

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
W.P.No.1959 of 2020

S.Sakthivel

... Petitioner

.Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department, Chennai - 9.
2. The Director of school Education,
DPI Buildings, College Road,
Chennai - 6.
3. The Chief Educational Officer,
Tiruppur.
4. The District Educational Officer,
Palladam, Tiruppur District.
5. The Secretary,
SLN Memorial Higher Secondary School,
Karadivavi - 641 658
Tiruppur District

.... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus to call for the entire records connected with the impugned order passed by the 3rd respondent in .Mu.No.0997/Aa3/2019. dated 10.01.2020 and quash the same and consequently, direct the respondents to approve the appointment of the petitioner as B.T.Assistant (Maths) in the 5th respondent school w.e.f 14.11.2018, with all consequential monetary benefits.

For Petitioner	: Mr.S.N.Ravichandran
For Respondents	: Mr.A.Rajaperumal Additional Government Pleader for R1 to R4.

O R D E R

By consent, this writ petition is taken up for final disposal.
<https://hcservices.ecourts.gov.in/hcservices/>

2. This writ petition has been filed challenging the proceedings of the 3rd respondent dated 10.01.2020 and for a direction to the respondents to approve the appointment of the petitioner as B.T.Assistant (Maths), who is working in the 5th respondent school from the year 2018 onwards.

3. The case of the petitioner is that a vacancy arose in the post of B.T.Assistant (Maths) on 01.06.2018, due to the retirement of one Tmt.Lalithamani, B.T.Assistant (Maths) on 31.05.2018. The 5th respondent school Management made several request to the educational authorities, requesting to fill up the post of B.T Assistant (Maths) and the 3rd respondent vide proceedings dated 19.09.2018, had granted permission to fill up the post of B.T. Assistant. Thereafter, the 5th respondent school issued an advertisement dated 05.10.2018 and also invited applications for the said post from Employment Exchange. The petitioner participated in the said selection and was appointed in the said vacancy on 14.11.2018. Pursuant to the appointment of the petitioner, the 5th respondent school had sent a proposal to the 3rd respondent, through the 4th respondent, on 14.11.2019, seeking for approval of appointment of the petitioner. Several representations were made to the respondents to grant the approval for the appointment. Ultimately, the petitioner approached this Court and filed writ petition in WP No.25524 of 2019 and pursuant to the orders passed by this Court, the 3rd respondent considered the representations made by the petitioner and has issued the impugned proceedings returning the proposal on the ground that there are surplus teachers, who have to be accommodated in the 5th respondent School by virtue of G.O.Ms.No.165, dated 17.09.2019. Aggrieved by the same, the present writ petition has been filed.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

5. The issue that has been raised in this writ petition has been dealt with by this Court in WP No.368 of 2020. The relevant portions of the order 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.

6. It is clear from the above order that the approval that was sought for, for the appointment of the petitioner in the year 2018 was kept pending by the District Educational Officer. Now, it is sought to be rejected by relying upon the order passed by the Division Bench. This Court held that the order passed by the Division Bench cannot be given a retrospective effect for a sanctioned vacancy, which arose much prior to the passing of the order. This Court also took into consideration the fact that G.O.Ms. No.165 dated 17.09.2019, has already been suspended. Therefore, the District Educational Officer must independently consider the approval that has been sought for, for the appointment of the petitioner in the 5th respondent school and he cannot reject the same by relying upon the Division Bench order of this Court.

7. In view of the above, the impugned proceedings of the 3rd respondent in O.Mu.No.0997/Aa3/2019, dated 10.01.2020, is hereby quashed. The petitioner is directed to resubmit the proposal to the 4th respondent through the 5th respondent school and on receipt of the proposal, the 4th respondent shall pass necessary orders granting approval, if the petitioner is otherwise qualified for being appointed as B.T.Assistant (Maths). This process shall be completed within a period of four weeks from the date of receipt of a copy of

this order.

8. This writ petition is accordingly allowed with the above directions. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rka

To

1.The Secretary to Government,
State of Tamil Nadu,
Education Department, Chennai - 9.

2. The Director of school Education,
DPI Buildings, College Road,
Chennai - 6.

3. The Chief Educational Officer,
Tiruppur.

4. The District Educational Officer,
Palladam, Tiruppur District.

5. The Secretary,
SLN Memorial Higher Secondary School,
Karadivavi - 641 658
Tiruppur District

+1cc to Mr.S.N.Ravichandran , Advocate SR.No. 6771

+1 cc to Government Pleader Sr.No. 7183

W.P.No.1959 of 2020

A.SK(06/02/2020)

सत्यमेव जयते

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