



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.16405 of 2020

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K.Pattu

... Petitioner

vs.

1.The Chief Educational Officer,
Tirunelveli District.

2.The District Educational Officer,
Tirunelveli District.

3.The Correspondent,
The Muslim Girls' Higher Secondary School,
Melapalayam,
Tirunelveli District.

... Respondents

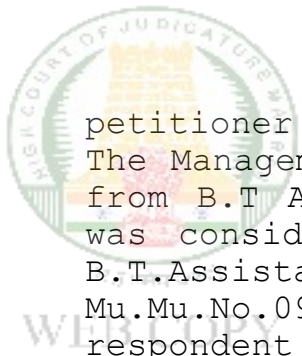
Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent in proceedings in O.Mu.No.3117/A4/2020, dated 09.09.2020 and the consequential order passed by the second respondent in his proceedings in O.Mu.No.548/A1/2020, dated 23.09.2020 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as B.T Assistant with effect from 01.04.2017 with salary and all consequential benefits.

For Petitioner : Mr.V.Panneer Selvam
For RR 1 & 2 : Mr.K.S.Selva Ganesan
Government Advocate

ORDER

The petitioner has filed the present Writ Petition, to quash the order passed by the first respondent, dated 09.09.2020 and the consequential order passed by the second respondent, dated 23.09.2020 and to direct the respondents to approve the appointment of the petitioner as B.T Assistant with effect from 01.04.2017 with salary and all consequential benefits.

2.According to the petitioner, the third respondent School is a minority institution and in the third respondent School, one Barakath Umma, who was working as Headmistress, attained the age of superannuation on 31.03.2017 and therefore, the said post became vacant on 01.04.2017. One M.A.Kadhar Ammal Beevi, B.T Assistant (Science), who was working in the same School, was given promotion as a Headmistress on 01.04.2017. Therefore, one post of B.T Assistant became vacant. In the above said sanctioned vacancy, the



petitioner was appointed as B.T Assistant (English) on 01.04.2017. The Management sent a proposal for approval with conversion of post from B.T Assistant (Science) to B.T Assistant (English). The same was considered and approval was granted for post conversion from B.T.Assistant (Science) to B.T.Assistant (English) by proceedings in Mu.Mu.No.0947L29/D2/E3/2017, in the month of April, 2019. The third respondent sent a proposal to the first respondent through second respondent enclosing the post conversion order. The first respondent returned the proposal on 08.11.2019 to clarify whether the proposal can be considered for approval as per the orders made in W.A(MD)No.76 of 2019 and G.O.Ms.No.165, School Education Department, dated 17.09.2019. Clarifying the same that the orders are not applicable to the petitioner's case since the appointment was made much prior to the date of the order of this Court as well as the Government Order, the third respondent School resubmitted the proposal on 28.01.2020. The same was forwarded by the second respondent clarifying the position and recommended the same to the first respondent for approval on 09.07.2020 stating that the third respondent School is a single minority School, the appointment was made in 2016-17 Academic year, from 2016-17 to till date, there is no surplus regarding B.T Assistant (English) and the appointment was made prior to the issuance of G.O.Ms.No.165, School Education Department, dated 17.09.2019. But, without considering the proposal, the first respondent rejected the same by impugned order, dated 09.09.2020 and consequently, the second respondent passed an order of rejection, dated 23.09.2020. Challenging the same, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that the petitioner was appointed in the vacancy, which arose due to the promotion in the sanctioned post. He further submitted that at the time of passing the impugned order, the first respondent referred to G.O.(Ms)No.165, School Education (Tho.Ka.2(1)) Department, dated 17.09.2019 and letter of the Government dated 04.12.2019. The said Government Order was issued by implementing the direction issued by this Court, vide order dated 09.04.2019, in W.A (MD)No.76 of 2019 etc., batch. 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. Hence, referring to the said Government Order and the letter issued by the Government rejecting the proposal of the third respondent is nothing but abuse of process of law. Therefore, the impugned orders are liable to be set aside and prayed for allowing the Writ Petition.

4.The learned Government Advocate appearing for the respondents 1 and 2 submitted that if the third respondent school resubmits 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 1 and 2, and perused the materials available on record.

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6. From the materials available on record and submissions made by the learned counsel appearing for the parties, it is seen that the third respondent School, which is a Minority Private Aided School, appointed the petitioner as B.T Assistant (English) in the vacancy that arose due to the promotion of the incumbent as Headmistress and submitted the proposal to the second respondent for approval. The respondents 1 and 2 passed the impugned orders dated 09.09.2020 and 23.09.2020 rejecting the request of the third respondent School for approval of appointment of the petitioner relying on G.O.Ms.No.165, School Education Department, dated 17.09.2019, issued in complying the interim order passed by this Court in W.A(MD)No.76 of 2019 etc., batch, dated 09.07.2019. Subsequent to the interim order, dated 09.04.2019 in W.A(MD)No.76 of 2019 etc., batch referred in the impugned orders by the respondents 1 and 2 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 took 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) declaring 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."

7. 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 respondents 1 and 2 in the impugned orders, dated 09.09.2020 and 23.09.2020, is erroneous. Hence, the impugned orders passed by the respondents 1 and 2, dated 09.09.2020 and 23.09.2020, are liable to be set aside and are hereby set aside. The respondents 1 and 2 are directed to consider the proposal submitted by the third respondent school for approval of appointment of the petitioner as B.T Assistant (English) and pass orders, on merits and in accordance with law, taking into consideration the judgment of the Division Bench of this Court dated 31.03.2021 in W.A.(MD) No.76 of 2019 etc., batch, 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.

8. With the above directions, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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 District.

2. The District Educational Officer,
Tirunelveli District.

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-23081[F] dated 19/07/2021)

+1 CC to M/s.GP (SR-23506[F] dated 22/07/2021)

W.P(MD)No.16405 of 2020
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RD(2.09.2021) 4P 5C