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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.21430 OF 2021

AND

W.M.P.NOS.22676 & 22678 OF 2021

(Through Video Conferencing)

Shree G.K. Jain Higher Secondary School
Represented by its Correspondent,
15, 180, MS Koil St,
Pudumanaikuppam,
Royapuram, Chennai,
Tamil Nadu - 600 013.

...Petitioner

Vs

- 1.The Commissioner
Directorate of School Education,
DPI Campus,
College Road,
Chennai 600 006.
- 2.The Chief Educational Officer,
Chennai.
- 3.The District Educational Officer,
Office of the District Education Office,
Chennai (East)
Chennai 600 005.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent in Oo.Moo No.3450/Aa2/2019 dated 31.08.2021 and quash the same and consequently direct the Respondents to grant approval to Shiv Kumar Shukla as BT Assistant Hindi with effect from 04.04.2019 with all services and monetary benefits.

For Petitioner : M/s.Dakshayani Reddy

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate for R1 to R3



ORDER

This Writ Petition has been filed for a Certiorarified Mandamus to call for the records of the 3rd respondent in Oo.Moo No.3450/Aa2/2019 dated 31.08.2021 and quash the same and consequently direct the Respondents to grant approval to Shiv Kumar Shukla as BT Assistant Hindi with effect from 04.04.2019 with all services and monetary benefits.

2.By the impugned order the respondents have rejected the proposal for approving the appointment of Mr.Shiv Kumar Shukla (Hindi Pandit) as a Hindi teacher on the ground that the said Shiv Kumar Shukla teacher has not obtained requisite qualification by writing TET, that there is a belated representation for the proposal and that were excess teachers in the school.

3.The learned counsel for the petitioner submits that asfar as TET qualifications are concerned, TET qualification has been declared to be not mandatory for minority institutions. In this connection, a reference was made to the decision of this Court in the case of Secretary to Government, Government of Tamil Nadu, Chennai Vs. S.Jeyalakshmi (2016) 5 CTC 639 wherein the decision of the Hon'ble Supreme Court in Pramati Educational and Cultural Trusts Vs. Union of India [(2014) 8 SCC 1] were also referred.

4.She therefore submits that the objection/reasons given in the impugned order in sofaras the TET qualification is concerned is unsustainable. It is further submitted that the proposal was sent as early as on 04.04.2019 when the said Hindi Pandit Shiv kumar Shukla was appointed. However, the proposal was returned during September 2019 stating that it cannot be taken up the pending approval for the promotion of the Headmaster. She therefore submits that after the promotion to the Headmaster's post were approved on 18.12.2020, a revised proposal was sent on 24.12.2020 and therefore the second reasons given in the impugned order is also unsustainable. As far as the excess teachers are concerned, the learned counsel for the petitioner submits that the issue has been examined by the Hon'ble Division Bench before the Madurai Bench of this Court by its order dated 31.03.2021 in a batch of Writ Appeals and Writ Petitions in the case of Secretary to Government, Government of TamilNadu, School Education Department and two others Vs. Iruthaya Amali and another and batch. A reference was made to paragraph 95 (v) from the said judgment which reads as under:-

'(v)Like that insofar as aided minority institutions are concerned if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because



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of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength.''

5.The learned counsel for the respondent submits that it is open for the petitioner to give appropriate representations based on the arguments that were advanced by this Court and therefore submits that the writ petition may be disposed by giving a liberty to the petitioner to approach the authorities with the above submissions.

6.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and perused the orders passed by the order of the 3rd respondent dated 31.08.2021 and the decisions cited by the learned counsel for the petitioner.

7.As a matter of fact, the issue is covered on both the aspects as far as requirement for obtaining TET qualifications and regarding excess teachers. Though it is mentioned that the said decision before the Madurai Bench of this Court is under appeal, the order has not been stayed till date therefore this decision is binding on all the authorities.

8.Considering the same, this Court is inclined to dispose this writ petition by directing the respondents to grant approval for the appointment of Shiv Kumar Shukla with effect from 04.04.2019 within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

rgm/jas



To

1. The Commissioner
Directorate of School Education,
DPI Campus,
College Road,
Chennai 600 006.

2. The Chief Educational Officer,
Chennai.

3. The District Educational Officer,
Office of the District Education Office,
Chennai (East)
Chennai 600 005.

+1cc to M/s. Dakshayani Reddy, Advocate, S.R.No.52317

W.P.No.21430 of 2021
and

W.M.P.Nos.22676 & 22678 of 2021

SSV(CO)
RVM(22/11/2021)