



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) No.5536 of 2021

and

W.M.P (MD) No.4389 of 2021

WEB COPY

K.Rekha Rani

... Petitioner

vs.

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Joint Director of School Education
(Higher Secondary),
DPI Campus, College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Tenkasi Educational District,
Tenkasi.
4. The District Educational Officer,
Sankarankovil Educational District,
Sankarankovil.
5. The Stella Maris Higher Secondary School,
Rep. by its Secretary,
Stella Maris Higher Secondary School,
Sivagiri, Tenkasi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the fourth respondent herein in his impugned proceedings in Na.Ka.No.5243/A5/2019, dated 22.02.2021 and quash the same as illegal and consequently direct the third and fourth respondents herein to approve the petitioner's appointment as B.T Assistant (Maths) Teacher in Stella Maris Higher Secondary School, Sivagiri with effect from 01.06.2019 and with all attendant benefit including the arrears of salary and allowance.

For Petitioner : Mr.V.R.Shanmuganathan
for Mr.S.Sekar

For RR 1 to 4 : Mr.P.Subbaraj
Government Advocate

**ORDER**

The petitioner has filed the present Writ Petition, to quash the impugned order passed by the fourth respondent, dated 22.02.2021 and to direct the third and fourth respondents to approve her appointment as B.T Assistant (Maths) Teacher in the fifth respondent School with effect from 01.06.2019 and with all attendant benefit including the arrears of salary and allowance.

2. According to the petitioner, on 01.06.2019, she was appointed as B.T Assistant (Maths) Teacher in the fifth respondent School, which is an aided Minority Institution, due to vacancy fell on account of superannuation of one P.Jeyaram. The abovesaid post is a regular sanctioned post with grant-in-aid from the Government of Tamil Nadu. The fifth respondent sent a proposal for approval of her appointment as B.T Assistant (Maths) to the fourth respondent. The fourth respondent, by an order, dated 22.02.2021, refused to approve her appointment on the ground that the petitioner has not passed in TET examination. Further, in the impugned order, the fourth respondent has stated that the approval of appointment has not been granted and the vacancy has to be filled up only through surplus teachers, by relying on the decision of the Division Bench of this Court in ***W.A(MD)No.76 of 2019 etc., batch, dated 09.04.2019 [The Secretary to Government, School Education Department Vs. Iruthaya Amali and another]***. Challenging the same, the petitioner has come out with the present writ petition.

3. The learned Government Advocate appearing for the respondents 1 to 4 submitted that at the time of passing the impugned order, the respondents referred the interim order, dated 09.04.2019, passed by the Division Bench of this Court in W.A(MD)No.76 of 2019 etc., batch. Pursuant to the said order, the Government have issued G.O. (Ms)No.165, School Education (Tho.Ka.2(1) Department, dated 17.09.2019. Subsequently, in the writ appeal batch, this Court finally issued certain guidelines with regard to approval of appointment. In this regard, he relied on the judgment of the Division Bench of this Court, dated 31.03.2021, in W.A(MD)Nos.76 of 2019 etc., batch and the relevant portion of the judgment is extracted hereunder:-

"95 (u) Till such excess teaching staff are identified under all category of schools as indicated above, no recruitment shall be made by the State Government / Education Department for the purpose of appointment of teachers under various categories like Secondary grade teacher, Graduate teacher, Post-Graduate teacher, Language teacher, Physical education teacher etc.,

(v) Like that insofar as aided minority institutions are concerned if it is a stand along 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 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"

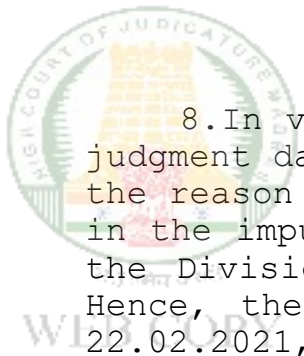
4. The learned Government Advocate appearing for the respondents 1 to 4 by relying on the above judgment submitted that if the fifth respondent school resubmitted the proposal, the respondents 1 to 4 will pass orders following the guidelines issued by the Division Bench of this Court, dated 31.03.2021.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4 and perused the materials available on record.

6. The fifth respondent School, which is a minority educational institution, appointed the petitioner as BT Assistant (Maths) in the vacancy arose due to the retirement of one P.Jeyaram. Subsequently, the fourth respondent by the impugned order, dated 22.02.2021, refused to approve her appointment stating that the vacancy has to be filled up only through surplus teachers, by relying on the interim order of the Division Bench of this Court in **W.A(MD)No.76 of 2019 etc., batch, dated 09.04.2019 [The Secretary to Government, School Education Department Vs. Iruthaya Amali and another]**.

7. The fifth respondent School, which is a minority institution, can fill up the sanctioned vacancy without obtaining prior permission. Subsequent to the interim order, dated 09.04.2019 in W.A(MD)No.76 of 2019 etc., batch referred in the impugned order by the fourth respondent and G.O.Ms.No.165, School Education Department, dated 17.09.2019, another Division Bench of this Court, by order, dated 20.09.2019, considering the said issue in the very same Writ Appeal, has suspended the operation of G.O.(Ms)No.165, School Education Department, dated 17.09.2019, passed in pursuant to the interim order dated 09.04.2019 in W.A(MD)No.76 of 2019 etc., batch, until further orders. Subsequently, another Division Bench of this Court taken up W.A(MD)No.76 of 2019 etc., batch for final hearing and vide judgment dated 31.03.2021, considered the issue in detail, in Para 95(o) declared the said Government Order as inoperative. The relevant portion of the said judgment reads as follows:-

"95. (o) In view of the aforesaid, the G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative."



8. In view of the subsequent interim order, dated 20.09.2019 and judgment dated 31.03.2021, made in W.A(MD) No.76 of 2019 etc., batch, the reason given by the fourth respondent for rejecting the approval in the impugned order by placing reliance upon the interim order of the Division Bench of this Court, dated 09.04.2019, is erroneous. Hence, the impugned order passed by the fourth respondent, dated 22.02.2021, is liable to be set aside and is hereby set aside. The respondents 1 to 4 are directed to approve the appointment of the petitioner as B.T Assistant (Maths) and pass orders within a period of two weeks from the date of receipt of a copy of this order and sanction and disburse all the monetary benefits to the petitioner.

9. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Director of School Education,
DPI Campus, College Road, Chennai - 600 006.
2. The Joint Director of School Education
(Higher Secondary), DPI Campus,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Tenkasi Educational District, Tenkasi.
4. The District Educational Officer,
Sankarankovil Educational District,
Sankarankovil.

+1 CC to M/s.SPL GP (SR-21326[F] dated 06/07/2021)

+2 CC to M/s.S.SEKAR, Advocate (SR-21560[F] dated 07/07/2021)

W.P (MD) No.5536 of 2021

05.07.2021

RC (23.07.2021) 4P-8C

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