



W.P.(MD)No.1861 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.1861 of 2020

and

W.M.P.(MD)Nos.1567 and 1569 of 2020

The Secretary,
Grama Committee Higher Secondary School,
Venkateswarapuram,
Tirunelveli District.

... Petitioner

Vs.

1. The Principal Secretary,
Government of Tamil Nadu,
School Education Department,
Secretariat,
St.George Fort,
Chennai.
2. The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat, St.George Fort.,
Chennai.
3. The Director of School Education,
College Road,
Chennai - 600 006.



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4. The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

5. The District Educational Officer,
Cheranmahadevi Educational District,
Tirunelveli.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the impugned Government Order passed by the first respondent in G.O.Ms.No.165, Department of School Education, dated 17.09.2019 and the consequential impugned order passed by the fifth respondent in Oo.Mu.No.5412/A4/2019, dated 17.12.2019 and to quash both the same as illegal and direct the respondents to permit the petitioner School to appoint qualified B.T.Assistant as Science Teacher by way of direct recruitment as per the Tamil Nadu Private School Regulations Act.

For Petitioner : Mr.K.R.Laxmnan

For Respondents : Mr.T.Amjadkhan
Government Advocate



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ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned Government Order passed by the first respondent in G.O.(Ms)No.165, Department of School Education, dated 17.09.2019 and the consequential impugned order passed by the fifth respondent in Oo.Mu.No.5412/A4/2019, dated 17.12.2019, quash both as illegal and direct the respondents to permit the petitioner School to appoint the qualified B.T.Assistant (Science) by way of direct recruitment as per the Tamil Nadu Private School Regulations Act.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the Secretary of the School and in his School, one K.P.Samuthirapandi got retired on 30.04.2019. After the retirement, the petitioner's School is functioning without Science Teacher. Hence, the School Committee has decided to fill up the post of B.T.Assistant (Science) through direct recruitment, as there is no suitable candidate fit for promotion in the School. Therefore, as per the Tamil Nadu Private School



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Regulations Act, for filling up the post through direct recruitment, prior approval is mandatory. The petitioner had applied for prior approval by way of submitting an application dated 02.10.2019 enclosing all the essential documents. However, the said application was rejected by way of issuing the impugned order, dated 17.12.2019, relying upon the interim order passed by this Court in W.A.(MD)Nos.76 of 2018 etc., batch stating that the Government shall not approve any appointment made by the Private Aided School, till the surplus teachers in the school coming under the same Management are exhausted and there shall not be any fresh appointment from 09.04.2019 in Private Aided Schools coming under the same Management are exhausted. However, subsequently, the Writ Appeals were disposed of in the year 2021 by this Court. Hence, now there is no legal impediment for the respondents for considering the proposal of the petitioner's School.

3. The learned counsel for the petitioner further submit that this Court may grant liberty to the petitioner to send a fresh proposal for filling up the said post and if such proposal is forwarded, the respondents may be



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directed to pass appropriate orders. Accordingly, he prayed for appropriate orders.

4. The learned Government Advocate appearing for the respondents would submit that the filling up of the vacant post of B.T.Assistant (Science) in the petitioner School from the list of surplus B.T.Assistant working in the other Aided High Schools and Higher Secondary Schools will not create any infirmities in the administration of the petitioner School. On the other hand, the filling up of the vacant post of B.T.Assistant (Science) from the open market in the petitioner School will result in wasteful expenditure to the Government, especially, when a large number of surplus B.T.Assistant (Science) in the other Aided High Schools and Higher Secondary Schools are getting Government grant without any work. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.



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6. It is seen from the records that the petitioner School was not allowed to fill up the vacant post of B.T.Assistant (Science) due to retirement of one Samuthirapandi for the reason that 19 B.T.Assistant (Science) Teachers are surplus in the Aided High Schools and Higher Secondary Schools in Tirunelveli District and hence, one of the surplus B.T.Assistant (Science) Teachers shall have to be appointed to the petitioner School on redeployment in the existing vacancy as per G.O.Ms.No.165, Department of School Education, dated 17.09.2019. When numerous surplus B.T.Assistant (Science) Teachers in the Aided High Schools and Higher Secondary Schools are awaiting for re-deployment, appointing a fresh candidate from open market in the petitioner School is uncalled for and it will result in unnecessary expenditure to the State Exchequer. However, the said G.O.(Ms)No.165, Department of School Education, dated 17.09.2019 is inoperative and hence, relying the said Government Order, for refusal to grant permission to fill up the post of B.T.Assistant (Science) from the open market is not sustainable. Further, the Division Bench of this Court, subsequently disposed the Writ Appeals. Hence, there is no legal impediment for the respondents to consider the fresh proposal.



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7. In view of the above, the impugned order, dated 17.12.2019 is set aside and the petitioner is directed to forward the proposal to the third respondent afresh within a period of two weeks from the date of receipt of copy of this order. If any such proposal is forwarded by the petitioner, the third respondent is directed to consider the same and pass appropriate orders as expeditiously as possible.

8. With the above directions, this Writ Petition is partly allowed.
No costs. Consequently, connected Miscellaneous petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

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