



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P. (MD) No. 15694 of 2021

and

W.M.P. (MD) No.12642 of 2021

S.Josephine Julia
Secondary Grade Teacher,
St. Joseph's Primary School,
N.G.O. 'B' Colony, Jawagar Nagar,
Tirunelveli District.

... Petitioner

Vs.

1.The District Educational Officer,
Tirunelveli,
Tirunelveli District.

2.The Block Educational Officer,
Palayamkottai Urban,
Tirunelveli District.

3.The Correspondent,
St. Joseph's Primary School,
N.G.O. 'B' Colony, Jawagar Nagar,
Tirunelveli District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of **Writ of Certiorarified Mandamus**, calling for the records relating to the impugned proceeding issued by the 1st respondent District Education Officer in Oo. Mu. No. 5234/a2/2019 dated 16.07.2021 and the consequential proceeding of the 2nd respondent Block Educational Officer in O. Mu. No. 276/a2/2021 dated 16.07.2021, quash the same and further direct the 1st respondent District Educational Officer herein to approve forthwith the appointment of petitioner as Secondary Grade teacher in the 3rd respondent school namely, St. Joseph's Primary School, Jawagar Nagar, w.e.f. 01.06.2018 and disburse the grant-in-aid towards her salary and allowances w.e.f., the said date with all attendant benefits, and pass such further or other suitable Order/Orders.



For Petitioner : Ms.A.Amala
For R1 and R2 : Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by
Mr.S.Shanmugavel,
Standing Counsel for State.

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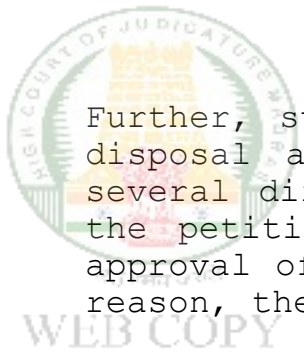
O R D E R

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings issued by the 1st respondent in Oo. Mu. No. 5234/a2/2019 dated 16.07.2021 and the consequential proceedings of the 2nd respondent in O. Mu. No. 276/a2/2021 dated 16.07.2021, quash the same and consequently direct the 1st respondent herein to approve forthwith the appointment of the petitioner as Secondary Grade teacher in the 3rd respondent school namely, St. Joseph's Primary School, Jawagar Nagar, with effect from 01.06.2018 and disburse the grant-in-aid towards her salary and allowances with effect from the said date with all attendant benefits.

2. According to the writ petitioner, one post of Secondary Grade Teacher in the third respondent school fell vacant on 01.06.2018 due to the superannuation of the then incumbent one P. Kasthuri on 31.05.2018. In that vacant post, the petitioner was appointed on 01.06.2018 as Secondary Grade Teacher in the third respondent School. A proposal was submitted by the third-respondent school seeking approval of the appointment of the petitioner, which was forwarded by the second respondent to the first respondent vide proceedings in Na.Ka.No.254/a1/2018 dated 20.09.2018. The first-respondent vide proceedings in O.MU.No.4375/A2/2018 dated 04.10.2018 in turn directed the the second-respondent to rectify certain defects as pointed out therein and to resubmit the proposal and a copy of the said proceedings was also marked to the third respondent school. Again the second-respondent vide proceedings in Na.Ka.No.254/a1/2018 dated 07.11.2018 recommended to the first-respondent to approve the appointment of the petitioner. While so, the first respondent has passed the impugned order on 16.07.2021 by rejecting the said proposal on the ground that the Division Bench of this Court has passed an interim order in W.A.(MD).No.76 of 2018 dated 09.04.2019 and also the Government order passed in compliance with the said interim order and returned the proposal to the third-respondent school. It was further stated by the first-respondent that the proposal for appointment could be considered only after the final verdict rendered by the Division Bench in the Writ Appeal.

3. According to the learned counsel for the petitioner per se the impugned order is illegal, as the first and second respondents have passed the impugned order without application of mind.

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Further, subsequently the said Writ Appeal was taken up for final disposal and the same was disposed of on 31.03.2021 by issuing several directions to fill up the surplus teachers. According to the petitioner, as the impugned order returning the proposal for approval of the appointment of the petitioner was without any valid reason, the same is liable to be quashed.

4. The learned Additional Advocate General appearing for the first and second-respondents, gone through the impugned order, has fairly submitted that the aforesaid interim order passed by this Court was subsequently decided by the Division Bench of this Court in a batch of Writ Appeals and rendered a common judgment on 31.03.2021 and the aforesaid fact was not taken note of by the official respondents, as rightly submitted by the learned counsel appearing for the petitioner. Hence, the reason as stated in the impugned order for returning the proposal is liable to be set aside.

5. As rightly submitted by the learned counsel for the petitioner the first respondent has passed the impugned order totally on non application of mind. It is further pointed out by the learned counsel for the petitioner that the petitioner was appointed as Secondary Grade Teacher on 01.06.2018, much earlier to the interim order passed by the Hon'ble Division Bench in the Writ Appeal on 09.04.2019. Further, it is argued that the first-respondent has omitted to scrupulously follow the interim order of the Hon'ble Division Bench, which specifically directed that "*There shall not be any fresh appointment from today in private aided schools till surplus teachers in other schools coming under the same management are exhausted*". As such the order of the Hon'ble Division Bench was clear that on and from 09.04.2019, there shall be no fresh appointment, whereas the appointment of the petitioner was made much earlier to this date, namely on 01.06.2018. This crucial aspect the first-respondent has omitted to observe and further the first-respondent has also not taken note of the final verdict rendered by the Division Bench in a batch of Writ Appeals. On the other hand, he simply returned the proposal without any valid reason. Therefore, this court has no hesitation to set aside the reasons stated in the said order.

6. In view of the above, it is directed that the third respondent shall resubmit the said proposal to the first respondent through the second respondent within a period of three weeks from the date of receipt of a copy of this order. On such proposal being re-submitted by the third respondent, the first respondent shall consider and pass orders in accordance with law after giving opportunity to the third-respondent school to place relevant materials before the first respondent. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.



7. In fine, the impugned order is quashed and the Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mnr

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,
Tirunelveli District.

2.The Block Educational Officer,
Palayamkottai Urban,
Tirunelveli District.

+1 CC to M/s.A.AMALA, Advocate (SR-29906[F] dated 22/09/2021)

+1 CC to M/s.SPL.GP (SR-30053[F] dated 23/09/2021)

W.P. (MD) No. 15694 of 2021
and

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RD/JC (12/11/2021) 4P 5C