



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.16573 of 2020

and

W.M.P(MD)No.13852 of 2020

WEB COPY

K.Alwyn Gnana Soundar

... Petitioner

vs.

1.The District Educational Officer,
Tirunelveli District.

2.The Block Educational Officer,
Melaneethithanallur,
Tirunelveli District.

3.The Correspondent,
TDTA Middle School,
Thervakulam,
Tirunelveli District.

... Respondents

Prayer: Writ Petition 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 second respondent in proceedings in O.Mu.No.497/A2/2020, dated 23.10.2020 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as B.T Assistant with effect from 06.04.2017 with salary and all consequential benefits.

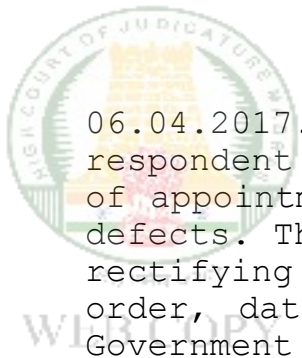
For Petitioner : Mr.V.Panneer Selvam

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 second respondent, dated 23.10.2020 and to direct the respondents to approve the appointment of the petitioner as B.T Assistant with effect from 06.04.2017 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 Kaladevi, who was working as Secondary Grade Teacher, attained the age of superannuation on 31.05.2016 and therefore, the post of Kaladevi became vacant w.e.f 01.06.2016. In the abovesaid sanctioned vacancy, the petitioner was appointed as B.T Assistant (Maths) on



06.04.2017. The third respondent sent a proposal to the first respondent through the second respondent on 19.09.2017 for approval of appointment of the petitioner. The same was returned for certain defects. Thereafter, the third respondent resubmitted the same after rectifying the defects. The second respondent passed the impugned order, dated 23.10.2020, rejecting the proposal by relying on the Government Letter dated 04.12.2019 stating that there are surplus Teachers available for deployment and till such deployment is completed, there cannot be any recruitment/appointment to the said post in Government run/aided Schools. 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 as B.T Assistant (Maths) on 06.04.2017 in the permanent sanctioned retirement vacancy. The impugned order is against the Right of Children to Free and Compulsory Education Act, 2009. Totally, banning the new appointments in the Schools is nothing but preventing the students from getting education. Therefore, the impugned order is totally non-application of mind. He further submitted that the proposal was rejected by the second respondent by referring to G.O.(Ms)No.165, School Education (Tho.Ka.2(1)) Department, dated 17.09.2019 and the 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 Order 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 order is 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.

6.From the materials available on record and the 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 (Maths) in the vacancy that arose due to the superannuation of one Kaladevi and submitted the proposal to the second respondent for approval. The



second respondent passed the impugned order dated 23.10.2020, 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. 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 second 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 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 second respondent in the impugned order, dated 23.10.2020, is erroneous. Hence, the impugned order passed by the second respondent, dated 23.10.2020, is liable to be set aside and is hereby set aside. The respondents 1 and 2 are directed to consider the proposal submitted by the third respondent for approval of appointment of the petitioner as B.T Assistant (Maths) and pass orders on merits and in accordance with law, taking into consideration the judgment of the Division Bench of this Court 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. Consequently, connected Miscellaneous Petition is closed.

Sd/-

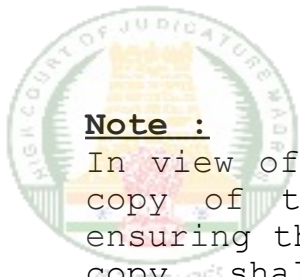
Assistant Registrar (CS-I)

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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.

WEB COPY

To

1.The District Educational Officer,
Tirunelveli District.

2.The Block Educational Officer,
Melaneethithanallur,
Tirunelveli District.

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-23082[F] dated
19/07/2021)

W.P (MD) No.16573 of 2020

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RD(2.09.2021) 4P 4C