



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.11363 of 2021

and

W.M.P(MD)Nos.8897 & 8898 of 2021

WEB COPY

Aided Muslim Committee Primary School,
Rep. by its Correspondent,
S.Sheik Shajakhan Sithik.

... Petitioner

vs.

1.The Commissioner of School Education,
O/o.The Commissioner of School Education Department,
College Road,
Chennai - 6.

2.The Director of Elementary Education,
O/o.The Director of Elementary Education,
D.P.I Complex,
Chennai - 600 006.

3.The District Educational Officer,
O/o.The District Educational Office,
Cheranmahadevi,
Ambasamudram Taluk,
Tirunelveli District.

4.The Block Educational Officer,
O/o.The Block Educational Office,
Ambasamudram Taluk,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writs of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the third respondent in his proceedings in Na.Ka.No.2317/A4/2019, dated 30.03.2021 and quash the same as illegal and consequently, to direct the third respondent to approve the appointment of M.Sabhna Asmi Fathima as Secondary Grade Teacher with effect from 03.07.2018 in the petitioner's School.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.P.Subbaraj
Government Advocate



ORDER

The petitioner has filed the present Writ Petition, to quash the impugned order issued by the third respondent, dated 30.03.2021 and to direct the third respondent to approve the appointment of M.Sabhna Asmi Fathima as Secondary Grade Teacher with effect from 03.07.2018 in the petitioner's School.

2.According to the petitioner-School, it is a Minority Private Aided School and it is governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. The post of Head Master became vacant in the petitioner School on account of the retirement of the incumbent and in the said vacancy, the senior most Secondary Grade Teacher was promoted and in the said vacancy, one M.Sabhna Asmi Fathima was appointed as Secondary Grade Teacher on 03.07.2018 and the said appointment was made in the sanctioned vacancy. The petitioner School submitted the proposal dated 04.12.2018 for approval of the appointment of the said M.Sabhna Asmi Fathima. The third respondent, vide proceedings, dated 01.02.2019, returned the proposal. Challenging the same, the petitioner School filed a Writ Petition in W.P(MD)No.8519 of 2019. This Court, by an order, dated 10.04.2019, disposed of the Writ Petition, remitting the matter back to the third respondent for fresh consideration. Aggrieved by the same, the third respondent preferred an appeal in W.A(MD)No.176 of 2020. The Division Bench of this Court, by an order, dated 07.08.2020, dismissed the Writ Appeal. Despite the order passed by this Court, the respondents have not taken any action to implement the order of this Court. Hence, the petitioner School filed Cont.P (MD)No.788 of 2021 and the same is still pending. While so, the third respondent by impugned proceedings, dated 30.03.2021, once again rejected the proposal for approval of appointment of M.Sabhna Asmi Fathima, referring the interim order of this Court, dated 09.04.2019 in W.A(MD)No.76 of 2019 etc., batch and also G.O.Ms.No.165, School Education Department, dated 17.09.2019. Challenging the same, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner School 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, another Division Bench of this Court vide order dated 20.09.2019, suspended the operation of the said Government Orders until further orders. Thereafter, finally, on 31.03.2021, another Division Bench of this Court declared the said Government Order as inoperative.

4.The learned Government Advocate appearing for the respondents

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submitted that if the petitioner school resubmitted the proposal, the respondents 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 School, which is a Minority Private Aided School, appointed one M.Sabhna Asmi Fathima as Secondary Grade Teacher in the vacancy arose due to the retirement of the Headmaster.

7. The third respondent passed the impugned order, dated 30.03.2021, rejecting the request of the petitioner School for approval of appointment of the petitioner.

8. The petitioner 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 follows:-

"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."

9. 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 for rejection of the proposal based 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 order passed by the third respondent, dated 30.03.2021, is liable to be set aside and is hereby set aside. The third respondent is directed to approve the appointment of the petitioner as Secondary Grade Teacher 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 the petitioner.

<https://hcservices.courts.gov.in/hcservices/> 10. In view of the above directions, the Writ Petition is allowed. No



costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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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 Commissioner of School Education,
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 - 2.The Director of Elementary Education,
O/o.The Director of Elementary Education,
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 - 4.The Block Educational Officer,
O/o.The Block Educational Office,
Ambasamudram Taluk,
Tirunelveli District.
- +1 CC to M/s.AJMAL ASSOCIATES, Advocate(SR-21897[F]dated 09/07/2021)
- +1 CC to M/s.SPL GP (SR-21940[F] dated 09/07/2021)

W.P (MD) No.11363 of 2021
08.07.2021

RK (19.07.2021) 4P 7C