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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.24007 OF 2021

AND

WMP.NO.25311 OF 2021

P.Rajakumari

...Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. By its Secretary,
Education Department,
Fort St.George, Chennai-600 009.
- 2.The District Educational Officer,
Chengam, Tiruvannamalai District.
- 3.The Block Educational Officer I,
Pudupalayam, Tiruvannamalai District.
- 4.The Correspondent,
Danish Mission Elementary School,
Gulalpadi, Vadamathur Post,
Chengam Taluk, Tiruvannamalai District.
- 5.The Central Manager and Chairman Education Board,
Arcot Lutheran Church,
Danish Mission Higher Secondary School,
Kattabomman Street,
Tiruvannamalai District -606 601.

...Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to pass orders for granting approval of appointment of petitioner in the Secondary Grade Assistant in the fourth respondent school from the date of appointment on 04.12.2017, based on the proposal submitted by the fourth respondent dated 14.03.2018 and resubmitted on 01.09.2020 and 01.03.2021 with all consequential and other benefits, including the arrears of salary to the petitioner from the date of initial appointment on 04.12.2017 along with interest within a time frame fixed by this Court.



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For Petitioner : M/s.T.Dharani
For Responents : Mr.T.Chezhiyan,
Additional Government Pleader
for R1 to R3
No Appearance - R4 & R5

ORDER

The petitioner, who is working as a Secondary Grade Assistant in the fourth respondent School, has filed the present writ petition seeking for a Mandamus directing the respondents to pass orders for granting approval of appointment of petitioner in the Secondary Grade Assistant in the fourth respondent school from the date of appointment on 04.12.2017, based on the proposal submitted by the fourth respondent dated 14.03.2018 and resubmitted on 01.09.2020 and 01.03.2021 with all consequential and other benefits, including the arrears of salary to the petitioner from the date of initial appointment on 04.12.2017 along with interest within a time frame fixed by this Court.

2. 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, instant writ petition 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 petitioner was appointed as Secondary Grade Teacher appointed prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 i.e., on 04.12.2017. 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''.

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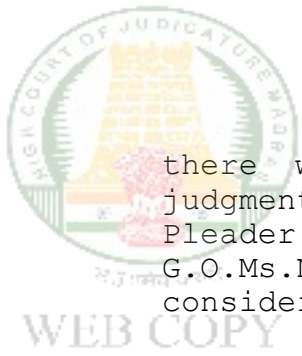
3. Heard the rival submissions of the parties and perused the materials available on record.

4. The learned counsel appearing for the petitioner would submit that 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 G.O.Ms.No.165 issued by School Education Department, dated 17.9.2019 and 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.

5. The learned Additional Government Pleader for the respondents 1 to 3 submitted that as against the judgment passed by the Division Bench of this Court W.A.(MD) No.76 of 2019, etc. batch, 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.

6. The learned counsel appearing for the petitioner would submit that in the instant case, the 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 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 for a direction to the educational authorities to accord approval to the appointment of the petitioner to the post of Secondary Grade Assistant.

7. 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.

8. On perusal of the judgment of the Division Bench of this Court in the aforesaid batch of cases and also 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 were 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 respondents to accord approval to the appointment made by the School Management in the instant writ petition.

9. Having regard to the rival submissions of the parties, taking note of the judgment passed by the Division Bench of this Court in W.A.(MD) No.76 of 2019, etc. batch, G.O.Ms.No.165 issued by the School Education department, dated 17.9.2019 will not prohibit the educational authorities to approve the appointment 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.

10. Accordingly, this Court directs the Chief Educational Officers/District Educational Officer, Tiruvannamalai District/second respondent to consider and pass an order of approval of the appointment of the petitioner as Secondary Grade Assistant, made by the fourth respondent 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.

11. With the above direction, the writ petition stands disposed of. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

Jvm



To

1.The Secretary,
The State of Tamil Nadu,
Education Department,
Fort St.George, Chennai-600 009.

2.The Chief Educational Officer /
The District Educational Officer,
Chengam, Tiruvannamalai District.

3.The Block Educational Officer I,
Pudupalayam, Tiruvannamalai District.

4.The Correspondent,
Danish Mission Elementary School,
Gulalpadi, Vadamathur Post,
Chengam Taluk, Tiruvannamalai District.

5.The Central Manager and Chairman Education Board,
Arcot Lutheran Church,
Danish Mission Higher Secondary School,
Kattabomman Street,
Tiruvannamalai District -606 601.

+1cc to Mr.T.Dharani, Advocate, Sr.No.35188

+1cc to the Government Pleader, Sr.No.36198

W.P.No.24007 of 2021

BR(CO)
RVM(01/07/2022)