



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.8031 of 2021

and

W.M.P. (MD)No.6129 of 2021

WEB COPY

Devaprakasam

... Petitioner

vs.

1.The Director of Elementary School Education,
D.P.I. Compound,
College Road, Chennai.

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

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

4.The Block Educational Officer,
Kalakad Range,
Tirunelveli District.

5.The Correspondent,
T.D.T.A. Primary & Middle School,
Perumalkulam,
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 pertaining to the order passed by the 3rd respondent in his proceedings O.Mu.No.4508/ 215/2017, dated 13.11.2017 and quash the same and direct the respondents to approve the appointment of the petitioner from the date of appointment i.e., from 05.10.2017 and confer all the consequential service & monetary benefits to the petitioner.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.K.S.Selvaganesan,
Government Advocate 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 O.Mu.No.4508/m5/2017,
<https://hcmjcs.courts.gov.in/cases>



dated 13.11.2017 and quash the same and consequently direct the respondents to approve petitioner's appointment with effect from 05.10.2017 and confer all the consequential service & monetary benefits to the petitioner.

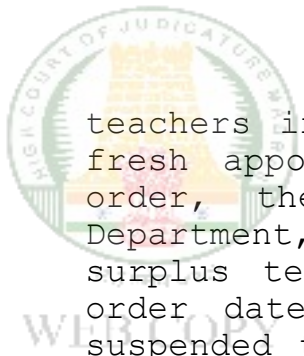
2. The fifth respondent school is a minority institution. The petitioner was appointed on 05.10.2017, in a sanctioned post as Secondary Grade Teacher in the fifth respondent school, due to the vacancy caused by the transfer one Wilbert Rajiah. The fifth respondent school sent a proposal to the third respondent for approval of the petitioner's appointment on 05.10.2017. The third respondent by the proceedings dated 13.11.2017, returned the proposal by stating that the fifth respondent management should submit a deployment report for the years viz., 2014-2015, 2015-2016 and 2016-2017. Hence, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner was appointed in a sanctioned post as per the staff fixation report dated 14.03.2017. The said staff fixation report for the year 2016-2017 was issued based on the student strength prevailing at the time. Admittedly, 145 students are studying at fifth respondent school and those 145 students are divided into 8 sections. Therefore, as per the Full Bench Judgment, classes 1-8 is required to have minimum 8 teachers. But, originally 6 teachers were sanctioned to the fifth respondent school through staff fixation report dated 14.03.2017. Without considering all these facts, the respondents arbitrarily returned the proposal. Hence, it is liable to be set aside and prayed for allowing this Writ Petition.

4. The third respondent filed counter affidavit. Mr.K.S.Selvaganesan, learned Government Advocate, 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 fifth 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.

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 carefully.

6. A reading of the impugned order shows that the third respondent has returned proposal of the fifth respondent for approval of appointment of the petitioner as Secondary Grade Teacher in the fifth respondent school, by stating that the fifth respondent management should submit a deployment report for the years 2014-2015, 2015-2016 and 2016-2017. The Division Bench of this Court in W.A. (MD) No.76 of 2019, dated 09.04.2019, held that till the surplus



teachers in the school under the same management are deployed, no fresh appointment can be made. In compliance of the above said order, the Government issued G.O.(Ms)No.165, School Education Department, dated 17.09.2019, with regard to re-deployment of surplus teachers. A Division Bench of this Court, vide interim order dated 20.09.2019, in W.A.(MD)Nos.76 of 2019, etc., batch, suspended the operation of the said Government Order until further orders. Subsequently, another Division Bench of this Court, vide Judgment dated 31.03.2021, made the said Government Order as inoperative, in the very same writ appeals. The third respondent, without considering the above legal position and subsequent order of this Court, dated 20.09.2019 and the judgment dated 31.03.2021, made in the very same writ appeals, erroneously returned the proposal of the fifth respondent school.

7. For the above reasons, the impugned order is liable to be set aside and accordingly, the impugned order passed by the third respondent, dated 13.11.2017, is hereby set aside. The fifth respondent is directed to resubmit the proposal within two weeks from the date of receipt of this order and on receipt of proposal, 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.

8. This Writ Petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am

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

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Tirunelveli.

4.The Block Educational Officer,
Kalakad Range,
Tirunelveli District.

+1 CC to M/s.GP (SR-23720[F] dated 23/07/2021)

+1 CC to M/s.S.CHELLAPANDIAN, Advocate (SR-23796[F] dated
23/07/2021)

**W.P(MD)No.8031 of 2021
and**

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MGJ(02.08.2021) 4P 7C