



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.948 of 2019

and

W.M.P. (MD) Nos.771 & 772 of 2019

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S.Sam Sargunaraj

... Petitioner

-VS-

1.The Chief Educational Officer
Tirunelveli

2.The District Educational Officer
Tirunelveli District

3.The Correspondent
St.Xavier's Higher Secondary School
Palayamkottai
Tirunelveli District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings in O.Mu.No.3077/A2/2018, dated 02.11.2018 and quash the same and direct the respondents to approve the appointment of the petitioner as B.T.Assistant History from the date of appointment i.e.01.12.2014 with all the consequential benefits from the date of appointment.

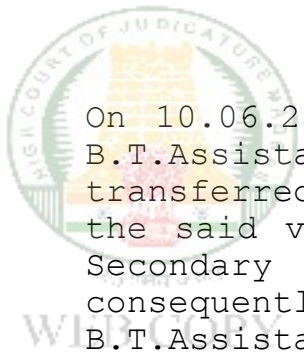
For Petitioner : Mr.V.Panneerselvam

For Respondents : Mr.S.Shanmugavel
Government Counsel for R1 & R2

O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the order dated 02.11.2018, passed by the second respondent, and to direct the respondents to approve the appointment of the petitioner as B.T.Assistant (History) from the date of appointment i.e.01.12.2014 with all the consequential benefits.

2. According to the petitioner, on 01.12.2014, he was appointed as B.T.Assistant (History) in the third respondent School.



On 10.06.2013, one Rev.Father Josephy Kennedy, who was working as B.T.Assistant (History) in the third respondent School, was transferred to De Britto Higher Secondary School, Devakottai. In the said vacant post, one Thilak Arockiaraj, who was working as a Secondary Grade Teacher, was appointed by way of promotion and consequently, his Secondary Grade Teacher post was upgraded as B.T.Assistant as per the policy decision of the Government. In the said vacancy, one Jai Vasanth Fernando was appointed as B.T.Assistant on 02.06.2014. Since the said Jai Vasanth Fernando got appointment in a Government School, he was relieved from service on 16.09.2014. Therefore, the said post became vacant and in the said vacant post, the petitioner was appointed as B.T.Assistant on 01.12.2014 and he is working as B.T.Assistant till date.

3. According to the petitioner, at that stage, the promotion given to Thilak Arockiaraj as B.T.Assistant (History) was not approved by the second respondent and hence, he was permitted to work as a Secondary Grade Teacher in the third respondent School. Thereafter, on 26.02.2018, the third respondent sent a proposal to the second respondent seeking approval for appointment of the petitioner as B.T.Assistant (History) in the vacancy caused due to the transfer of Rev.Father Joseph Kennady, B.T.Assistant (History) from the third respondent School to De Britto Higher Secondary School, Devakottai. The said proposal was returned, vide order dated 08.05.2021, to the third respondent asking further particulars with regard to the appointment of the petitioner in the vacancy arose with effect from 10.06.2013. The third respondent resubmitted the proposal on 17.07.2018 to the second respondent seeking approval for the appointment of the petitioner as B.T.Assistant (History) in the with effect from 01.06.2017 in the vacancy caused due to the transfer of Joseph Kennady. The second respondent, by order dated 02.11.2018, again returned the proposal stating that joining report of the petitioner with effect from 01.06.2017 and Certificate stating that there is no surplus teacher in the third respondent School for the academic year 2017-2018 have not been enclosed. Challenging the same, the petitioner has filed this writ petition.

4. The second respondent has filed a counter affidavit stating that promotion given to Thilak Arockiyaraj as B.T.Assistant (History) was not approved by the second respondent and therefore, he was permitted to continue as Secondary Grade Teacher with effect from 01.06.2017. Hence, no vacancy arose for appointing the petitioner as B.T.Assistant (History). Further, originally, the third respondent submitted a proposal on 26.02.2018 seeking approval for the petitioner's appointment with effect from 01.12.2014. The said proposal was returned with certain queries and it was resubmitted by the third respondent seeking approval for the petitioner's appointment with effect from 01.06.2017 only. Since there were certain defects to be complied with, the said proposal was returned and if the said defects are complied with by the third



respondent, appropriate decision will be taken in the matter and therefore, the petitioner cannot claim approval from 01.12.2014.

5. Heard the learned counsel on either side and carefully perused the materials available on record.

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6. On perusal, it is seen that on 01.12.2014, the petitioner was originally appointed as B.T.Assistant (History) in the third respondent School in vacancy arose due to the relieving of one Jai Vasanth Fernando from service. Subsequently, one Thilak Arockiaraj, who was working as a Secondary Grade Teacher in the third respondent School, was promoted as B.T.Assistant (History) and appointed the vacant post caused due to the transfer of Joseph Kennady, B.T.Assistant (History) and since approval was not given to his promotion, Thilak Arockiaraj was permitted to continue as Secondary Grade Teacher.

7. Further, it is seen that on 26.02.2018, the third respondent sent a proposal to the second respondent seeking approval for appointment of the petitioner as B.T.Assistant (History) in the vacant post caused due to the transfer of Joseph Kennady, with effect from 01.12.2014. The said proposal was returned by the second respondent asking particulars with regard to the appointment of the petitioner in the said vacant post with effect from 10.06.2013. However, the third respondent resubmitted the proposal on 17.07.2018, wherein he sought approval with effect from 01.06.2017 only and not from 10.06.2013 and the said proposal was also returned, by the impugned order, with certain defects to be complied with. Admittedly, the petitioner has not challenged the proposal dated 17.07.2017 sent by the third respondent nor the third respondent resubmitted the proposal complying with the queries raised in the impugned order of the second respondent. As per the Rules, the third respondent is the appointing Authority for the post of B.T.Assistant. Therefore, when the third respondent himself has submitted the proposal to grant approval with effect from 01.06.2017, even though the petitioner has raised objection to the effect that his appointment is entitled to be approved with effect from 01.12.2014, such a relief cannot be granted by this Court. If at all the petitioner was working from 01.12.2014 and not paid salary, the petitioner can workout his remedy before the third respondent in the manner known to law, if he is so entitled.

8. In view of the above, this Court passes the following orders:

- (i) The third respondent is directed to resubmit the proposal complying with the queries raised in the impugned order dated 02.11.2018, within a period of four weeks from the date of receipt of a copy of this order;



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- (ii) On receipt of the resubmission of the proposal by the third respondent, the second respondent shall consider the same and pass orders on merits and in accordance with law, as expeditiously as possible, as there is already delay in granting approval for the petitioner's appointment.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// 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 Chief Educational Officer,
Tirunelveli.
- 2.The District Educational Officer,
Tirunelveli District.
- 3.The Correspondent
St.Xavier's Higher Secondary School
Palayamkottai, Tirunelveli District.

+1 CC to M/s.SPL. GP (SR-29776[F] dated 21/09/2021)

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