



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.22413 of 2019

and

W.M.P (MD)No.19201 of 2019

Central Higher Secondary School,
Kayalpatnam-628 204,
Tuticorin District,
Rep. by its Correspondent.

... Petitioner

Vs.

1.The Chief Educational Officer,
Tuticorin District,
Tuticorin-628 002.

2.The District Educational Officer,
Tiruchendur-628 215,
Tuticorin District.

3.R.Pavithra Devi

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding passed by the second respondent in his proceedings O.Mu.No.4311/A4/2019 dated 04.10.2019 and quash the same as illegal and consequently direct the first respondent to approve the appointment of the third respondent as B.T.Assistant (English) in the petitioner school with effect from 01.07.2019 in pursuance of the petitioner proposal dated 09.09.2019 along with salary grant within the period that may be stipulated by this Court.

For Petitioner : Mr.M.E.Ilango

For R1 & R2 : Mr.P.Subbaraj

Government Advocate

ORDER

This writ petition is filed to quash the impugned proceeding passed by the second respondent, in his proceedings O.Mu.No.4311/A4/2019 dated 04.10.2019 and to direct the first respondent to approve the appointment of the third respondent as B.T.Assistant (English) in the petitioner school with effect from 01.07.2019 in pursuance of the petitioner proposal, dated 09.09.2019



along with salary grant within the period that may be stipulated by this Court.

2. The petitioner's School is a private aided minority institution. The petitioner's school appointed the third respondent as B.T.Assistant (English) on 01.07.2019 in a vacancy caused due to the voluntary retirement of an incumbent Secondary Grade Teacher Mr.Alicia Rodrigo on 01.07.2019. The third respondent is fully qualified to be appointed in the said post. The petitioner's school has also sent a proposal dated 09.09.2019 to the first respondent for approval of appointment of the third respondent. The second respondent, by his proceedings dated 04.10.2019, had returned the proposal for approval of appointment stating that Mrs.Alicia Rodrigo, working as Secondary Grade Teacher went on Voluntary Retirement and as such, no order upgrading the post of Secondary Grade Teacher to B.T.Assistant and allocating the subject was attached. The TET certificate of Mrs.Pavithra Devi should be enclosed and in view of the order passed by this Court in W.A.(MD)No.76/2019, dated 09.04.2019, the Government has passed G.O.(Ms)No.165, School Education (Thoka.2(1) Department, dated 17.03.2019, and in view of the same, no surplus post certificate issued by the Correspondent, need to be enclosed. The petitioner has come out with the present writ petition challenging the said order.

3. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 & 2 and perused the materials available on record.

4. From the impugned order, it is seen that the request of the petitioner School for approval of appointment of the third respondent as B.T.Assistant (English) was rejected on the ground that the petitioner School appointed the third respondent as B.T.Assistant (English) in the place of one Alicia Rodrigo, who was working as Secondary Grade Teacher and went on voluntary retirement and no order upgrading the post of Secondary Grade Teacher to B.T.Assistant was attached and T.E.T., Certificate of the third respondent should be enclosed and in view of G.O(Ms) No.165, School Education Department, dated 17.03.2019, which was passed pursuant to the order of this Court, dated 09.04.2019, made in W.A(MD)Nos.76 of 2019 etc. batch, no surplus teacher post certificate issued by the correspondent to be enclosed. The said reasonings are erroneous on the following grounds:-

(I) As per the judgment of this Court, dated 14.11.2017, made in W.A.(MD)No.1350 of 2017 [The Secretary to Govt., Department of School Education and others vs. J.Remila and another], no prior approval for upgradation and allotment of subject is required for minority institution.

(ii) Insofar as denying approval to the appointment for want of pass in Teachers Eligibility Test (TET) is concerned, it is well



teachers in a minority educational institution, the teachers can be appointed even without passing the Teachers Eligibility Test.

(iii) 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 taken 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) declared 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."

5. In view of the above, the reason given by the second respondent for rejecting the proposal for approval of appointment of the third respondent is erroneous. Hence, the impugned order passed by the second respondent, dated 04.10.2019, is set aside. The petitioner is directed to resubmit the proposal to the second respondent. On receiving such proposal, the second respondent is directed to consider the same and grant approval as per law prevailing at present.

6. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Chief Educational Officer,
Tuticorin District,
Tuticorin-628 002.

2.The District Educational Officer,
Tiruchendur-628 215,
Tuticorin District.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-20239[F] dated 25/06/2021)

W.P. (MD)No.22413 of 2019

23.06.2021

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