



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) No.10401 of 2021

W.M.P. (MD) Nos.8085 & 8086 of 2021

The Headmistress & Correspondent
Regina Caeli Girls Higher Secondary School,
Ammapettai,
Thanjavur District-614 401.

... Petitioner

vs.

1.The Government of Tamilnadu,
Rep by its Secretary,
Department of Higher Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Panagal Building,
Thanjavur District-613 001.

4.The District Educational Officer,
Orathanaadu,
Tanjore District-625 531.

... 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 third respondent Chief Educational Officer in third respondent Chief Educational Officer in O.Mu.No.3172/A2/2020, dated 07.04.2021 (as signed) and the consequential proceedings issued by the District Educational Officer in O.Mu.No.5969/A3/2019, dated 28.04.2021 (as signed), quash the same and further direct the third and fourth respondents to approve forthwith the appointment of Sr.S.Joan of Arc as PG Assistant (Maths) in the petitioner school with effect from the date of her appointment viz., 03.06.2019 and release salary and all attendant benefits with effect from the said date, with all attendant benefits including arrears of salary and allowances.



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

For Respondents : Mr.K.S.Selvaganesan
Government Advocate

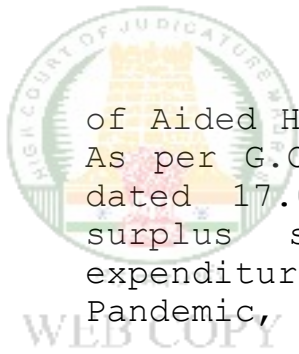
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ORDER

This Writ Petition is filed to quash the impugned order passed by the third respondent, dated 07.04.2021 and the consequential proceedings of the fourth respondent, dated 28.04.2021 and further direct the respondents 3 and 4 to approve forthwith the appointment of Sr.S.Joan of Arc as PG Assistant (Maths) in the petitioner's school with effect from the date of her appointment viz., 03.06.2019 and release salary and all attendant benefits with effect from the said date, including arrears of salary and allowances.

2. According to the petitioner, the petitioner's school is a minority aided school, owned and administered by the Congregation of the Sisters of St.Anne, Tiruchirapalli. In the petitioner School, one post of P.G. Assistant [Maths] fell vacant on 03.06.2019, due to the retirement of then incumbent Mrs.C.Bellarmin on 31.05.2019. In that vacancy, the School appointed one Sr.S.Joan of Arc, as P.G.Assistant (Maths) w.e.f., 03.06.2019. She joined in service on 03.06.2019 and continues to work in the said post.

3. The petitioner School, immediately after her appointment, submitted necessary proposal to the DEO, vide letter dated 20.09.2019, for approving her appointment for the purpose of disbursement of grant-in-aid towards her salary. However, the DEO kept the petitioner's proposal pending for no reason. In the meantime, the third respondent/Chief Educational Officer, vide his proceedings in O.Mu.No.3172/A2/2020, dated 07.04.2021 returned the proposal stating that as per the Order in W.A(MD)Nos.76 of 2019 etc., batch, dated 09.04.2019 and W.P.No.31575 of 2019 and WMP No.31774 of 2019, dated 08.11.2019, only after deployment of the surplus staff is completed, action can be initiated in respect of appointment made in teaching posts. The Schools under the Management are run under the Corporate Management and it is learnt that there are surplus B.T. Assistant (Maths) posts available under the Management. When there are fully qualified B.T. Assistant (Maths) for promotion as P.G. Assistants, the denial of the same by appointing a teacher from the open market cannot be accepted. There are surplus P.G. Assistant (Maths) posts available in Thanjavur Revenue District based on the staff fixation orders



of Aided Higher Secondary Schools for the academic year 2019-2020. As per G.O.(Ms)No.165, School Education (Tho Ka.2(1)) Department, dated 17.09.2019, no new appointment shall be made till the surplus staff available is exhausted to avoid additional expenditure to the Government. Therefore, due to COVID-19 Pandemic, they are not in a position to deploy the surplus staff.

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

5.The learned Government Advocate appearing for respondents submitted that at the time of appointment, there are surplus teachers in the same Management and without deploying a surplus teacher, the petitioner's School appointed Sr.S.Joan or Arc as P.G. Assistant (Maths) 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 Government Advocate appearing for the respondents and perused the materials carefully.

7. A reading of the impugned order shows that the third respondent has rejected the request of the petitioner's School for approval of appointment of Sr.S.Joan of Arc as PG Assistant (Maths) in the petitioner's School referring to G.O.(Ms)No.165, School Education Department, dated 17.09.2019. The said Government Order was made as 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 subsequent order of this Court, erroneously rejected the proposal of the petitioner's School.

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 07.04.2021, is hereby set aside. The respondents are directed to approve the appointment of Sr.S.Joan of Arc as P.G. Assistant (Maths) in the petitioner's 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 (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.

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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

1.The Secretary,
Department of Higher Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Panagal Building,
Thanjavur District-613 001.

4.The District Educational Officer,
Orathanaadu,
Tanjore District-625 531.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-19878[F] dated 22/06/2021)

+1 CC to SPL GP (SR-20023[F] dated 23/06/2021)

**W.P(MD)No.10401 of 2021
22.06.2021**

KM(29.06.2021) 4P 7C

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