



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22 .12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A(MD)Nos.1910 and 1911 of 2021

and

C.M.P(MD)Nos.8420 and 8421 of 2021

WEB COPY

W.A(MD)No.1910 of 2021:

1.The Chief Educational Officer,
Virudhunagar District.

2.The District Educational Officer,
Virudhunagar District.

... Appellant / Respondents 1 and 2
Vs.

1.P.Heubert Immanuel ... 1st Respondent/1st Writ Petitioner

2.The Secretary,
S.H.N.Edwardd Higher Secondary School,
Sattur,
Virudhunagar District. ... 2nd respondent/3rd respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 14.07.2021 in W.P(MD)No.11759 of 2021.

Prayer in WP(MD). 11759/ 2021 :

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 pertaining to the order passed by the 1st respondent in his proceedings in Oo.Mu.no.2042/A4/2020 dt 3.11.2020 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as B.T.Assistant (English) from the date of appointment i.e from 3.1.2019 with salary and all consequential benefits.

For Appellants : Mr.P.Subbaraj,
Special Government Pleader
For R-1 : Mr.V.Panneerselvam

W.A(MD)No.1911 of 2021:

1.The Chief Educational Officer,
Virudhunagar District.



2.The District Educational Officer,
Virudhunagar District.

... Appellant / Respondents 1 and 2

Vs.

1.N.Yoburaja

... 1st Respondent/1st Writ Petitioner

2.The Secretary,
S.H.N.Edwardd Higher Secondary School,
Sattur,
Virudhunagar District.

... 2nd respondent/3rd respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 14.07.2021 in W.P(MD)No.11760 of 2021 on the file of this Court.

Prayer in WP(MD) . 11760/ 2021 :

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 pertaining to the order passed by the 1st respondent in his proceedings in Oo.Mu.no.2043/A4/2020 dt 3.11.2020 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as B.T.Assistant (English) from the date of appointment i.e from 3.1.2019 with salary and all consequential benefits.

For Appellants : Mr.P.Subbaraj,
Special Government Pleader
For R-1 : Mr.V.Panneerselvam

COMMON JUDGMENT

PUSHPA SATHYANARAYANA, J.

The Writ Appeals are preferred by the Government against the order passed in W.P(MD)Nos.11759 and 11760 of 2011.

2. The writ petitions were filed by the Teachers assailing the order passed by the first appellant dated 03.11.2020 and to direct the appellants to approve the appointment of the writ petitioners as B.T. Assistants(English) from the date of appointment viz., 03.01.2019. The writ petitioners who are the first respondent in the writ appeals have passed B.A., (English) and B.Ed., (English) and qualified for the post of B.T. Assistant(English). The second respondent in the writ appeals is a Government non-minority aided school. The



said school called for applications to fill up the post of B.T. Assistant(English). In response, the writ petitioners had applied and they were selected and appointed as B.T. Assistants by order dated 03.01.2019. Both the writ petitioners were appointed in the permanent sanctioned vacancy that arose due to the retirement of a Secondary Grade Teacher on 31.05.2018 and promotion of a Secondary Grade Teacher on 02.07.2018 respectively. Rule 15(4) of the Tamil Nadu Recognized Private Schools(Regulation) Rules, mandates the management of the school to get prior permission from the appellants to fill up the post. Therefore, the school management had sent the proposal to the first appellant to fill up the post of B.T. Assistant(English). The second respondent school while appointing the Teachers in the sanctioned vacancy has to follow certain conditions viz., (i) communal roster system should be followed as per the procedure laid down in G.O.Ms.No.241 dated 20.10.2007; (ii) Appointment should be made as per the terms contemplated under the Right to Compulsory Education Act, 2009; and (iii) the Teacher should have passed the Teacher's Eligibility Test (TET) (hereinafter referred to as TET). As the posts mentioned above are coming under 'BC' category, the appellants granted prior permission to fill up the post of B.T. Assistant by upgrading the Secondary Grade Teacher Post as B.T. Assistant. It is also not in dispute that at the time of granting permission, the appellants had verified all the documents and granted approval. In spite of the same, order of approval was not passed. Therefore, the writ petitioners filed W.P(MD)Nos.5440 and 5464 of 2020 seeking a Mandamus to approve the appointment. While the said writ petitions were pending, the impugned order of rejection of the proposal was passed on the ground of surplus Teachers working in some other schools by referring to G.O.Ms.No.165 School Education Department dated 17.09.2009. The impugned order also referred to the interim order granted by this Court in W.A(MD)No.76 of 2019 batch. Aggrieved by the order of rejection of the approval, the writ petitions were filed which were allowed by the writ Court. The above writ appeals are directed against the said order.

3. The learned Special Government Pleader appearing for the appellants submitted that the second respondent school is a minority Educational Institution whereas it is a non minority aided school. The impugned order itself was passed only based on G.O.Ms.No.165 School Education Department dated 17.09.2019 and the interim order passed in the W.A(MD)No.76 of 2019 etc., batch. Before the Writ Court could pass the final order, the writ appeal batch was heard in which the above referred G.O.Ms.No.165 School Education Department dated 17.09.2019, was said to be inoperative.

4. In view of the above, the Writ Court allowed the writ petitions. In fact, before the Writ Court, the learned Government



Advocate had submitted that if the school submits the proposal, the respondents 1 and 2, will pass orders following the directions issued by the Division Bench of this Court in W.A(MD)No.76 of 2019 etc., dated 31.03.2021. Based on the said submission, the first appellant was directed to approve the appointment of the writ petitioners as B.T. Assistants and pass orders within a period of two weeks. It is also not stated by the Government whether there were any surplus Teacher and they were deployed. In the absence of any surplus Teacher available, in the interest of the second respondent school as well as the students, the Teachers already appointed should be allowed to continue. Therefore, we see no reason to interfere with the order passed by the learned Single Judge.

5. In view of the above, the writ appeals are dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

6. The appellants are directed to approve the appointment of the writ petitioners within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Pm

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.

Copy to:

1.The Chief Educational Officer,
Virudhunagar District.

2.The District Educational Officer,
Virudhunagar District.

+2cc to Mr.V.Panneer Selvam, Advocate Sr.No.40360 Dt:23.12.2021

+1cc to SPL. GP, Sr.No.40255 Dt : 23.12.2021

W.A(MD)Nos.1910 and 1911 of 2021
22.12.2021