



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2021

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The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM
AND
The Hon'ble Mrs.JUSTICE S.ANANTHI

W.A. (MD) .No.977 of 2020
and
C.M.P (MD) .Nos.3486 and 5305 of 2020

1.The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli-627 001.

2.The Chief Educational Officer,
Tirunelveli-627 009.

.. Appellants/1 to 2 Respondent

Vs.

1.Tmt.M.Tamilselvam,

..1st Respondent/Writ Petitioner

2.The Secretary,

M.D.T.Hindu College Higher Secondary School,

Tirunelveli-627 001.

..2nd Respondent/3rd Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 30.01.2020 passed in W.P.(MD).No.19342 of 2013.

Prayer in WP(MD) . 19342/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent herein in O.Mu.No.1127/A5/2013 dated 10.05.2013 and quash the same and to direct the respondents herein to issue appropriate formal orders approving the appointment of the petitioner as Graduate Teacher (Mathematics) with retrospective effect from the date of her initial appointment i.e 10.08.2009 and to further direct the third respondent to regularise the services of the petitioner in the said post from 10.08.2009 and disburse arrears of pay and allowances forthwith and pass such further or other orders.

For Appellants

: Mr.R.Baskaran

For R1

: Mr.G.Thalaimutharasu for R1



For R2

: Mr.K.Karthikeyan for

Mr.Sengu Vijay

J U D G M E N T

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[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

This Writ Appeal filed by the Educational Department is directed against the order dated 30.01.2020 in W.P.No.19342 of 2013.

2.This writ appeal was entertained and an order of interim stay was granted. The first respondent/teacher had filed a petition for vacating the interim order, which was listed before us today. With the consent on either side, the writ appeal is taken up for disposal.

3.The first respondent filed a Writ Petition for issuance of a Writ of Certiorarified Mandamus, to quash the order dated 10.05.2013 and to issue an order of approval approving her order of appointment as Graduate Teacher in Mathematics in the second respondent school with effect from her date of appointment namely 10.08.2009 and to regularize her service from the said date and disburse the arrears of pay and allowances.

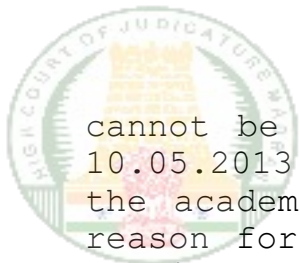
4.The second respondent/school is an aided and non-minority school. The learned Single Bench allowed the writ petition and while doing so, made an observation that no prior approval is required for filling up vacancy, which is arisen in a sanctioned post. We have our reservation on the said aspect because the second respondent school is aided and non minority school and therefore the approval of the department is required. It may not be the case, if the school is an aided and minority institution. However, this issue need not to be decided in this appeal, because there are other reasons set out by the Department for rejecting the approval of the appointment, which we can test for its correctness in this appeal. Therefore, the observations made by the learned Writ Court with regard to the aspects as to whether prior approval is required or not for filling up the vacancy arising in the sanctioned post in an aided and non-monitory institution is vacated and the said legal issue is left open.

5. Now we move on to consider as to whether the Department was justified in rejecting the approval of the appointment of the first respondent vide order dated 10.05.2013. The reason sated is that the appointment was made on 10.08.2009 during the Academic year 2009-2010 and during the said academic year, there were three surplus posts and the posts presently held by the first respondent was also declared as surplus and the teacher along with the post had to be deployed with another school and in fact, such an order of



