



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.7907 of 2021

and

W.M.P(MD)No.6035 & 6036 of 2021

WEB COPY

The Correspondent
St. John Vianney's Girls
Higher Secondary School,
Palliyadi-629 169,
Kanyakumari District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 009.

3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent Chief Educational Officer in Mu.Mu.No.8113/E4/2018, dated 04.02.2021 denying approval to the appointment of S.Ezhil Shini as BT Assistant (English) quash the same and further direct the third respondent CEO to approve forthwith the appointment of S.Ezhil Shini as BT Assistant (English) in the petitioner school w.e.f., 08.06.2017 with all attendant benefits including arrears of salary and allowance.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

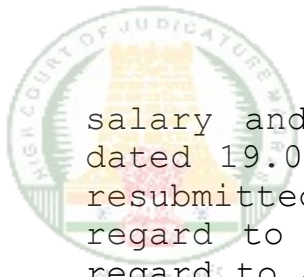
For Respondents : Mr.P.Subbaraj
Government Advocate



ORDER

This writ petition is filed seeking a writ of Certiorari Mandamus, to call for the records relating to the impugned order passed by the third respondent, Chief Educational Officer, in Mu.Mu.No.8113/E4/2018, dated 04.02.2021, denying approval to the appointment of S.Ezhil Shini as BT Assistant (English) and quash the same and further direct the third respondent CEO to approve the appointment of S.Ezhil Shini as BT Assistant (English) in the petitioner school w.e.f., 08.06.2017 with all attendant benefits including arrears of salary and allowance.

2. The learned counsel appearing for the petitioner submitted that the petitioner's School is a recognised and aided minority educational institution, owned and administered by the Society of the Council of ICM Educational Institutions, Madurai. In the said School there are 23 Teachers viz., 1 Headmistress, 10 BT Assistants, 5 Secondary Grade Teachers, 3 Tamil Pandits, 2 Physical Education Teachers, 1 Sewing Teacher and 1 Music Teacher, working and they are receiving aid from the State Government. Apart from the above teaching staffs, there are 5 aided non-teaching staffs viz., 1 Junior Assistant, 1 Office Assistant, 1 Record Clerk, 1 Night Watchman and 1 Part time Scavenger, working in the school. There are 662 students studying in the School. One post of Secondary Grade Teacher fell vacant on 01.06.2017 due to the retirement of the then incumbent Tmt.V.Sriya Pushpam on 31.05.2017. As per the policy, as and when a Secondary Grade Teacher in the Middle School section fall vacant, only the candidate with graduate qualification has to be appointed as BT Assistant in the subject which is in need of the school. The petitioner's school appointed one Tmt.S.Ezhil Shini as BT Assistant (English) on 08.06.2017 and she joined duty on 08.06.2017 and continues to work in the school till date. The petitioner's school submitted the proposal to the third respondent on 28.06.2017, requesting to approve the appointment of Tmt.S.Ezhil Shini and disburse grant-in-aid towards her salary. The third respondent returned the proposal by the proceedings, dated 10.11.2017, seeking certain details and directed the school to resubmit the proposal after complying with the defects. The petitioner's school resubmitted the proposal to the third respondent after rectifying the defects on 01.03.2018. The third respondent has not passed any orders. Therefore, the petitioner filed a writ petition in W.P.(MD)No.15793 of 2018 before this Court for mandamus, directing the respondents 2 & 3 to approve the appointment of S.Ezhil Shini as BT Assistant (English) in the petitioner's school with effect from the date of her appointment viz., 08.06.2017 with all attendant benefits including the arrears of salary and allowance and disburse grant-in-aid towards the



salary and other attendant benefits. This Court, by the order dated 19.07.2018, directed the respondents 2 & 3 to consider the resubmitted proposal of the petitioner, dated 01.03.2018 with regard to appointment of one S.Ezhil Shini and pass orders with regard to approval of the said appointment, within four weeks. In violation of orders of this Court, dated 19.07.2018, the fourth respondent refused to approve the appointment of S.Ezhil Shini by the proceedings, dated 29.08.2018, stating that only after surplus teachers in Kanyakumari District, is deployed to the needy Schools, necessary steps will be taken for approving the appointment. The petitioner issued notice through their counsel on 29.06.2019 to the respondents 3 & 4 to comply with the order of this Court, dated 19.07.2018. Even after that, the respondents 3 & 4 have not passed any orders and hence, the petitioner filed Contempt Petition (MD) No.1125 of 2019. While the said contempt petition was pending, the third respondent by the impugned order, dated 04.02.2021, rejected the proposal for approval of the appointment of S.Ezhil Shini. Challenging the said order, the petitioner has come out with the present writ petition.

