



WEB COPY

W.P.(MD)No.9084 of 2021 and

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2021

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD)No.9084 of 2021 and

WMP(MD) No.6840 & 6845 of 2021

The Correspondent,
Mary Immaculate High School,
Kovalam Road, Cape Comorin,
Kanyakumari District - 629 702

...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,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent District Educational Officer in O.Mu.No.7941/Aa5/2019 dated 20.12.2019 and quash the same, and further direct the fourth respondent DEO to approve forthwith the appointment of Josephine Anand as B.T.Assistant (Science) w.e.f 08.06.2017 in the petitioner school with salary and all other attendant benefits.

For Petitioner

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

For Respondents

: Mr.P.Thilak Kumar
Counsel for Government of
Tamil Nadu



O R D E R

Mr.P.Thilak Kumar, learned Government Counsel for the Government, accepts notice on behalf of the respondents.

2. By consent, the Writ Petition is taken up for final disposal at the admission stage itself.

3. The Writ Petition has been filed by the petitioner to quash the impugned proceedings issued by the fourth respondent in O.Mu.No.7941/Aa5/2019 dated 20.12.2019 and further direct them to approve the appointment of Josephine Anand as B.T.Assistant (Science) w.e.f 08.06.2017 in the petitioner school with salary and all other attendant benefits.

4.The case of the petitioner's School is that it is one among the various institutions owned and administered by the Missionary Sisters of the Immaculate Heart of Mary, which is a registered Society. The petitioner's School was sanctioned with 16 teaching staffs and 2 non-teaching staffs till the academic year 2017-2018. The post of B.T Assistant (Science) fell vacant on 31.05.2017, due to the retirement of the then incumbent. In that vacancy, the petitioner has appointed one Josephine Anand as B.T Assistant (Science), w.e.f 08.06.2017 and submitted proposal to the fourth respondent for approval, which was returned for certain compliance. After compliance, the School resubmitted the proposal. Since no order was passed, the petitioner filed W.P.(MD) No.22475 of 2019, seeking a Writ of Mandamus and this Court by order dated 25.10.2019, disposed of the said Writ Petition with a direction to the respondents to consider the petitioner's representation within a period of twelve weeks. Thereafter, the fourth respondent has returned the proposal vide impugned proceedings in O.Mu.No.7941/Aa5/2019 dated 20.12.2019, stating that as there are surplus posts of B.T.Assistant in Science in the Schools run by the same Corporate Management and directed the petitioner school to fill up the post of B.T. Assistant (Science) by deploying the surplus teachers. Against the said order, this Writ Petition has been filed.

5. The learned counsel for the petitioner would state that by G.O.Ms.No.165, School Education Department, dated 17.09.2019. the Government had directed that from 09.04.2019, the Schools ran by the Corporate Management and other Management shall not make any fresh appointment of teaching faculty in the vacancy caused due to any reason unless and until the deployment of excess teachers are exhausted. He would further state that the said Government Order itself has been declared as inoperative by the Division Bench of this Court in W.A(MD) No.76 of 2019 etc batch, dated 31.03.2021 and therefore the present impugned order passed



in terms of the said Government Order is liable to be set aside. Thus, he would pray to quash the impugned order.

6.Mr.P.Thilak Kumar, the learned Government Counsel appearing for the respondents would submit that at the time of appointment of Josephine Anand, there were surplus teachers in the Schools run by the same management and without appointing them, the petitioner School appointed the said Josephine Anand in the vacancy and therefore, the impugned order has been passed returning the proposal, which does not require interference by this Court.

7.Heard the learned Counsel for the petitioner as well as the respondents.

8. The relevant portion of the Judgment in W.A.(MD) No.76 of 2019, dated 31.03.2021, whereby, the Division Bench declared G.O.Ms.No.165, "as inoperative", is extracted hereunder.

93.7. In this regard, we like to point out that, already the import of the interim order passed by a Division Bench of this court in this batch of cases on 09.04.2019 has been quoted fully. Only pursuant to the said interim order, dated 09.04.2019, this G.O.Ms.No.165 was issued, however, subsequently, when the same batch of cases came up before yet another Division Bench of this Court on 20.09.2019, the import of G.O.Ms.No.165 was considered and the Division Bench, on that date, had passed an order, whereby, it expressed prima facie view that, the directions issued by earlier order, date 09.04.2019 was beyond the scope of the writ appeals. Therefore the Division Bench was of the opinion that, the operation of the G.O.Ms.No.165, dated 17.09.2019 shall be suspended, accordingly, the operation was suspended until further orders.

93.8. After having gone through the two interim orders passed by two Co-ordinate Division Benches in this batch of cases, one is dated 09.04.2019 and another is dated 20.09.2019, in between G.O.Ms.No.165 was issued on 17.09.2019, we are of the considered view that, the said G.O.Ms.No.165 ought not to have been issued as a fall out of the interim order passed by this Court. Therefore we are in agreement with the view expressed by a Co-ordinate Bench of this Court by order, dated 20.09.2019, that the said G.O is a fall out of the interim direction issued in the batch of writ



appeals, therefore the operation of the said G.O shall be suspended until further orders.

93.9. In that view of the matter and the comprehensive decision since having been arrived at by us in this batch of cases, the said G.O.Ms.No.165, in our considered view, can very well be declared to be inoperative.

9.Considering the submissions made by the learned counsel for the petitioner and in the light of the above Judgment passed by the Division Bench in Writ Appeals in W.A.(MD) No.76 of 2019 etc., batch, dated 31.03.2021, the impugned proceedings is liable to be set aside and accordingly, the impugned proceedings issued by the fourth respondent in O.Mu.No.7941/Aa5/2015 dated 20.12.2019 are hereby set aside. The respondents are directed to approve the appointment of Josephine Anand as B.T.Assistant (Science) w.e.f 08.06.2017 in the petitioner school, if she 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 weeks from the date of receipt of a copy of this Order.

10.With the above direction, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /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 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,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.ISSAC CHAMBERS, Advocate (SR-18774[F] dated
04/06/2021)

+1 CC to SPL GP (SR-18735[F] dated 03/06/2021)

Order made in
W.P. (MD)No.9084 of 2021 and
WMP(MD) No.6840 & 6845 of 2021
Dated 02.06.2021

KM(15.06.2021) 5P 7C