



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.10934 of 2021

and

W.M.P(MD)Nos.8579 & 8580 of 2021

WEB COPY

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

... Petitioner

vs.

1.The Government of Tamil Nadu,
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 Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent-Chief Educational Officer in O.Mu.No.3124/A2/2019, dated 15.03.2021 (as signed) and the consequential proceedings issued by the fourth respondent-District Educational Officer in O.Mu.No.1363/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 S.Vanacka Selvi as P.G Assistant (History) in the petitioner-School with effect from the date of her appointment viz., 04.09.2018 and release salary and all attendant benefits with effect from the said date.

For Petitioner	: Mr.K.Ragatheesh Kumar
For Respondents	: Mr.P.Subbaraj Government Advocate

ORDER

The petitioner-School has filed the present Writ Petition, to
<https://hcservices.ecourts.gov.in/hcservices/>



quash the impugned order passed by the third respondent, dated 15.03.2021 and the consequential proceedings issued by the fourth respondent, dated 28.04.2021 and to direct the third and fourth respondents to approve forthwith the appointment of S.Vanacka Selvi as P.G Assistant (History) in the petitioner-School with effect from the date of her appointment viz., 04.09.2018 and release salary and all attendant benefits with effect from the said date.

2. According to the petitioner, the petitioner School is a recognised aided Minority Educational Institution. In the said School, there are 35 Teachers viz., 1 Headmistress, 10 PG Assistants, 2 Vocational Instructors, 13 BT Assistants, 3 Tamil Pandits, 3 Secondary Grade Teachers, 1 Physical Education Teacher, 1 Sewing Teacher and 1 Music Teacher, working and they are received aid from the State Government. Apart from the above teaching staffs, there are 5 aided non-teaching staffs viz., 1 Junior Assistant, 1 Lab Assistant, 1 Record Clerk, 1 Office Assistant and 1 Watchman, working in the School. There are 1012 students studying in the School. One post of Post Graduate (PG) Assistant fell vacant in the petitioner School on 04.09.2018 due to the transfer of the then incumbent N.Grace Mary on 03.09.2018. The petitioner's school appointed one S.Vanacka Selvi as PG Assistant (History) on 04.09.2018 and she continues to work in the school till date. The petitioner School submitted a proposal to the fourth respondent on 05.12.2018, requesting to approve the appointment of S.Vanacka Selvi and disburse grant-in-aid towards her salary. In the meantime, the third and fourth respondents by the impugned orders, dated 15.03.2021 and 28.04.2021 respectively, rejected the proposal for approval of the appointment of S.Vanacka Selvi. Challenging the said orders, the petitioner has come out with the present writ petition.

3. The learned Government Advocate appearing for the respondents submitted that at the time of passing the impugned order, the respondents referred the interim order, dated 09.04.2019 passed by the Division Bench of this Court in W.A(MD)No.76 of 2019 etc., batch and G.O.(Ms)No.165, School Education (Tho.Ka.2(1) Department, dated 17.09.2019. Subsequently, in the writ appeal batch, this Court finally issued certain guidelines with regard to approval of appointment. In this regard, he relied on the judgment of the Division Bench of this Court, dated 31.03.2021, in W.A(MD)Nos.76 of 2019 etc., batch and the relevant portion of the judgment is extracted hereunder:-

"95 (u) Till such excess teaching staff are identified under all category of schools as indicated above, no recruitment shall be made by the State Government / Education Department for the purpose of appointment of teachers under various categories like Secondary grade teacher, Graduate teacher, Post-Graduate teacher, Language teacher, Physical education teacher



etc.,

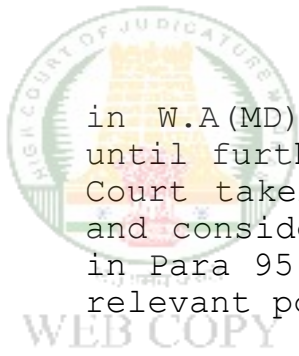
(v) Like that insofar as aided minority institutions are concerned if it is a stand along institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength"

4. The learned Government Advocate appearing for the respondents by relying on the above judgment submitted that if the petitioner's school resubmitted the proposal, the respondents 3 & 4 will pass orders following the guidelines issued by the Division Bench of this Court, dated 31.03.2021.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

6. The petitioner's School, which is a minority educational institution, appointed one S.Vanacka Selvi as PG Assistant (History) in the vacancy arose due to the transfer of one N.Grace Mary PG Assistant (History). Subsequently, the third and fourth respondents by the impugned orders, dated 15.03.2021 and 28.04.2021 respectively, rejected the proposal for approval of the appointment of S.Vanacka Selvi and the reasons given by the respondents 3 and 4 are erroneous.

7. The petitioner's School, which is a minority institution, can fill up the sanctioned vacancy without obtaining prior permission. Subsequent to the interim order, dated 09.04.2019 in W.A(MD)No.76 of 2019 etc., batch referred in the impugned order by the third respondent and G.O.Ms.No.165, School Education Department, dated 17.09.2019, another Division Bench of this Court considering the said issue in the very same Writ Appeal, has suspended the operation of G.O.(Ms)No.165, School Education Department, dated 17.09.2019, passed in pursuant to the interim order dated 09.04.2019



in W.A(MD)No.76 of 2019 etc., batch, by order, dated 20.09.2019, until further orders. Subsequently, another Division Bench of this Court taken up W.A(MD)No.76 of 2019 etc., batch for final hearing and considered the issue in detail, vide judgment dated 31.03.2021, in Para 95(o) declared the said Government Order as inoperative. The relevant portion of the said judgment reads as follow:-

"95. (o) In view of the aforesaid, the G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative."

8.In view of the subsequent interim order, dated 20.09.2019 and judgment dated 31.03.2021 made in W.A(MD)No.76 of 2019 etc., batch, the reliance placed by the third respondent in the impugned order on the interim order of the Division Bench of this Court, dated 09.04.2019 and G.O.(Ms)No.165, School Education Department, dated 17.09.2019, is erroneous. Hence, the impugned orders passed by the respondents 3 and 4, dated 15.03.2021 and 28.04.2021 are liable to be set aside and are hereby set aside. The respondents 3 and 4 are directed to approve the appointment of S.Vanacka Selvi as PG Assistant (History). The respondents 3 and 4 are directed to approve the appointment of S.Vanacka Selvi, and pass orders within a period of two weeks from the date of receipt of a copy of this order and sanction and disburse all the monetary benefits to S.Vanacka Selvi.

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

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-21150[F] dated 05/07/2021)

+1 CC to M/s.SPL GP (SR-21182[F] dated 05/07/2021)

W.P (MD) No.10934 of 2021
02.07.2021

SSS(CO)
RD(15.07.2021) 5P 7C