.O.Ms.No.165, dated 17.09.2019 has already been suspended by this Court and the very validity of the said Government order is now under consideration in the writ appeal which is pending before the Madurai Bench of this Court.

7.In the considered view of this Court, the 2nd respondent ought to have independently considered the approval for appointment sought for by the petitioner School. The 2nd respondent cannot rely upon the subsequent order passed by this Court in the year 2019 and deny the approval.

8.In view of the above discussion, this Court has no hesitation to interfere with the impugned proceedings of the 2nd respondent dated 21.11.2019 and accordingly, the same is hereby quashed. The petitioner is directed to resubmit the proposal to the 2nd respondent seeking for approval for the appointment of two Secondary Grade Teachers made in the year 2014 and 2017 respectively and the 2nd respondent, on receipt of the proposal, is directed to process the file and grant approval, if the appointment has fulfilled all the other requirements. This process shall be completed within a period of four weeks from the date of receipt of copy of this order."

7. It is clear from the above judgment that the District Educational Officer ought to have independently considered the approval sought for by the petitioner since he has been appointed in a sanctioned post. That apart, he was appointed in

the year 2017 itself. Therefore, the third respondent cannot rely upon G.O.Ms.No.165 dated 17.09.2019, which has already been suspended by this Court.

8. In view of the above, the impugned proceedings of the third respondent dated 10.12.2018 is hereby quashed and the fourth respondent-School is directed to re-submit the proposal to the third respondent and the third respondent, on receipt of the proposal, is directed to process the file and grant approval, if the petitioner has fulfilled all the other requirements. This process shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

9. This writ petition is accordingly allowed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

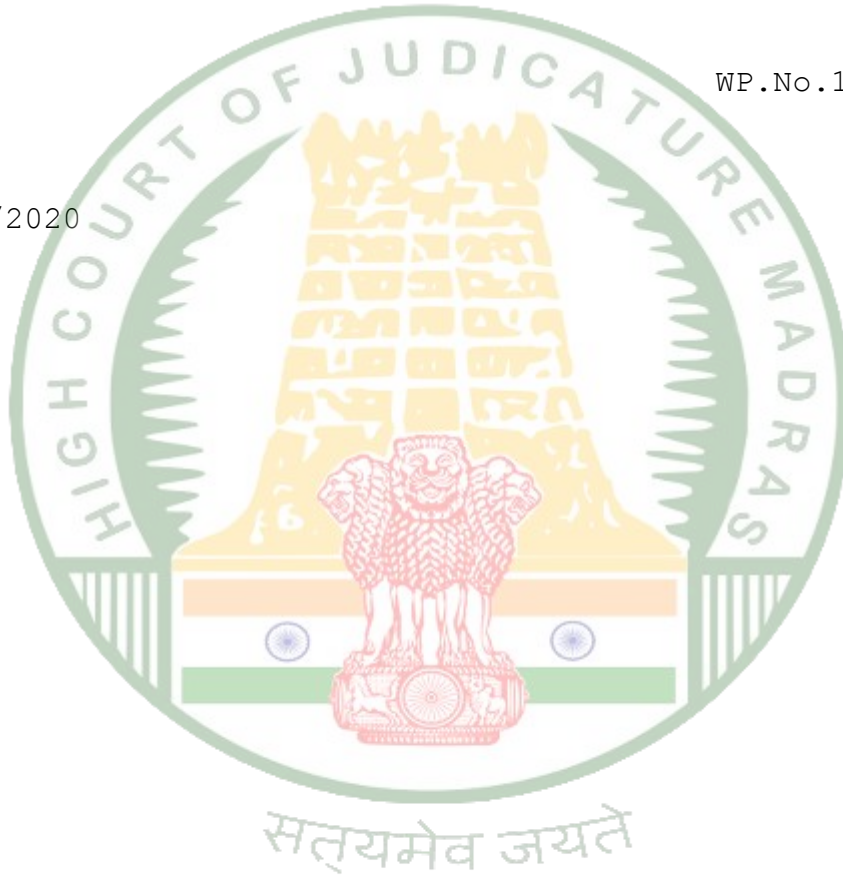
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Parikkal, Cuddalore District.

+lcc to M/s.T.Dharani, Advocate Sr.11194
+lcc to the Government Pleader Sr.12430

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vsn II[co]
srg 03/03/2020



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