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W.P(MD)Nos.13777, 13781 & 13782 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
W.P(MD)Nos.13777, 13781 & 13782 of 2020

and
W.M.P(MD)Nos.11429, 11432 & 11433 of 2020

N.Vinothini ... Petitioner in W.P(MD)No.13777/2020

R.Saranya ... Petitioner in W.P(MD)No.13781/2020

G.Saranya ... Petitioner in W.P(MD)No.13782/2020

vs.

1.The District Educational Officer,
Melur,
Madurai District.

2.The Block Educational Officer,
Madurai East,
Madurai District.

3.Dhanam Middle School,
Rep. by its Correspondent,
Gandhi Nagar,
Madurai - 20.

... Respondents in all W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writs of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent in his proceedings in Na.Ka.No.3361/A3/2020, dated 02.09.2020 and quash the same and consequently direct the respondents to approve the appointment of the petitioners as Secondary Grade Teacher with effect from 02.04.2018, 01.08.2018 and 04.06.2018 respectively with salary and all consequential benefits.

For Petitioners : Mr.V.Panneer Selvam
(In all W.Ps')

For RR 1 & 2 : Mr.K.S.Selva Ganesan
(In all W.Ps') Government Advocate

COMMON ORDER

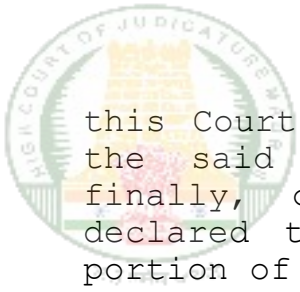
The petitioners have filed these present Writ Petitions, to quash the order passed by the first respondent, dated 02.09.2020 and to direct the respondents to approve the appointment of the petitioners as Secondary Grade Teachers with effect from 02.04.2018, 01.08.2018 and 04.06.2018 respectively, with salary and all consequential benefits.



2. According to the petitioners, they passed Diploma in Teacher Education and were fully qualified for the post of Secondary Grade Teachers. In the third respondent School, one post of Secondary Grade Teacher became vacant on 01.11.2016 due to the promotion of Tmt. Joice Sorooparani. In the said permanent sanctioned vacancy, the petitioner-N.Vinodhini in W.P(MD)No.13777 of 2020 was appointed on 02.04.2018. Thereafter, one Tmt.R.Krithiga was transferred to Srinivasa Perumal Aided Elementary School, P.Subbulapuram, on 31.03.2018. In the said vacancy, the petitioner-R.Saranya in W.P(MD)No.13781 of 2020 was appointed on 01.08.2018. Thereafter, one Tmt.P.Belcia Esther Selvarani, Secondary Grade Teacher was promoted as a Headmistress on 07.06.2017. In the said vacancy, the petitioner-G.Saranya in W.P(MD)No.13782 of 2020 was appointed on 04.06.2018.

3. The third respondent School was established in the year 1956 and the Institution is a Minority Institution protected under Article 30(1) of the Constitution of India. In the third respondent School, as per the staff fixation of the year 2017-18, 759 students were studying, 22 posts were sanctioned post. In the fixation itself, it has been specifically stated that three Secondary Grade Teachers Posts are eligible to fill up as the students strength is more than 750. As per the Government norms, the School is entitled for more posts. Therefore, the third respondent School sent the proposals for approval of appointment of the petitioners to the first respondent on 06.10.2018. The same was returned for want of staff fixation order, dated 01.08.2018. Thereafter, the proposal was re-submitted on 22.10.2019 along with the staff fixation order. Again the same was returned on 20.01.2020 by the first respondent for certain queries. Complying the queries, the proposal was re-submitted on 06.02.2020. Since there was no progress, the third respondent School, on behalf of the petitioners, has filed a Writ Petition in W.P(MD)No.7292 of 2020 for approval of appointment of the petitioners. This Court, by an order, dated 14.07.2020, directed the first respondent herein to consider the proposal for approval of appointment of the petitioners within a period of eight weeks. Subsequently, the first respondent, by an impugned order, dated 02.09.2020, rejected the request of the third respondent School 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 petitioners have come out with the present Writ Petitions.

4. The learned counsel appearing for the petitioners 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. The relevant portion of the said Judgment reads as follows:-

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"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."

5.The learned Government Advocate appearing for the respondents 1 and 2 submitted that if the third respondent school resubmitted the proposal, the respondents 1 & 2 will pass orders following the guidelines issued by the Division Bench of this Court, dated 31.03.2021.

6.Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents 1 and 2 and perused the materials available on record.

7.The third respondent School, which is a Minority Educational Institution, appointed one N.Vinodhini/petitioner in W.P(MD)No.13777 of 2020 in the vacancy arose due to promotion of one Tmt.Joice Sorooparani; one R.Saranya/petitioner in W.P(MD)No.13781 of 2020 in the vacancy arose due to transfer of Tmt.R.Krithiga to Srinivasa Perumal Aided Elementary School, P.Subbulapuram and G.Saranya/petitioner in W.P(MD)No.13782 of 2020 in the vacancy arose due to promotion of one Tmt.P.Belcia Esther Selvarani as a Headmistress and all of them were appointed as Secondary Grade Teachers. In the writ petition in W.P.(MD)No.7292 of 2020, filed by the third respondent, this Court, by order, dated 19.07.2018 passed the following order:-

"4.Mr.A.Thiyagarajan, learned Government Advocate appearing for the respondents, on instructions, would submit that the proposal dated 06.10.2018, submitted by the petitioner School, for approval of appointment of three Secondary Grade Teachers, is still pending with the first respondent and the same would be considered by the first respondent and an order to that effect would be passed thereon, on merits and in accordance with law, within a time frame to be fixed by this Court.

5.Recording the abovesaid submission made by the learned Government Advocate appearing for the respondents, this Court directs the first respondent to consider the proposal submitted by the petitioner School, dated 06.10.2018, and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order."



8.The first respondent passed the impugned order, dated 02.09.2020, rejecting the request of the third respondent School for approval of appointment of the petitioners.

9.The third respondent 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 first 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."

10.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 first 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 order passed by the first respondent, dated 02.09.2020, is liable to be set aside and is hereby set aside. The first respondent is directed to approve the appointment of the petitioners as Secondary Grade Teachers 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 petitioners.

11.With the above directions, these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)



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 District Educational Officer,
Melur,
Madurai District.
2. The Block Educational Officer,
Madurai East,
Madurai District.
3. Dhanam Middle School,
Rep. by its Correspondent,
Gandhi Nagar, Madurai - 20.

+1 CC to M/s.SPL GP (SR-21039[F dated 02/07/2021)

+3 CC to M/s.V.PANNEER SELVAM, Advocate (SR-21067[F] dated 02/07/2021)

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RC (13.07.2021) 5P 8C