



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.7772 of 2021

and

W.M.P (MD)Nos.5920 & 5921 of 2021

K.K.Lavanya Lakshmi

... Petitioner

Vs.

1.The Chief Educational Officer,
O/o.the Chief Educational Office,
Madurai, Madurai District.

2.The District Educational Officer,
O/o.the District Educational Office,
Madurai, Madurai District.

3.The Correspondent,
Sourashtra Girls Higher Secondary School,
Theppakulam,
Madurai District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the second respondent in his impugned proceedings in ஓ.மு.எண்.4148/அ4/2020 dated 20.05.2020 and quash the same as illegal and consequently to direct the second respondent to approve the appointment of the petitioner as B.T.Assistant (Social Science) within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar

For R1 & R2 : Mr.N.Shanmugaselvam

Additional Government Pleader

ORDER

This writ petition is filed seeking to call for the records relating to the impugned order issued by the second respondent, vide his impugned proceedings in ஓ.மு.எண்.4148/அ4/2020, dated 20.05.2020, quash the same as illegal and consequently, direct the second respondent to approve the appointment of the petitioner as B.T.Assistant (Social Science) within the period that may be stipulated by this Court.

2. Mr.N.Shanmugaselvam, learned Additional Government Pleader takes notice for the respondents 1 and 2. By consent of both

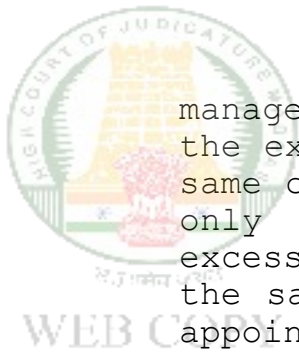


parties, the Writ Petition is taken up for final disposal at the stage of admission itself.

3. The learned counsel appearing for the petitioner submitted that in the third respondent School, the post of B.T.Assistant (Social Science) became vacant on account of the retirement of erstwhile incumbent one T.R.Usha. In the said sanctioned vacancy, the petitioner was appointed as B.T.Assistant (Social Science) on 01.07.2019. The third respondent submitted the proposal, dated 19.07.2019, for approval of the appointment of the petitioner. The second respondent, by the proceedings in ஓ.மு.எண்.4148/அ4/2020, dated 20.05.2020, rejected the proposal for approving the appointment of the petitioner on the ground that the post can be filled up only with the surplus teachers in accordance with the proceedings of the first respondent, vide his proceedings No.9537/A4/2019, dated Nil/12/2019. The learned counsel appearing for the petitioner submitted that even according to the proceedings referred to in the impugned order, there is no surplus teacher in the subject of Social Science in the third respondent School. Though there are surplus teachers in other subjects, the same will not stand in the way of approval of the appointment of the petitioner. There is no surplus teacher in the post of B.T. Assistant (Social Science) in the third respondent School. The surplus teacher mentioned by the second respondent relates to other subjects. The deployment of surplus teacher is made only in the Corporate Management System School and not Single Management System School. The third respondent School is coming under the Single Management System School. G.O.(Ms)No.165, School Education (tho.ka.2(1)) Department, dated 17.09.2019, was made as inoperative by the Division Bench of this Court and prayed for allowing the writ petition.

4. The learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that when four (4) teachers are surplus in the third respondent School, only one of the surplus teacher can be appointed and the petitioner cannot be appointed in the said vacancy. The reason given by the second respondent is valid. In this regard, he relied on the judgment of the Division Bench of this Court, dated 31.03.2021, made in W.A.(MD)Nos.76 of 2019 etc., batch. The relevant portion of the said judgment is extracted hereunder:-

"95 (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 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. From the above submissions, it is seen that, it is the specific case of the petitioner that she was appointed as B.T.Assistant (Social Science) in the sanctioned vacancy in the third respondent School on the retirement of previous incumbent T.R.Usha. From the impugned order, it is seen that the second respondent has returned the proposal stating that there are four (4) surplus teachers in the third respondent School and the third respondent has to act accordingly. It is not the case of the second respondent that there is a surplus teacher in B.T.Assistant (Social Science). Further, the third respondent School comes under the Single Management System and it is not coming under the Corporate Management System. The Government issued G.O.(Ms)No.165, School Education (tho.ka.2(1)) Department, dated 17.09.2019, with regard to redeployment of surplus teachers and the said Government Order was made as inoperative by the Division Bench of this Court, vide order dated 20.09.2019, made in W.A.(MD)Nos.76 of 2019 etc. batch as well as in the judgment dated 31.03.2021, made in the same Writ Appeals. Paragraph No.95(v) of the judgment dated 31.03.2021, made in W.A.(MD)Nos.76 of 2019 etc. batch, relied on by the learned Additional Government Pleader appearing for the respondents 1 and 2, does not advance the case of the respondents 1 and 2. On the other hand, it advances the case of the petitioner. In the said Paragraph, this Court has held that when the School is stand alone Institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-2022 shall not be affected because of identified excess teacher in other Schools. It is not in dispute that the third respondent School is a stand alone Institution and the petitioner was appointed in a sanctioned post and the vacancy caused by retirement of previous incumbent T.R.Usha.

6. In view of the above, there is no impediment for the second respondent to approve the appointment of the petitioner as B.T.Assistant (Social Science). The third respondent is directed to resubmit the proposal for approving the appointment of the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receiving such proposal, the respondents 1 and 2 are directed to pass orders on the proposal submitted by the third respondent for approving the appointment of the petitioner in the third respondent School, within a period of eight (8) weeks, thereafter.



7. In the result, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Chief Educational Officer,
Madurai,
Madurai District.
- 2.The District Educational Officer,
Madurai,
Madurai District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-17291[F] dated 23/04/2021)

+1 CC to M/s.SPL GP (SR-17349[F] dated 23/04/2021)

W.P. (MD)No.7772 of 2021
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pm(CO)

TR(07.06.2021) 4P 5C