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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.A.No.1177 of 2022 and
C.M.P.No.7435 of 2022

1. The Chief Educational Officer,
Erode District,
Erode.
 2. The District Educational Officer,
Erode Educational District,
Erode.
- ... Appellants

-vs-

E.K.M.Abdul Gani Matharasa Islamia High School,
No.26, Cauvery Road,
Erode-638 001,
Rep. by its Correspondent,
G.Muhammad Thaj Muhyideen,
S/o. E.K.M.Abdul Gani

.... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 10.02.2020 made in W.P.No.2991 of 2020 and allow the Writ Appeal.

Prayer in W.P.No.2991 of 2020 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondents to grant approval of appointment of B.T.Assistant Teachers Viz., Tmt.M.Mohideen Fathuma and Tmt.A.Sakila Banu in the post of B.T.Assistant (Tamil) and B.T.Assistant (social science) respectively appointed in the sanctioned posts in petitioner school on 01.06.2019, based on the proposal submitted by the petitioner school dated 28.08.2019, with all consequential and other attendant benefits including payment of salary from the date of appointment, within a time frame fixed by this Court.



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For Appellants : Ms.Mythriye Chandru
Special Government Pleader

For Respondent : Mr.G.Sankaran

J U D G M E N T

S.VAIDYANATHAN, J.,
and
N.MALA, J.,

The Present Appeal is directed against the order of the learned Single Judge dated 10.02.2020 made in W.P.No.6400 of 2022.

2.The Respondent / Writ Petitioner School has approached this Court by way of Writ Petition in W.P.No.2991 of 2020, seeking grant of approval of appointment of B.T.Assistant Teachers viz., Tmt.M.Mohideen Fathuma and Tmt.A.Sakila Banu in the post of B.T.Assistant (Tamil) and B.T.Assistant (Social Science) respectively appointed in the sanctioned posts in the Petitioner School on 01.06.2019, based on the proposal submitted by the Petitioner School dated 28.08.2019, with all consequential and other attendant benefits including payment of salary from the date of appointment, within a time frame fixed by this Court.

3. The learned Single Judge vide order dated 10.02.2020, by referring to the earlier order of this Court in W.P.No.368 of 2020 dated 08.01.2020, has observed as follows.

" 4. The issue that has been raised in this writ petition has already been dealt with by this Court in WP No.368 of 2020 dated 08.01.2020. The relevant portions of the order is extracted hereunder :-

6. It is an admitted case that the vacancies arose in the year 2014 and 2017 and the petitioner School has proceeded to fill up the vacancy of Secondary Grade Teacher and had sent proposal seeking for approval of the appointment and it was kept pending by the 2nd respondent. The 2nd respondent ought to have independently considered the approval sought for by the petitioner since, the post in question is a sanctioned post and it is a sanctioned vacancy. The 2nd respondent ought not to have relied upon the order passed by the Division Bench of this Court in the year 2019 and should not have given a retrospective effect



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for a sanctioned vacancy which arose in the year 2014 and 2017 respectively. That apart, the 2nd respondent failed to take note of the fact that the operation of G.O.Ms.No.165, dated 17.09.2019 has already been suspended by this Court and the very validity of the said Government order is now under consideration in the writ appeal which is pending before the Madurai Bench of this Court.

7. In the considered view of this Court, the 2nd respondent ought to have independently considered the approval for appointment sought for by the petitioner School. The 2nd respondent cannot rely upon the subsequent order passed by this Court in the year 2019 and deny the approval.

8. In view of the above discussion, this Court has no hesitation to interfere with the impugned proceedings of the 2nd respondent dated 21.11.2019 and accordingly, the same is hereby quashed. The petitioner is directed to resubmit the proposal to the 2nd respondent seeking for approval for the appointment of two Secondary Grade Teachers made in the year 2014 and 2017 respectively and the 2nd respondent, on receipt of the proposal, is directed to process the file and grant approval, if the appointment has fulfilled all the other requirements. This process shall be completed within a period of four weeks from the date of receipt of copy of this order.

5. It is clear from the above order that the approval of appointment has to be considered independently and it should not be stalled based on G.O.Ms.No.165 dated 17.09.2019, since the operation of Government Order has already been suspended by this Court. Therefore, the respondents are bound to consider the proposal independently and if the appointment is in accordance with law, the approval has to be granted to the appointments made by the petitioner school."

4. Aggrieved by the said order, the Appellants have approached this Court by way of filing the present Writ Appeal.



5. Ms.S.Mythreyee Chandru, learned Special Government Pleader appearing for the Appellants/Respondents in the Writ Petition submitted that on receipt of the order copy passed in aforesaid Writ Petition, the 1st Respondent herein passed an order on 20.03.2020, rejecting the request of the Writ Petitioner School seeking approval of appointment to the aforesaid persons. She has further submitted that in an identical issue, a Special Leave Petition in S.L.P.(C) No.15702 of 2021 has been filed before the Hon'ble Apex Court and interim stay has been granted and in view of the same, no further proceeding could be taken place, as their hands are tied. She further contended that the Writ Petitioners have not cleared Teachers Eligibility Test (TET).

6. Mr.G.Sankaran, learned counsel, who accepts notice for the Respondent/Writ Petitioner contended that even though identical matter is pending before the Hon'ble Apex Court, the direction contained in (i) alone is stayed and no there is no stay of operation of entire Judgment and that apart the Hon'ble Apex Court has not passed orders stating that High Court shall not proceed with similar cases that are pending in the High Court, on account of the pendency of the aforesaid SLP. He further submitted that the contention that the Writ Petitioners have not cleared TET has not been addressed before the learned single Judge in the Writ Petition.

7. Heard both sides. Perused the records.

8. Learned Additional Government Pleader appearing for the Appellants, for the first time has stated before this Court that the Writ Petitioners have not cleared the TET exams and no such plea has been raised before the learned Single Judge, as could be seen from the order dated 10.02.2020. In the absence of any such plea made before the learned Single Judge, it is impermissible to raise additional plea in the Writ Appeal. As the G.O.No.165 dated 17.09.2019 may not be applicable to the facts of the case, the learned Single Judge was right in directing the Appellants to consider the case of the Writ Petitioner School independently and if the appointment is in accordance with law, the approval has to be granted in respect of the appointments made by the Writ Petitioner's school.

9. In view of the same, we do not find any infirmity in the order passed by the learned Single Judge and the same does not call for any interference by this Court. As the time granted by the learned Single Judge has already expired, in order to avoid multiplicity of litigation, this Court directs the Appellants to take a decision on the proposal submitted by the School, within a period of one month from the date of receipt of a copy of this



order, as per the directions issued by the learned Single Judge. This Court makes it very clear that if any decision is taken in favour of the Writ Petitioner, it will be subject to the outcome of the pending S.L.P. In case of any adverse order is passed in the pending SLP and if the same is applicable to the case of the Writ Petitioner, the amount payable, pursuant to the proposal that may be decided in favour of the Writ petitioner can, not only be, withdrawn, but also to be repaid by the School to the Government or it can be adjusted from the terminal benefits of the Teachers, whose appointments are sought to be approved. This order shall be informed to the respective Teachers, who are concerned in the Writ Petition. An undertaking should be obtained from the individual teachers for repayment of the amount or to adjust from their terminal benefits in case of adverse orders in SLP or the school has to repay the amount and recover it from the individual concerned.

10. In the result, this Writ Appeal is dismissed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Educational Officer,
Erode District,
Erode.
2. The District Educational Officer,
Erode Educational District,
Erode.

+lcc to the Government Pleader sr.30463

W.A.No. 1177 of 2022

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srg 29/04/2022