



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.22516 of 2019

and

W.M.P. (MD)No.19298 of 2019

WEB COPY

Mathiaselvi

... Petitioner

vs.

1.The Secretary to the Government,
Department of School Education,
St. George Fort,
Chennai.

2.The Director of School Education,
DPI Compound,
College Road,
Chennai.

3.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

4.The District Educational Officer,
Tenkasi, Tirunelveli District.

5.The Secretary,
Rukmani High School,
Mangalapuram,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in respect of order passed by the 4th respondent in O.Mu.No.2216/23/2019, dated 30.09.2019 and quash the same and consequently, direct the fourth respondent to approve the appointment of the petitioner and disburse all the service and monetary benefits from the date of the appointment (i.e., 01.04.2019).

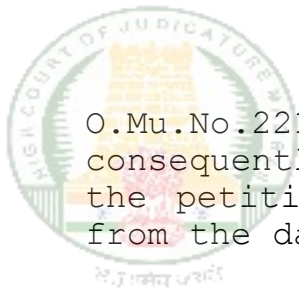
For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.K.S.Selvaganesan,
Government Advocate for R1 to R4.

ORDER

This Writ Petition is filed seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fourth respondent in

<https://hcmjceus.gov.in/hcmjceus>



O.Mu.No.2216/m3/2019, dated 30.09.2019 and quash the same and consequently direct the respondents to approve the appointment of the petitioner and disburse all the service and monetary benefits from the date of the appointment i.e., 01.04.2019.

2. The fifth respondent school is a non-minority school and functioning from the year 1931. Earlier it was founded by an individual as Primary School for classes 1 to 5. After that the school was upgraded in the year of 1952 as Middle School with 12 teaching staff. Since the registration of educational agency became mandatory, the fifth respondent school registered under the Tamil Nadu Societies Registration Act. Now, the said society is acting as educational agency of the fifth respondent school. Once in every three years, the educational agency would appoint the correspondent/secretary of the school to discharge the day-to-day affairs of the school. The fifth respondent school receives grant in aid from the Government. In the fifth respondent school, one Saral worked as a Tamil Pandit was promoted as Headmaster on 01.04.2019. Due to the same, the fifth respondent school intended to fill the said vacancy with suitable candidate. The petitioner applied for the said post and the fifth respondent school appointed the petitioner as Tamil Pandit on 01.04.2019. The fifth respondent school sent a proposal to the fourth respondent for approval of the petitioner's appointment on 01.04.2019. However, the fourth respondent without giving any opportunity, rejected the proposal, by the impugned order dated 30.09.2019, stating that in W.A.(MD)Nos.76 of 2019 etc., batch, this Court by order dated 09.04.2019, directed the respondents "unless surplus posts are deployed in needy school, do not approve the appointment made in the corporate management till then" and the same is pending for adjudication. Hence, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that only one post of Tamil Pandit was sanctioned to the fifth respondent School, hence, no question of surplus teacher arises. He further submitted that the reason given in the impugned order for rejecting the proposal for approval of appointment by referring G.O (Ms)No.165, School Education Department, dated 17.09.2019 and the order of the Division Bench of this Court, dated 09.04.2019, made in W.A(MD)No.76 of 2019 etc., batch, is unsustainable, in view of the subsequent judgment of the Division Bench of this Court in W.A.(MD) No.76 of 2019, dated 31.03.2021. In the said order, this Court has held that G.O.Ms.No.165, School Education Department, dated 17.09.2019, issued in compliance of the interim order dated 09.04.2019, referred in the impugned order, as inoperative and therefore, prayed for setting aside the impugned order.

4. The fourth respondent filed counter affidavit. Mr.K.S.Selvaganesan, learned Government Advocate, appearing for respondents 1 to 4 submitted that the fourth respondent has rejected the proposal of the fifth respondent school in view of the fact that



the Government has directed not to approve any fresh appointment of teachers until the surplus teachers working in other schools under single/corporate body are deployed. In view of the same, the impugned order of rejection is valid and prayed for dismissal of this Writ Petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4 and perused the materials available on record carefully.

6. A reading of the impugned order shows that the fourth respondent has returned the proposal of the fifth respondent school referring to the Government Order in G.O(Ms)No.165, School Education Department, dated 17.09.2019 and the order of the Division Bench of this Court dated 09.04.2019, made in W.A.(MD)No.76 of 2019, etc., batch. In compliance of the above said order, the Government issued G.O.(Ms)No.165, School Education Department, dated 17.09.2019, with regard to re-deployment of surplus teachers. A Division Bench of this Court, vide interim order dated 20.09.2019, in W.A.(MD)Nos.76 of 2019, etc., batch, suspended the operation of the said Government Order until further orders. Subsequently, another Division Bench of this Court, vide Judgment dated 31.03.2021 made the said Government Order as inoperative, in the very same writ appeals. The fourth respondent, without considering the above legal position and subsequent order of this Court, dated 20.09.2019 and the judgment dated 31.03.2021, made in the very same writ appeals, erroneously returned the proposal for approval of appointment of the petitioner.

7. For the above reasons, the impugned order is liable to be set aside and accordingly, the impugned order passed by the fourth respondent, dated 30.09.2019, is hereby set aside. The respondents 1 to 4 are directed to approve the appointment of the petitioner, if the petitioner is otherwise eligible and pass orders, in the light of the guidelines issued by the Division Bench of this Court in W.A.(MD)No.76 of 2019, dated 31.03.2021 within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. This Writ Petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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 Secretary to the Government,
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- 4.The District Educational Officer,
Tenkasi, Tirunelveli District.

+1 CC to M/s.S.CHELLAPANDIAN, Advocate (SR-23795[F] dated
23/07/2021)

**W.P (MD) No.22516 of 2019
and**

**W.M.P. (MD) No.19298 of 2019
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MGJ(02.08.2021) 4P 6C