



WEB COPY



W.P.No.18511 of 2021

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.18511 of 2021 and
W.M.P.No.19743 of 2021

J.Abraham Paul Jayachandran

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Petitioner

VS

1.The Chief Educational Officer

Presidency Girls Higher Secondary School Campus
Egmore, Chennai - 600 008.

2. The District Educational Officer

Chennai North Educational District
Villivakkam, Chennai - 600 045.

3. The Correspondent

Park Town Mission High School
42, Ponnappa Chetty Street
Waltax Road, Chennai - 600 003.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the first respondent O.Mu.No.6390/Aa2/2019 dated 24.06.2021 and to quash the same and consequently direct the respondents 1 and 2 to pass orders granting



W.P.No.18511 of 2021

approval of appointment of the petitioner in the post of Physical Education Teacher in the third respondent school with effect from 01.06.2019 based on the order of appointment dated 25.02.2019, with all consequential and other attendant benefits including payment of salary from the date of appointment, within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader
for respondents 1 and 2

ORDER

The petitioner has challenged the impugned order dated 24.06.2021 passed by the first respondent, rejecting the proposal sent by the third respondent school, seeking approval for the appointment of the petitioner as a Physical Education Teacher on the ground that as per G.O.Ms.No.525, School Education Department dated 29.12.1997, the third respondent is having surplus teachers in their school in the very same District.



W.P.No.18511 of 2021

WEB COPY

2. According to them, the proposal sent by the third respondent school is in violation of G.O.Ms.No.165, School Education Department dated 17.09.2019.

3. G.O.Ms.No.165, School Education Department dated 17.09.2019 was quashed by the order of a Division Bench of this Court dated 31.03.2021 in W.A(MD).No.76 of 2019, etc batch. However, it is an undisputed fact that, aggrieved by the order dated 31.03.2021 passed in W.A.(MD)No.76 of 2019, etc batch, the respondents have preferred a SLP before the Hon'ble Supreme Court, which is still pending consideration. G.O.Ms.No.165, School Education Department dated 17.09.2019, which the respondents have relied upon while rejecting the third respondent's proposal seeking approval for the appointment of the petitioner as Physical Education Teacher, was issued pursuant to an interim order dated 09.04.2019 passed by a Division Bench of this Court in W.A.(MD).No.76 of 2019, etc batch, which was subsequently disposed of by the final order dated 31.03.2021 referred to *supra*.



W.P.No.18511 of 2021

WEB COPY

4. The contention of the petitioner is that the G.O.Ms.No.165, School Education Department dated 17.09.2019 can be applied only prospectively, i.e, to be exercised on or after 17.09.2019 and not to be exercised prior to 17.09.2019. In the case on hand, admittedly, the proposal was sent by the third respondent school seeking approval for the appointment of the petitioner as Physical Education Teacher on 10.06.2019, which is prior to the date of the G.O.Ms.No.165, School Education Department, which is dated 17.09.2019. The petitioner was also appointed by the third respondent school by an appointment order dated 25.02.2019.

5. Learned Additional Government Pleader appearing for the respondents would rely upon G.O.Ms.No.525, School Education Department dated 29.12.1997 and would submit that only in accordance with the said G.O and in accordance with G.O.Ms.No.165, School Education Department dated 17.09.2019, the proposal sent by the third respondent school seeking approval for the appointment of the petitioner as Physical Education Teacher was rejected under the impugned order. However, as seen from the impugned order, the question as to whether



W.P.No.18511 of 2021

WEB COPY

G.O.Ms.No.165, School Education Department dated 17.09.2019 has to be applied prospectively or retrospectively, has not been considered.

6. The petitioner also claims that being a sanctioned post, his approval for the appointment as Physical Education Teacher in the third respondent school ought to have been sanctioned. G.O.Ms.No.165, School Education Department dated 17.09.2019 also came into force only pursuant to the interim direction passed by a Division Bench of this Court on 09.04.2019 in W.A.(MD)No.76 of 2019, etc batch. Admittedly, the petitioner was appointed on 25.02.2019 as a Physical Education Teacher by the third respondent school and a proposal was sent by the third respondent school seeking approval for the appointment of the petitioner as a Physical Education Teacher on 10.06.2019, prior to G.O.Ms.No.165, School Education Department dated 17.09.2019.

7. The contentions that have been raised in this writ petition have not been considered by the respondents as seen from the impugned order. Being a non-speaking order, as to whether the G.O.Ms.No.165, School Education Department dated 17.09.2019 is prospective or retrospective



W.P.No.18511 of 2021

the impugned order has to be necessarily quashed and the matter remanded back to the respondents for fresh consideration on merits and in accordance with law.

8. Accordingly, the impugned order is hereby quashed and the matter is remanded back to the respondents for fresh consideration on merits and in accordance with law. The first respondent shall pass final orders on merits and in accordance with law after giving due consideration to the contentions raised by the petitioner in this writ petition within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the aforesaid directions, the writ petition is disposed of. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

14.12.2022

Index: Yes/No
Speaking order/Non-speaking order
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WEB COPY



W.P.No.18511 of 2021

To

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WEB COPY



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ABDUL QUDDHOSE,J.

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