



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.7971 of 2021

and

W.M.P(MD)No.6084 of 2021

R.Bastin Sobitha Selvi

... Petitioner

-Vs-

1.The District Educational Officer,
Vallioor, Tirunelveli District.

2.The Block Educational Officer,
Nanguneri Union,
Tirunelveli District.

3.The Correspondent,
St. Antony's Middle School,
Karankadu, Nanguneri Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 1st respondent herein in Na.Ka.No.673/A2/2020 dated 27.01.2021 and quash the same and further direct the 1st respondent herein to approve the appointment of petitioner as BT Assistant (History) in the 3rd respondent school w.e.f., 25.06.2018 and disburse grant-in-aid towards salary and other attendant benefits.

For Petitioner : Mr.A.Ajith Geethan

For R1 & R2 : Mr.C.M.Mari Chellaiah Prabhu
Additional Government Pleader

ORDER

This Writ Petition is filed to call for the records relating to the impugned proceedings issued by the first respondent herein in Na.Ka.No.673/A2/2020, dated 27.01.2021, and quash the same and further direct the first respondent herein to approve the appointment of petitioner as BT Assistant (History) in the 3rd respondent school w.e.f., 25.06.2018 and disburse grant-in-aid

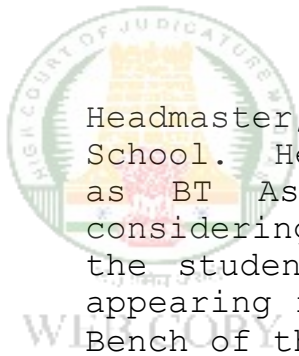


towards salary and other attendant benefits.

2. Mr.C.M.Mari Chellaiah Prabhu, learned Additional Government Pleader takes notice on behalf of the respondents 1 & 2. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. According to the petitioner, he is now working as BT Assistant in the third respondent's School. One post of BT Assistant in the third respondent school fell vacant due to dismissal of previous incumbent, namely, G.Princely, on 21.05.2018. In the said sanctioned vacancy, the petitioner was appointed as BT Assistant w.e.f., 25.06.2018. He possessed the requisite qualification for the post of B.T.Assistant (History). The third respondent School submitted the proposal to the first respondent herein through the second respondent on 01.09.2018, requesting to approve the petitioner's appointment as BT Assistant w.e.f., 25.06.2018. The second respondent returned the proposal, vide proceedings in A.Thi.Mu.No.1204/A1/2019, dated 23.01.2019, calling for certain particulars and documents. Thereafter, the third respondent re-submitted the proposal along with necessary particulars and documents to the second respondent on 31.01.2019 and requested to approve the petitioner's appointment. Since the second respondent has not passed any orders on the proposal re-submitted by the third respondent School, the petitioner filed a writ petition in W.P(MD)No.5828 of 2019 before this Court, seeking a direction to approve the appointment of the petitioner as BT Assistant in the third respondent school w.e.f., 25.06.2018 and disburse grant-in-aid towards salary and other attendant benefits, by considering the proposal, dated 31.01.2019, submitted by the third respondent school. This Court, by order dated 13.03.2019, directed the second respondent to consider the proposal, dated 31.01.2019 on merits and in accordance with law. Thereafter, the first respondent returned the proposal, vide impugned proceedings in Na.Ka.No.673/A2/2020, dated 27.01.2021, stating that the petitioner's previous incumbent namely, Princely filed writ petition in W.P(MD)No.11938 of 2018, challenging the dismissal order, which has been pending and prior permission was not obtained from the Department, for converting the subject from Science to History. The petitioner has come out with the present writ petition challenging the impugned order, dated 27.01.2021.

4. The learned counsel appearing for the petitioner would submit that the first respondent ought to have seen that no interim order was granted by this Court in W.P.(MD)No.11938 of 2018, filed by the previous incumbent. The third respondent School, being a minority institution, no permission is required either before effecting the appointment or conversion of the subject. This Hon'ble Court in several cases had repeatedly held that subject Roster system cannot be insisted to Minority Educational Institutions. Since Science qualified teacher is working there as



Headmaster, History Teacher alone is needed to the third respondent School. Hence, the third respondent School appointed the petitioner as BT Assistant (History) instead of BT Assistant (Science) considering the overall need of the school and in the interest of the students. In support of his contention, the learned counsel appearing for the petitioner relied on the judgment of the Division Bench of this Court in ***W.A (MD) No.716 of 2014, dated 04.04.2017.***

5. The learned Additional Government Pleader appearing for the respondents 1 & 2 submitted that the petitioner was appointed as BT Assistant (History) in the vacancy caused in BT Assistant (Science) without getting prior permission for conversion of the subject and hence, the respondents rejected the approval and prayed for dismissal of the writ petition.

6. From the impugned order, it is seen that the first respondent rejected the request of the third respondent for approval of the appointment of the petitioner as BT Assistant (History) stating that the writ petition in W.P(MD)No.11938 of 2018 filed by the previous incumbent, namely, Princely, challenging her dismissal order, is pending and the third respondent did not obtain permission from the respondents 1 & 2 for converting the subject from Science to History. Both the grounds mentioned in the impugned order are not correct. The third respondent being a minority institution, there is no necessity to obtain prior permission for appointment and conversion of subject. The petitioner was appointed only in the sanctioned post of BT Assistant. According to the petitioner, she is having B.A., (History) and B.Ed., degree and fully qualified to be appointed as BT Assistant. Further, the reason given by the first respondent for rejecting the request of the petitioner is concerned, the third respondent cannot keep the post vacant till the disposal of the writ petition filed by the previous incumbent, namely, Princely, which will affect the interest of the students. It is pertinent to note that this Court has not granted any interim order in the writ petition in W.P(MD)No.11938 of 2018, filed by the previous incumbent. Further, the Headmaster of the School is BT Assistant (Science) and the request of the third respondent School is BT Assistant (History). The third respondent being minority institution, has to take into consideration the interest of the students and need of the subject. The judgment rendered in ***W.A (MD) No.716 of 2014, dated 04.04.2017*** relied on by the learned counsel for the petitioner, is squarely applicable to the facts of the present case.

7. For the above reasons, the impugned order passed by the first respondent is set aside and the third respondent is directed to resubmit the proposal and on receiving such proposal, the respondents 1 & 2 are directed to consider the said proposal for approving the appointment of the petitioner and pass orders on the said proposal.



8. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd

ASSISTANT REGISTRAR (CS II)

TRUE COPY

WEB COPY

/05/2021

SUB ASSISTANT REGISTRAR (CS)

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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 District Educational Officer,
Vallioor, Tirunelveli District.

2.The Block Educational Officer,
Nanguneri Union,
Tirunelveli District.

1CC TO THE SPL GOVT PLEADER SR 16935

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03/05/2021

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