



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.10154 of 2022
and
W.M.P.No.9845 of 2022

Aided Elementary School,
Rep. by its Secretary/Manager,
Gunamangalam,
Vellaiyur Post - 606 107,
Ulundurpet Taluk,
Kallakurichi District.

... Petitioner

Vs.

1. The Director of Elementary Education,
College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Kallakurichi,
Kallakurichi District.
3. The District Educational Officer,
Ulundurpet,
Kallakurichi District.
4. The Block Educational Officer,
Ulundurpet,
Kallakurichi District.
5. K.Karthikeyan

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records relating the proceedings of the 3rd respondent in Na.Ka.No.1950/A3/2022 dated 07.03.2022 and quash the same and consequently direct the 3rd respondent to approve the appointment of the 5th respondent made in the petitioner school as Secondary Grade Teacher with effect from 22.02.2019 with salary and all other monetary benefits.



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For Petitioner : Mr.R.Kamaraj

For RR1 to 4 : Mr.V.Manoharan
Additional Government Pleader

O R D E R

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. The case of the petitioner in brief:

The petitioner school is duly recognized and aided by the Government of Tamil Nadu and it has three sanctioned posts of one Headmaster and two Secondary Grade Teachers. On 07.01.2019, one Mrs.T.Vijaya who was working as Secondary Grade Teacher, had voluntarily retired from service. In order to fill up the said vacancy, the petitioner made a representation to the 3rd respondent through the 4th respondent on 12.01.2019. However, there was no response. Thereafter, the petitioner-school has appointed the 5th respondent in the said vacant post, since he possessed the requisite qualification including the Teachers Eligibility Test and hence, the petitioner-school sent several proposals to the 3rd and 4th respondents for approving the appointment for the said post. But, after a lapse of 2 ½ of years, the appointment made by the petitioner-school has not been approved by the respondent. Thereafter, the petitioner filed a writ petition before this Court in W.P No.18880 of 2021 seeking direction to the respondents 2 and 4 for approval of the appointment of the 5th respondent and this Court, by an order dated 23.03.2020 directing the respondents 2 and 4 to consider the petitioner's representation. However, the 3rd respondent by his proceedings dated 07.03.2022, has rejected the petitioner's application on the ground that as per the order passed in W.P.No.31575 of 2019, approval cannot be granted till surplus posts are identified. The above order is not applicable to the present case on hand as the school Management made appointment prior to the issuance of G.O. Ms. No.165 dated 17.09.2019. Challenging the rejection order passed by the educational authorities, the petitioners have preferred the instant writ petition before this Court.

3. According to the learned counsel appearing for the petitioner, the 5th respondent was appointed in the existing vacancy for the post of Secondary Grade Teacher and the petitioner-Management submitted proposal to the educational authorities for approval of the appointment made by the School management to the said post. However, the educational authorities rejected the proposal by relying upon the G.O.Ms.No.165 dated 17.9.2019 issued by the School Education



department. Challenging the rejection order passed by the educational authorities, the petitioners have preferred the instant writ petitions before this Court.

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 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's case 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, the 5th respondent 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. Heard the rival submissions of the parties and perused the materials available on record.

6. 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.



7. The learned Additional Government Pleader would submit 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.

8. 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. The aforesaid appointment was made prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and the proposal was also sent to the educational authorities prior to the issuance of 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 authorities to accord approval to the appointment to the post of Secondary Grade Teacher made by the School Management in the instant writ petition.

9. According to the learned Additional Government Pleader, the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021 as against the judgment passed by the Division Bench of this Court in the Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc. and obtained stay insofar as Clause (i) of paragraph 95 of the said judgment. Except the aforesaid clause (i) of paragraph 95, there was no stay in respect of remaining portion of the judgment. It is agreed by the learned Additional Government Pleader that the writ petitioner was appointed prior to the G.O.Ms.No.165 dated 17.9.2019 and therefore, it can be considered and an appropriate order may be passed.

10. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.9.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointment made by the School Management in the instant writ petition is prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and proposal for the said



appointment was also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, there is no legal impediment for the respondent department to accord approval to the appointment made by the School Management in the instant writ petition.

11. Having regard to the rival submissions of the parties, taking note of 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., G.O.Ms.No.165 issued by the School Education department, dated 17.9.2019 will not prohibit the educational authorities to approve the appointments made by the School Management in the instant writ petition since the proposal for approval of appointment made by the School Management was forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.9.2019 in proper perspective passed the impugned order rejecting the proposal submitted by the School Management. Therefore, the impugned order passed by the respondent department is liable to be quashed.

12. Accordingly, the impugned order passed by the 3rd respondent department dated 07.03.2022 is quashed and remitted to the Chief Educational Officer/District Educational Officer concerned, to consider and pass an order of approval of the appointment made by the School management, provided the said proposal satisfies all the norms prescribed for such appointment and as per the Rules, as expeditiously as possible preferably within a period of twelve (12) weeks from the date of receipt of copy of the order.

13. With the above directions, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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



2. The Chief Educational Officer,
Kallakurichi,
Kallakurichi District.

3. The District Educational Officer,
Ulundurpet,
Kallakurichi District.

4. The Block Educational Officer,
Ulundurpet,
Kallakurichi District.

+1cc to Mr.R.Kamaraj, Advocate, S.R.No.28416

W.P.No.10154 of 2022
and
W.M.P No.9845 of 2022

SS[co]
NSK/27/05/2022