3.The learned Government Advocate appearing for the respondents 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 and 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 by relying on the above judgment submitted that if the petitioner's school resubmitted the proposal, the respondents 3 & 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 and perused the materials available on record.

6. The petitioner's School, which is a minority educational institution, appointed one S.Ezhil Shini as BT Assistant (English) in the vacancy arose due to the retirement of one Tmt.V.Sriya Pushpam, Secondary Grade Teacher. The proposal sent by the petitioner's school for approval of appointment was accepted by the third respondent. In the writ petition in W.P.(MD)No.15793 of 2018, filed by the petitioner, this Court, by order, dated 19.07.2018 passed the following order:-

"5.Considering the limited scope of the writ petition, this Court is inclined to pass the following orders:-

"that the second and third respondents are directed to consider the said resubmitted proposal dated 01.03.2018 of the petitioner School, with regard to the appointment of one S.Ezhil Shini as B.T.Assistant on 08.06.2017 and pass necessary orders with regard to the approval of the said appointment, within a period of four weeks from the date of receipt of a copy of this order."

7. The third respondent after the above order of this Court, by the proceedings, dated 29.08.2018, refused to approve the appointment of S.Ezhil Shini stating that only after the surplus teacher in Kanyakumari District, is deployed to the needy schools, necessary steps will be taken for approving the appointment. Subsequently, the third respondent passed the impugned order,



dated 04.02.2021, rejecting the request of the petitioner for approval on the following grounds:-

"i) there are 311 surplus teachers in Kanyakumari District including 8 BT Assistants in English post;

ii) in the petitioner's school there are two BT Assistant (maths) and BT Assistant (Science) were rendered as surplus in the year 2016-2017;

iii) appointment made without prior permission and without following the subject roster;

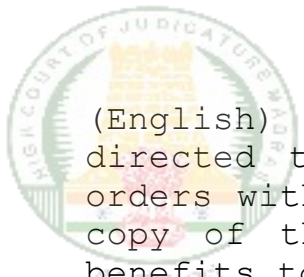
iv) in the interim order passed in W.A(MD)No.76 of 2019 etc., batch dated 09.04.2019, a Division Bench of this Court held that only after deployment of excess staffs, new appointments shall be made. Approving the proposal submitted by the petitioner will be a additional financial burden.

The above said reasons given by the third respondent are erroneous.

8. The petitioner's 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 third respondent and G.O.Ms.No.165, School Education Department, dated 17.09.2019, another Division Bench of this Court 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, by order, dated 20.09.2019, 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 considered the issue in detail, vide judgment dated 31.03.2021, in Para 95(o) declared the said Government Order as inoperative. The relevant portion of the said judgment reads as follow:-

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

9. 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 reliance placed by the third respondent in the impugned order on the interim order of the Division Bench of this Court, dated 09.04.2019 and G.O.(Ms)No.165, School Education Department, dated 17.09.2019, is erroneous. Hence, the impugned order passed by the third respondent, dated 04.02.2021, is liable to be set aside and is hereby set aside. The third respondent is directed to approve the appointment of S.Ezhil Shini as BT Assistant (English) without insisting deployment of all excess BT Assistant



(English) in Kanyakumari District. The third respondent is directed to approve the appointment of S.Ezhil Shine, 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 S.Ezhil Shini.

WEB COPY

10. With the above directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

am

To

1. The Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
2. The Director of School Education,
College Road,
Chennai-600 009.
3. The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District.
4. The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

+1 CC to M/s. ISSAC CHAMBERS, Advocate (SR-20398[F] dated 28/06/2021)

+1 CC to M/s. SPL GP (SR-20444[F] dated 28/06/2021)

W. P. (MD) No. 7907 of 2021
25.06.2021

AS (06.07.2021) 6P 7C