



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) .No.3184 of 2021

and

W.M.P. (MD) .No.2523 of 2021

H.Vinoth

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Tuticorin,
Tuticorin District.
- 2.The District Educational Officer,
Kovilpatti,
Tuticorin District.
- 3.The Correspondent,
St.Louis Higher Secondary School,
Keelavaippar - 628 903,
Tuticorin District.

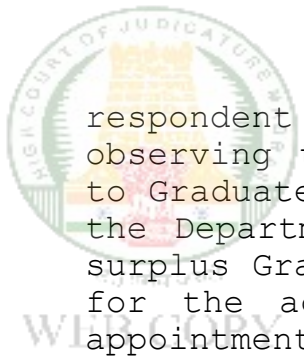
...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the first respondent herein in Na.Ka.No.824/A3/2020 dated 03.02.2020 and quash the same and further direct the first respondent herein to approve the petitioner's appointment as BT Assistant (English) in the third respondent school w.e.f., the date of appointment viz., 01.06.2018 with salary and attendant benefits.

For Petitioner	:	Mr.A.Ajith Geethan
For R-1 and R-2	:	Mr.S.Shaji Bino, Special Government Pleader.
For R-3	:	No appearance

ORDER

The petitioner herein was appointed as a BT Assistant (English) with effect from 01.06.2018 by the third respondent School. When the third respondent had submitted a proposal for approval of the



respondent through the impugned order, dated 03.02.2020, by observing that when the sanction post from Secondary Grade Teacher to Graduate Teacher is sought to be converted, prior permission from the Department has to be obtained. It was further stated that 31 surplus Graduate Teachers are there in the entire Tuticorin District for the academic year 2018-2019 and therefore, the petitioner's appointment cannot be approved.

2. Both the reasons cited by the first respondent herein in the impugned order have already been settled against them in various decisions of this Court. Insofar as the first reason cited that prior permission for upgradation of a post is concerned, the Hon'ble Division Bench of this Court, in the case of ***The Government of Tamil Nadu, Represented by Secretary to Government, Department of School Education, Madras and others Vs. J.Remila and another***, reported in ***2018-1-Writ L.R. 410***, had held that such prior permission was not required in the case of minority institution and that the Government Orders relied upon by the respondents in this regard including G.O.(Ms).No.144, School Education Department dated 04.07.2008 were not applicable.

3. I had the occasion to consider this aspect in the case of ***Immaculate Arputha Mary Usha Vs. The Government of Tamil Nadu, Represented by its Secretary, Education Department, Chennai and others*** passed in ***W.P.No.16977 of 2018, dated 08.02.2022***, in the following manner:

"7. In the case of J.Remila (supra), the facts involved in that case was when the School appointed a B.T. Assistant Teacher in the vacancy of a Secondary Grade Teacher, the proposals for approval was rejected by the Educational Authorities. The stand taken by the Educational Department was that a prior permission for conversion of a post is required for making appointments even in a Minority Institution. Various Government Orders were referred to, in support of their claim including G.O.Ms.No.144, dated 04.07.2008. The Hon'ble Division Bench of this Court, had held that these Government Orders are not applicable to the Government Aided Schools and the rejection of the proposal for approval would amount to interfering with the administration of a Minority Institution. The relevant portion of the orders are as follows:-

"17. The Learned counsel for the First Respondent, then drew our attention to the observations recorded by the Learned Single Judge in W.P. (MD)No.18044 of 2011, filed by



W.P.No.18044

of 2011, dated

21.03.2012, the applicability of G.O.Ms. No.144, dated 04.07.2008 was negatived as follows:-

"94. However, the second part of the order stipulating that once the post is converted, under no circumstances, it can be re-converted in future is certainly contrary to the object sought to be achieved. In case of necessity of the teacher is of the particular subject depending on the strength of the school and students, there can be no bar to re-convert the post. (There is no necessity to go into this point), as the G.O.Ms.No.144 dated 04.07.2008 has no application to the case of the petitioner, as it is not published in the Government Gazette, nor the rules have been framed as per the procedure laid down under Section 56 of the Act. Unless the amended rules are published in the Government Gazette, it can have no force of law and, cannot apply to privately managed aided schools."

The aforesaid extracts are self-explanatory. In the background of the aforesaid decisions cited above, the rejection of the proposal for approval of the petitioner's post is illegal."

4. The aforesaid decision itself is self-explanatory. Hence, the first reason assigned by the first respondent in the impugned order, that prior permission for approval is required, cannot be sustained in view of the aforesaid decisions.

5. Insofar as the second reason cited by the first respondent in the impugned order for rejecting the proposal for approval is concerned, the first respondent has treated the surplus Graduate Teachers for the year 2018-2019 for the entire district as one unit. This reasoning is contrary to the decision of the Hon'ble Division Bench of this Court in the case of **Secretary to Government and others Vs. Iruthaya Amali and another**, reported in **2021 SCC Online Mad 1285**, whereby, the Hon'ble Division Bench had held that for the purpose of fixing the staff strength of the School, the School as such shall be treated as one unit and not the Educational agency / joint management / corporate management.

6. In the instant case, the respondents have taken into consideration the surplus Graduate Teachers in the entire district which is contrary to the decision of the Hon'ble Division Bench and hence, the second reason stated for rejection also cannot be



sustained. In the result, the impugned order requires interference and the petitioner's appointment requires to be approved.

7. Accordingly, the impugned order dated 03.02.2020 is quashed. Consequently, there shall be a direction to the second respondent herein to forthwith pass fresh orders on the proposal sent by the third respondent dated 09.05.2019, approving the petitioner's appointment dated 31.05.2018 as BT Assistant (English), within a period of four (4) weeks from the date of receipt of a copy of this order.

8. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

Lm

To

1.The Chief Educational Officer,
Tuticorin,
Tuticorin District.

2.The District Educational Officer,
Kovilpatti,
Tuticorin District.

+1 CC to M/s.SPL.GP (SR-28184[F] dated 27/06/2022)

W.P. (MD) .No.3184 of 2021
23.06.2022

SG(CO)
KB(06.07.2022) 5P 4C