



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

W.P(MD)No.8018 of 2021

W.M.P.(MD)Nos.6116 & 6119 of 2021

R.Jeya Suhi

... Petitioner

vs.

1.The Secretary to the Government,
Department of School Education,
St. George Fort, Chennai.

2.The Director of School Education,
DPI Compound,
College Road,
Chennai.

3.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

4.The District Educational Officer,
Valliyoor,
Tirunelveli District.

5.The Secretary/Correspondent,
Walker Higher Secondary School,
Dohanvur,
Tirunelveli 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 relating to the impugned order passed by the 3rd respondent in Ka.Se.O.Mu.No.4331/M3/2020, dated 23.11.2020 and quash the same and consequently direct the respondents to approve petitioner's appointment with effect from 02.06.2018 and further direct the respondents to disburse all service and monetary benefits to the petitioner.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.C.M.Marichelliah Prabhu,
Addl. Government Pleader for R1 to R4

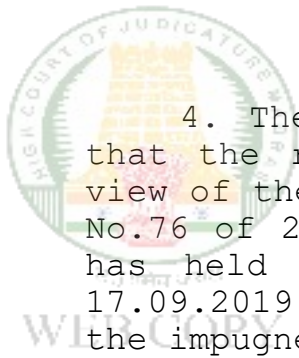


ORDER

This Writ Petition is filed seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent in Ka.Se.O.Mu.No.4331/M3/2020, dated 23.11.2020 and quash the same and consequently direct the respondents to approve petitioner's appointment with effect from 02.06.2018 and further direct the respondents to disburse all service and monetary benefits to the petitioner.

2. The 5th respondent school is a minority aided school established by TDTA, a registered company of CSI Diocese. The Correspondent of the school was appointed by the Manager of TDTA High and Higher Secondary School. In the 5th respondent school, one Mary Jansibai worked as B.T.Assistant, was transferred to Baren Burck Higher Secondary School, Surandai, on 31.05.2018, which is also managed by the same management. Due to the vacancy caused by the transfer of the said Jansibai, the 5th respondent intended to fill up the said vacancy. On knowing the above said fact, the petitioner applied for the said post. The 5th respondent considering the merit and ability, appointed the petitioner as B.T. Assistant (Science), in the place of the said Jansibai from 29.05.2018.

3. According to the petitioner, her appointment was made in a regular B.T. Assistant post. The 5th respondent sent a proposal to the 4th respondent for approving the appointment of the petitioner on 27.08.2018. The fourth respondent forwarded the said proposal to the third respondent, by proceedings dated Nill, November 2018. The third respondent returned the proposal for want of No surplus Teachers Certificate from the 5th respondent school. Subsequently, the 5th respondent school re-submitted the proposal along with the relevant certificate to the fourth respondent. Thereafter, the said proposal was sent to the third respondent. The third respondent returned the proposal through order dated 25.07.2019, with an endorsement that 4th respondent should ensure the letter given by the 5th respondent with regard to No Surplus Post Certificate and directed to resubmit the same. The petitioner challenged the return endorsement made by the fourth respondent by way of filing a Writ Petition in W.P.(MD)No.23686 of 2019. This Court, by order dated 11.11.2019, set aside the impugned order and directed the respondents to reconsider the proposal sent by the 5th respondent. In view of the non compliance of the said order, the petitioner filed Cont.P.(MD)No.884 of 2020. During the pendency of the contempt petition, the third respondent rejected the proposal by the impugned order, citing G.O.Ms.No.165, School Education Department, dated 17.09.2019.



4. The learned counsel appearing for the petitioner submitted that the reason given in the impugned order is unsustainable, in view of the judgment of the Division Bench of this Court in W.A.(MD) No.76 of 2019, dated 31.03.2021. In the said judgment, this Court has held that G.O.Ms.No.165, School Education Department, dated 17.09.2019 is inoperative and therefore, prayed for setting aside the impugned order.

5. The learned Additional Government Pleader, appearing for respondents 1 to 4 submitted that at the time of appointment, there are surplus teachers in the same management and without appointing a surplus teacher, the 5th respondent appointed the petitioner and in view of the same, the impugned order of rejection is valid and prayed for dismissal of this Writ Petition.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 4 and perused the materials carefully.

7. A reading of the impugned order shows that the third respondent has rejected the request of the fifth respondent for approval of appointment of the petitioner as B.T.Assistant (Science) in the fifth respondent school referring to G.O.Ms.No.165, School Education Department, dated 17.09.2019. The said Government Order was made inoperative by the Division Bench of this Court in W.A.(MD) No.76 of 2019, by the order dated 31.03.2021. The third respondent, without considering the legal position and judgment of this Court, erroneously rejected the proposal of the 5th respondent.

8. For the above reason, the impugned order is liable to be set aside and accordingly, the impugned order passed by the third respondent, dated 23.11.2020, is hereby set aside. The respondents 1 to 4 are directed to approve the appointment of the petitioner, if the petitioner is otherwise eligible and pass orders, in the light of the guidelines issued by the Division Bench of this Court in W.A.(MD)No.76 of 2019, dated 31.03.2021 within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. This Writ Petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Vsm

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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 Secretary to the Government,
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- 2.The Director of School Education,
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- 4.The District Educational Officer,
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Tirunelveli District.

+1 CC to M/s.SPL GP (SR-17146[F] dated 22/04/2021)

+1 CC to M/s.S.CHELLAPANDIAN, Advocate(SR-17287[F] dated 23/04/2021)

**W.P(MD)No.8081 of 2021
and**

W.M.P. (MD)Nos.6116 & 6119 of 2021

21.04.2021

PSP (13.05.2021) 4P 7C