



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2020

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CORAM:

THE HONOURABLE Mr.JUSTICE M.S.RAMESH

W.P. (MD) .No.26849 of 2019

and

W.M.P. (MD) .No.23189 of 2019

A.M.Avva

... Petitioner

Vs.

1.The Secretary to the Government,
Department of School Education,
St.George Fort, Chennai.

2.The Director of School Education,
DPI Compound,
College Road, Chennai.

3.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

4.The District Educational Officer,
Tenkasi,
Tirunelveli District.

5.The Block Educational Officer,
Kadayanallur,
Tirunelveli District.

6.The Manager,
Hidhayathul Islam Primary School,
Kadayanallur,
Tirunelveli.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records in respect of order passed by the fourth respondent in O.Mu.No.1469/A4/2019 dated 23.07.2019 and quash the same and consequently, direct the fourth respondent to approve the application of the petitioner and disburse all the service and monetary benefits from the date of the appointment (ie., 14.06.2019).



For Petitioner : Mr.S.Chellapandian

For R1 and R5 : Mr.M.karuppasamy
Government Advocate

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ORDER

The petitioner herein was appointed in the vacancy which arose in the sixth respondent school on 14.06.2016. When the proposal for approval of appointment was sent to the fourth respondent, the same came to be rejected through the impugned order, dated 23.07.2019 on the ground that a Writ Appeal in W.A.(MD)Nos.76 of 2019 etc batch, are still pending and had observed that unless the surplus posts are filled, the approval cannot be considered. The petitioner has challenged the said rejection in the present writ petition.

2.The reason assigned in the impugned order for refusing the proposal of the sixth respondent school is that, in view of the order passed by the Division Bench of this Court in the aforesaid Writ Appeals, as well as the instructions of the Director of Elementary Education and by taking into consideration the interest of the students, the school was advised to co-operate till the final decision arrived in the case which is pending before the High Court. It was also observed that, unless the surplus Teachers are exhausted, the request for approval cannot be entertained. The Hon'ble Division Bench of this Court in batch of cases in W.A.Nos.76 of 2019 etc., had held that till the surplus Teachers in other schools coming under the same Management school are not exhausted, there shall not be any fresh appointment or approval of any appointment among other categories therein.

3.In consequence to the decision of the Hon'ble Division Bench, G.O.Ms.No.165 dated 17.09.2019 came to be passed and when the writ appeals in W.A.Nos.76 of 2019 was taken up for consideration by the Division Bench, a portion of G.O.Ms.No.165 was sustained in the order dated 20.09.2019. The condition imposed in the batch of Writ Appeals referred to above, is in consonance with such private aided school, wherein the surplus Teachers in other school coming under the same Management were required to be exhausted. Admittedly, the petitioner herein is not a part of the Corporate Management of schools and therefore, the question of accommodating surplus Teachers in other school does not arise in the present case. The circular relied upon by the respondent dated 25.06.2019 is also based on the aforesaid order of the Division Bench and hence, the consequential order also requires to be interfered with.

4.It is now stated by the learned counsel for the petitioner that the sixth respondent school cannot be equated to that of the school covered under the Writ Appeals in W.A.No.76 of 2019 etc batch, since they did not come under the Corporate Management chain of schools. Even otherwise, the existence of surplus Teacher, cannot



be a ground for rejecting the request for approval of the appointment in a private aided school. The learned counsel for the petitioner submitted that as a matter of fact there is no surplus of teacher in their school.

5. The learned Government Advocate appearing for the respondent Nos.1 to 5 would rely upon the averments made in the impugned order as well as in the counter affidavit and submit that there are enormous surplus Teachers working in various Management Schools in Tamil Nadu and meeting out their salaries would cause heavy financial implication to the Government.

6. In view of the fact that the directions referred to in the Division Bench order may not be applicable to the petitioner's school and the school covered under the Division Bench order may stand in a different footing, the impugned order itself cannot be sustained in the light of the above observations.

7. Accordingly, the impugned order dated 23.07.2019, passed by the fourth respondent in O.Mu.No.1469/A4/2019 is quashed and consequently, the fourth respondent is directed to approve the petitioner's appointment dated 14.06.2019 to the post of Secondary Grade Teacher, otherwise qualified for approval, atleast within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Department of School Education,
The Secretary to the Government
St. George Fort, Chennai.

2. The Director of School Education,
DPI Compound,
College Road, Chennai.

3. The Chief Educational Officer,
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4. The District Educational Officer,
Tenkasi,
Tirunelveli District.



5.The Block Educational Officer,
Kadayanallur,
Tirunelveli District.

+1 CC to M/s.Special Govt.Pleader (SR-7276[F]

+1 CC to M/s.S.CHELLAPANDIAN, Advocate (SR-7357[F]

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