



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 21.04.2021**

**CORAM:**

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

**W.P. (MD) No.8217 of 2021**

**and**

**W.M.P (MD) No.6215 of 2021**

WEB COPY

D.Maria Jeri Kansi

... Petitioner

-Vs-

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

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

3.The Correspondent,  
Christhu Raja Higher Secondary School,  
Palayamkottai-627 002,  
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 second respondent District Educational Officer in O.Mu.No.4691/A5/2020, dated 10.03.2021 quash the same and further direct the first respondent Chief Educational Officer herein to approve forthwith the appointment of petitioner as BT Assistant Maths in the sanctioned Maternity Leave Vacancy from 29.06.2017 to 25.03.2018 (270 days) in the 3<sup>rd</sup> respondent school namely, Christhuraaja Higher Secondary School, Palayamkottai and disburse the grant-in-aid towards her salary.

For Petitioner : Ms.A.Amala

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 second respondent, District Educational Officer, in O.Mu.No.4691/A5/2020, dated 10.03.2021 and quash the same and further direct the first respondent, Chief Educational Officer herein to approve the appointment of the petitioner as BT Assistant (Maths) forthwith in the sanctioned Maternity Leave Vacancy from 29.06.2017 to 25.03.2018 (270 days) in the 3<sup>rd</sup> respondent school namely, Christhuraaja Higher Secondary School, Palayamkottai and disburse the grant-in-aid



towards her salary.

2. Mr.C.M.Mari Chelliah 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, the third respondent School is a minority educational institution. In the third respondent School, one Tmt.S.Valarmathi was working as BT Assistant (Maths) in the sanctioned post and was receiving grant-in-aid from the Government. She applied for maternity leave from 29.06.2017 to 25.03.2018 for (270) days). The third respondent School was having single post of BT Assistant (Maths). In view of the maternity leave vacancy, the third respondent School appointed the petitioner as BT Assistant (Maths) from 29.06.2017 to 25.03.2018 by the order, dated 29.06.2017. The petitioner discharged her duty as BT Assistant (Maths) in the third respondent School. The third respondent School sent a proposal to the second respondent, by letter, dated 28.07.2019, for salary to the petitioner, for the period from 29.06.2017 to 25.03.2018. The second respondent, by proceedings, dated September, 2019 sought for certain clarifications. The third respondent School furnished all the details. Subsequently, the respondents 1 & 2 did not pass any orders even after receiving several remainders from the third respondent. While so, the second respondent, by the impugned proceedings, dated 10.03.2021 rejected the request of the petitioner seeking approval of appointment of the petitioner in the maternity leave post from 29.06.2017 to 25.03.2018, on the ground that the appointment should not be made, as there are surplus teachers available in the Government High School and Higher Secondary School.

4. The learned counsel for the petitioner submitted that the petitioner was not appointed under the regular vacancy and she was appointed as BT Assistant (Maths) in the sanctioned Maternity Leave Vacancy. The reason given by the second respondent for rejection of approval in the impugned order that there are 155 surplus teachers for the academic year 2018-2019 and 2019-2020 in the District of Tirunelveli. In support of her contention, the learned counsel appearing for the petitioner relied on the Government Order in G.O (Ms)No.198, Science and Technology Department, dated 15.03.1995.

5. Mr.C.M.Mari Chelliah Prabhu, learned Additional Government Pleader appearing for the respondents 1 & 2 submitted that there are surplus teachers available. The third respondent school without getting any permission, appointed the petitioner in the maternity leave vacancy and hence, the approval sought for by the third respondent school is rejected and the same is valid and prayed for dismissal of the writ petition.

6. From the rival submissions of the learned counsel for the respondents 1 & 2 and the learned Additional Government Pleader appearing



for the respondents 1 & 2 and materials on record, it is seen that the petitioner was appointed as substituted teacher on 29.06.2017 for the period from 29.06.2017 to 25.03.2018 in the place of one Tmt.S.Valarmathi, B.T.Assistant (Maths), who availed maternity leave. The third respondent School sent a proposal for approval of the appointment of the petitioner as BT Assistant (Maths) for the above said period. The second respondent rejected the said proposal on the ground that there are 155 surplus teachers for the academic year 2018-2019 and 2019-2020 and new appointments cannot be made and also stated that only surplus teachers can be appointed in the vacancy caused due to the maternity leave. In the impugned order, the respondents also referred G.O.No.165, School Education (tho.ka.2 (1)), Department, dated 17.09.2019. The reason given by the second respondent is erroneous. The second respondent failed to see that the petitioner was appointed in the vacancy that arose due to the maternity leave from 29.06.2017 to 25.03.2018. This appointment is long prior to G.O.No.165, School Education (Tho.Ka.2(1)), Department, dated 17.09.2019. Further, a Division Bench of this Court has made G.O.No.165, dated 17.09.2019 as inoperative. It is not in dispute that the petitioner worked in the vacancy arose due to maternity leave availed by the regular incumbent Tmt. S.Valarmathi, who was appointed in the sanctioned post. Further, as per G.O.Ms.No.198 Science and Technology Department, dated 15.03.1995, the Government permitted the School Authorities to appoint substitute teacher in the vacancy due to the availing of maternity leave by the incumbent. The petitioner having worked from 29.06.2017 to 25.03.2018 is entitled to salary applicable for the salary payable to the regular teacher.

7. For the above reasons, the impugned order, dated 10.03.2020, is set aside. The third respondent is directed to re-submit the proposal within a period of two weeks from the date of receipt of a copy of this order and on receiving such proposal, the respondents 1 & 2 are directed to approve the appointment of the petitioner as BT Assistant (Maths) in the sanctioned maternity leave vacancy from 29.06.2017 to 25.03.2018 in the third respondent School and disburse the salary, thereafter.

8. With the above observations and direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD 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

- 1.The Chief Educational Officer,  
Tirunelveli, Tirunelveli District.
- 2.The District Educational Officer,  
Tirunelveli, Tirunelveli District.
- 3.The Correspondent,  
Christhu Raja Higher Secondary School,  
Palayamkottai-627 002,  
Tirunelveli District.

+1 CC to M/s.A.AMALA, Advocate ( SR-17041[F] dated 22/04/2021 )

+1 CC to M/s.SPL GP ( SR-17145[F] dated 22/04/2021 )

**W.P. (MD) No.8217 of 2021**

**21.04.2021**

GS(17.05.2021) 4P 6C