deployment was passed on 16.11.2009 by the Chief Educational Officer, Thirunelveli, deploying the first respondent to S.N.R.Higher Secondary School, Sri Gomathipuram, Sankarankovil. The other reason stated by the appellant Department is that during the Academic years 2010-2011 and 2011-2012, there were one post in each of the year which was declared as surplus. The order impugned in the writ petition dated 10.05.2013, does not state that the second respondent school did not obtain approval before filling up the vacancy. Therefore, as observed by us earlier, the question of whether prior approval is required or not, does not arise for consideration in this appeal. Once having steered clear of this issue, we will examine the facts as to whether the Department is justified in refusing the approval of the appointment of the first respondent. Admittedly, the second appellant namely, the Chief Educational Officer by proceedings dated 12.11.2008 granted permission to the second respondent school to fill up the vacancies, which had arisen in the post of Graduate Teacher in Mathematics and as per the communal roster, the post is reserved for Schedule Caste candidates. There is no dispute to the fact that the second respondent school had followed the proper procedure for appointing the candidates, strictly implemented the communal roster and when the appointment order was to be issued, parliamentary election was notified and model code of conduct came into operation. Therefore, the Secretary of the second respondent school addressed the Election Commissioner on 12.03.2009 requesting permission for issuing the order of appointment and filling up the vacant post in the light of the approval granted by the second appellant dated 12.11.2008.

6.The Election Commission by proceedings dated 27.03.2009 granted permission to issue the order of appointment for six B.T. Assistants which includes the first respondent. It is thereafter after following the due procedure and calling for fresh list from the employment exchange, issuing paper publication, the second respondent school issued an order of appointment to the first respondent dated 05.08.2009. The first respondent joined duty on 10.08.2009. Thus the order of appointment was issued during the Academic year 2009-2010. Therefore, the second respondent Management requested the appellant Department to modify the approval order dated 12.11.2008 by granting approval for the academic year 2009-2010 instead of 2008-2009. This was rejected on the ground that for the academic year 2009-2010, there were three surplus posts including the post held by the first respondent. One important fact, which has not been mentioned in the order dated 10.05.2013 is that the order deploying the first respondent on the ground that of the post has become surplus, which was passed on 16.11.2009 was cancelled by the Chief Educational Officer, Tirunelveli, by proceedings dated 24.04.2010, permitting the second respondent Institution to continue the three teachers including the first respondent in the very same school. In such circumstances, the reasons assigned by the first appellant for rejecting the approval



cannot be sustained. Furthermore, it is stated in the order dated 10.05.2013 that two posts are have been declared as surplus during the academic years 2010-2011, 2011-2012. However, that cannot be a reason for refusing an approval, because the issue was whether the appointment made during the academic year 2009-2010 could have been approved or not and whether the prayer made by the management for making a correction in the approval order is justified or not. Therefore, the first respondent cannot invent other reasons for rejecting the approval of the appointment of the appellants made on 05.08.2009 by citing a reason that in the next two academic years, there were one post surplus for each year. Thus, We are of the considered view that the order passed by the first appellant dated 10.05.2013 is solely unsustainable and the first appellant has taken a hyper-technical view which cannot be appreciated, especially, the second respondent Institution has followed proper procedure and made the order of appointment.

7. Therefore, the order dated 10.05.2013 impugned in the writ petition has to be quashed. In the result, the appeal filed by the department is dismissed and consequently the writ petition filed by the first respondent is allowed and the order dated 10.05.2013 passed by the first appellant is quashed for the reasons which we have assigned in this judgment and not on the reasons which were assigned by the learned Single Bench. Consequently, We direct the appellants to approve the appointment of the first respondent with effect from her date of joining on 10.08.2009 and sanction all benefits accruing on account of such approval within a period of 3 months from the date of receipt of copy of this judgment. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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 District Educational Officer,
Tirunelveli Educational District, Tirunelveli-627 001.

2.The Chief Educational Officer,Tirunelveli-627 009.



+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-19125[F] dated 10/06/2021)

+1 CC to M/s.M.SENGU VIJAY, Advocate (SR-19237[F] dated 14/06/2021)

+1 CC to M/s.SPL GP (SR-19209[F] dated 11/06/2021)

W.A.(MD).No.977 of 2020 and
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KB(17.06.2021) 5P 6C