

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.02.2020
CORAM
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
W.P.No.3189 of 2020

Manager & Correspondent,
Madasa E.Deeniyath Aided Elementary School,
Ambur 635 802.

..Petitioner

.v.

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

2.The Director of School Education,
D.P.I.Buildings, College Road,
Chennai-6.

3.The District Educational Officer,
Vaniyambadi.

4.The Block Educational Officer,
Mathanur,
Vellore District.

.... Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by 4th respondent in O.Mu.No.20/A1/2019, dated 09.01.2020 and quash the same and consequently direct the respondents to approve the appointment of Tmt. O.Hawwa Begum as Secondary Grade Teacher in the petitioner school w.e.f. 5.9.2019, with all consequential monetary benefits.

For Petitioner : Mr.S.N.RAvichandran

For Respondents : Mrs.V.Annalakshmi
Government Advocate

O R D E R

This writ petition has been filed challenging the impugned proceedings of the 4th respondent refusing to grant approval for the appointment of the Secondary Grade Teacher in the petitioner School.

2.The case of the petitioner is that the petitioner School is a linguistic minority institution. There is a sanctioned post of Secondary Grade Teacher for Urdu language. A vacancy arose for the said post due to the promotion of the incumbent. In the said vacancy, a selection and appointment was made by the petitioner School on 05.09.2019 and the concerned candidate has also joined in the said School. The petitioner School thereafter had forwarded the proposal for approval and the same has been rejected by the 4th respondent by quoting G.O.Ms.No.165, dated 17.09.2019. 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 School had appointed the Secondary Grade Teacher for Urdu language only in a sanctioned post. The learned counsel further submitted that G.O.Ms.No.165, dated 17.09.2019, has already been stayed by this Court. That apart, the learned counsel for the petitioner also relied upon the judgment of this Court in W.P.(MD).No.1195 of 2020 dated 22.01.2020. The relevant portions in the judgment is extracted hereunder:

"7.The issue involved in this writ petition is also covered by the order of this Court in W.P(MD)No.21065 of 2019, dated 08.11.2019 (Jaihind Primary School, M.Karisalkulam, Sivagangai District rep. by its Secretary Mr.P.S.Senthil v. The Chief Educational Officer, Sivagangai District and Others), wherein it has been held as follows:

"6.From the materials on record, it is seen that the vacancy for the post of Secondary Grade Teacher has arisen in the petitioner School on 04.06.2018 itself. At request of the petitioner School, the respondents granted prior permission to fill up the said post. After obtaining permission from the respondents, the petitioner School appointed one Vijayakumar as Secondary Grade Teacher and forwarded the proposal for approval of appointment of the said Vijayakumar as Secondary Grade Teacher to the third respondent. The third respondent forwarded the said proposal to the second respondent stating that as per direction of the Division Bench of this Court in W.A(MD). No.76 of 2019, no appointment shall be made in the aided private School till surplus teachers are deployed. The second respondent returned the proposal forwarded by the third respondent on the ground that the proposal

of the petitioner was not recommended by the third respondent in accordance with rules. The recommendation sent by the third respondent referring the order of this Court, dated 09.04.2019, in W.A(MD).No.76 of 2019, is erroneous. In the said order, this Court held that till the surplus teacher in the School under the same management are deployed, no fresh appointment can be made. Based on the interim order of the Division Bench of this Court, dated 09.04.2019, Government issued G.O.(Ms).No.165, School Education Department, dated 17.09.2019. A Division Bench of this Court by order dated 20.09.2019 in W.A(MD).No.76 of 2019, suspended G.O.(MD).No.165.

7. In view of the above materials, recommendation sent by the third respondent referring to interim order, dated 09.04.2019 is erroneous. The respondents having granted prior permission to fill up the vacancy of the Secondary Grade Teacher in the petitioner School, is not entitled to now not to approve the appointment made in the sanctioned post, based on the prior permission. In view of the same, the impugned order of the third respondent dated 17.09.2019 and return of the second respondent, dated 27.08.2019, are set aside. The petitioner School is directed to resubmit the proposal within a period of two weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents 2 and 3 are directed to approve the appointment of Vijayakumar as Secondary grade Teacher in the Petitioner School within a period of eight weeks thereafter, if he is otherwise eligible".

4. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that there are surplus posts that is available in the same Union and therefore, the concerned teacher can only be accommodated towards those surplus posts. The learned Government Advocate therefore submitted that there is no ground to interfere with the impugned order passed by the 4th respondent.

5. A careful reading of the impugned order passed by the 4th respondent shows that he has only quoted G.O.Ms.No.165, dated 17.09.2019 and the interim orders passed by this Court in Writ Appeal. There is no mention about any

surplus posts and Secondary Grade Teacher, Urdu available in the Union. The impugned order passed by the 4th respondent is unsustainable since the petitioner has been appointed in a sanctioned post and the operation of G.O.Ms.No.165, dated 17.09.2019, has already been stayed by this Court. The facts of the present case is squarely covered by the judgment that has been referred supra.

6. In view of the above discussion, the impugned order passed by the 4th respondent in his proceedings dated 09.01.2020, is hereby quashed. The petitioner School is directed to resubmit the proposal to the 4th respondent and the 4th respondent on receipt of the same is directed to process the file and grant approval if the concerned Secondary Grade Teacher has satisfied all the other requirements. Necessary orders shall be passed by the 4th respondent within a period of six weeks from the date of receipt of copy of this order.

This writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP

To

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

2.The Director of School Education,
D.P.I.Buildings, College Road,
Chennai-6.

3.The District Educational Officer,
Vaniyambadi.

4.The Block Educational Officer,
Mathanur, Vellore District.

+1cc to Mr.S.N.RAvichandran , Advocate SR.No. 16653

+1 cc to Government Pleader Sr.No. 17753

W.P.No.3189 of 2020

A.SK(04/03/2020)