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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No. 4594 of 2020

and

W.M.P.Nos. 5450 and 5451 of 2020

S. Mani

...Petitioner

Vs.

1. The Director of Elementary Education,
College Road, Chennai - 600 006.

2. The District Educational Officer,
Vriddhachalam, Cuddalore District.

3. The Block Educational Officer,
Nallur, Cuddalore District.

4. The Correspondent,
D.M. Elementary School,
Kattumailur - 606 304,
Cuddalore District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorarified mandamus, calling for the records relating to the order of the second respondent made in his proceedings in Na.Ka.No. 8341/Aa2/2019, dated 06.12.2019 and quash the same and direct the respondents 1 to 3 to approve the appointment of the petitioner in the fourth respondent school from the date of his appointment and consequently direct the respondents to pay the salary to the petitioner with arrears of salary.

For Petitioner : Mr. A.S. Kaizer

For Respondents : Mr. V. Manoharan,
Additional Government Pleader
for R1 to R3

ORDER

The writ petition is filed for the issuance of a writ of certiorarified mandamus, calling for the records relating to the order of the second respondent made in his proceedings in Na.Ka.No. 8341/Aa2/2019, dated 06.12.2019 and quash the same and direct the respondents 1 to 3 to approve the appointment of the petitioner in the fourth respondent school from the date of his appointment and consequently direct the



respondents to pay the salary to the petitioner with arrears of salary.

2. According to the writ petitioner, he was appointed as Secondary Grade Assistant Teacher in the fourth respondent school on 16.11.2016. The fourth respondent school had sent a proposal to the second respondent for approval of appointment of the petitioner as a secondary Grade Assistant Teacher. The second respondent has returned the said proposal on 28.03.2018. Thereafter, the fourth respondent school sent the proposal again for the approval of the appointment of the petitioner to the third respondent. The third respondent also recommended for the appointment of the petitioner on 20.04.2018. The second respondent on 27.03.2019, once again returned the proposal seeking for additional information/documents from the fourth respondent school. In response to the aforesaid queries raised by the second respondent, the fourth respondent has sent its reply with additional information/documents in compliance to the queries made by the second respondent. Pursuant to the directions passed by this court in W.P.No. 22735 of 2019 dated 19.09.2019, the second respondent passed the impugned order rejecting the proposal for the approval of the appointment of the petitioner.

3. According to the petitioner, the second respondent rejected the proposal of the fourth respondent for approval of appointment of the petitioner as a secondary Grade Assistant teacher by relying upon the decision of the Division Bench of this Court at Madurai in W.A.(MD) No.76 of 2019 etc. cases (Batch), dated 9.4.2019 and the Government Order in G.O.Ms. No. 165, School Education Department, dated 17.09.2019.

4. The learned counsel appearing for the petitioner would submit that the Government has passed G.O.Ms.No.165 dated 17.9.2019 based on the interim order passed by the Division Bench of this Court at Madurai in W.A.(MD) No.76 of 2019 etc. cases (Batch), dated 9.4.2019 and thereafter, in the said batch of cases in W.A.(MD) No.76 of 2019, the Division Bench of this Court by judgment, dated 31.3.2021 issued comprehensive directions to the respondent department and also this Court observed that till the rules are framed, directions issued by the Division Bench of this Court in the aforesaid order shall be strictly followed by both the State Government and the Educational Institutions. The learned counsel appearing for the petitioner would further submit that G.O.Ms.No.165 has been passed by the Government on 17.9.2019 and subsequently, the subject matter of the G.O.Ms.No.165 challenged in the Writ Appeals in W.A.(MD) No.76 of 2019, etc. Batch cases and judgment also passed in the aforesaid Batch cases. However, the instant writ petitioner is not covered under the G.O.Ms.No.165 dated 17.9.2019 or the final order passed by the Division Bench of this Court in the aforesaid Batch cases for the reason that in the instant writ



petition, petitioner was appointed prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. The learned counsel appearing for the petitioner also drew the attention of this Court to the Clause (t) of paragraph 95 of the aforesaid judgment wherein the Division Bench of this Court has held as under:

(t) This exercise shall be completed on or before 31st July, 2021, so that the identification of excess staff and follow up action as indicated in the compendium of schedule hereinabove can be undertaken and be followed strictly''.

5. The learned counsel appearing for the petitioner would submit that the G.O.Ms.No.165 dated 17.9.2019 as well as the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019 are prospective in nature. In the present case, the appointment was made prior to the Government order passed in G.O.Ms.No.165 issued by School Education Department, dated 17.9.2019. Therefore, there is no legal impediment for approving the appointment made by the School Management to the aforesaid post in the light of the existing Rules thereunder.

6. The learned Additional Advocate General submitted that as against the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021. It is further submitted that the Hon'ble Supreme Court stayed the judgment only in respect of Clause (i) of paragraph 95 of the said judgment. Further, it is also brought to the notice of this Court that the Division Bench in paragraph 6 of the said judgment, has observed that, ''no fresh appointment even in the sanctioned vacancy shall be made by any school which are managed by the Corporate Management.

7. The learned counsel appearing for the petitioner would submit that in the instant case, no appointment was made by the School Management pursuant to the judgment passed by the Division Bench of this Court. All the appointments were made prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and the proposals were also sent to the educational authorities prior to the said G.O.Ms.No.165 dated 17.9.2019. Thus, G.O.Ms.No.165 dated 17.9.2019 and the Division Bench judgment will not bind over the appointment made by the School Management in the instant writ petition. Therefore, the learned counsel appearing for the petitioner seeks to quash the impugned order and consequently, direct the educational authority to accord approval to the appointment to the post of Secondary Grade Teacher, made by the School Management in the instant writ petition.



8. This court has considered a similar issue in W.P.No.3194 of 2020 and etc. cases (Batch), dated 18.4.2022, following the aforesaid, and after hearing the parties concerned, this court is inclined to pass order as follows:

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The impugned orders passed by the respondent department in the aforesaid writ petition is quashed and the matter is remitted back to the authority concerned to consider afresh, subject to the verification by the respondents and pass an order of approval of the appointment made by the School management, provided the said proposals satisfies all the norms prescribed for such appointments and as per the Rules, as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of a copy of the order. It is made clear that only if the appointed to the post of Secondary Grade Teacher prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and also, the proposal for approval of the such appointment was forwarded to the educational authority prior to the issuance of G.O.Ms.No.165 dated 17.9.2019, the petitioner is entitled to the relief granted hereinabove.

9. With the above directions, the writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Director of Elementary Education,
College Road, Chennai - 600 006.

2. The District Educational Officer,
Vriddhachalam, Cuddalore District.

3. The Block Educational Officer,
Nallur, Cuddalore District.

+1 cc to Mr.A.S. Kaizer, Advocate Sr.NO. 27374

+1 cc to Government Pleader Sr.NO. 26783

W.P. No. 4594 of 2020

and

W.M.P.Nos. 5450 and 5451 of 2020

ajs(CO)

A.SK(30/05/2022)