



WP(MD)No.2921 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.06.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.2921 of 2020

and

W.M.P.(MD)Nos.2481 & 2483 of 2020

J.Jenitha

... Petitioner

/vs./

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai 600 009.
- 2.The Director of School Education,
College Road, Chennai 600 006.
- 3.The District Educational Officer,
Lalgudi, Trichy,
Trichy District 621 601.
- 4.The Block Educational Officer,
Lalgudi, Trichy,
Trichy District 621 601.
- 5.The Bishop & Manager of All Diocesan Schools
The Church of South India
Tiruchirappalli Thanjavur Diocese
Diocesan Office, Puthur,
Trichy District 620 017.



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6.The Correspondent,
SPG Mission Elementary School,
Sengaraiyur, Lalgudi Taluk,
Trichy District 621 702.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus Calling for the records relating to the impugned proceedings issued by the 3rd respondent District Educational Officer in O.Mu.No.4391/A2/2018 dated 26.04.2019, Quash the same and further direct the 3rd respondent DEO to approve forthwith the appointment of the petitioner, namely J.Jenitha as Secondary Grade teacher in the 6th respondent school namely, SPG Mission Elementary School, Senkarayur, Trichy District, w.e.f. 23.07.2014 and disburse the grant-in-aid towards her salary and allowances with all attendant benefits including arrears.

For Petitioner : Mr.K.Ragetheesh Kumar
for M/s.Isaac Chambers

For Respondents : Mr.S.Shaji Bino (For R1 to R4)
Special Government Pleader

ORDER

The sixth respondent school, which is under the Corporate Management of the fifth respondent, is a Minority Aided Educational Institution. The petitioner herein was appointed as a Secondary Grade Teacher on 19.07.2014, with effect from 23.07.2014, in the vacancy that arose owing to the promotion of a teacher in



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a sanctioned post. The proposal sent by the sixth respondent dated 23.07.2014 seeking for approval of the petitioner's appointment, came to be rejected through the impugned order dated 26.04.2019 on the ground that school under the Corporate Management of the fifth respondent diocese, has surplus teachers.

2.The issue as to whether the proposal for approval of an appointment can be rejected on the ground cited in the impugned order, has come up before this Court in various writ petitions and this Court had been consistently taking a stand that for the purpose of fixing the staff strength, the School shall be the unit and not the Educational Agency/Joint Management or Corporate Management. In a recent decision taken in a batch of writ petitions in **W.P.No.3194 of 2020, etc.**, dated **18.04.2022** in the case of **B.Kurinjimalaron vs. the State of Tamil Nadu, Represented by its Secretary, Education Department, Fort St.George, Chennai 600009**, this aspect was dealt with in the following manner:

5. The learned counsel appearing for the petitioners 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 cases, the



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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 posts in the light of the existing Rules thereunder.

6. The learned Additional Advocate General submitted 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.

7. The learned counsel appearing for the petitioners 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. All the appointments were made prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and the proposals were also sent to the educational authorities prior to the said



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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 petitions. Therefore, the learned counsel appearing for the petitioners seeks to quash the impugned orders and consequently, direct the educational authorities to accord approval to the appointment to the post of B.T. Assistant and Secondary Grade Teacher, made by the School Management in the instant writ petitions.

8. According to the learned Additional Advocate General, 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 Advocate General that the writ petitioners were 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.

9. 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



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G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and proposals 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 impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.

10. 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 appointment made by the School Management in the instant writ petitions since the proposals for approval of appointment made by the School Management were 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 and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the impugned orders passed by the respondent department are liable to be quashed.”



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3.The aforesaid extract is self explanatory. As such, the reason assigned by the respondents that there are surplus teachers in the School run by the fifth respondent, cannot be sustained, since the sixth respondent school requires to be treated as a single unit.

4.Accordingly, the impugned order dated 26.04.2019 is quashed. Consequently, there shall be a direction to the third respondent herein to pass appropriate orders, approving the appointment of the petitioner, namely, J.Jenitha, as a Secondary Grade Teacher with effect from 23.07.2014. Such orders of approval shall be passed within a period of eight (8) weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes
Internet : Yes
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M.S.RAMESH, J.

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TO:

- 1.The Secretary,
Department of School Education,
Fort St.George, Chennai 600 009.
- 2.The Director of School Education,
College Road, Chennai 600 006.
- 3.The District Educational Officer,
Lalgudi, Trichy,
Trichy District 621 601.
- 4.The Block Educational Officer,
Lalgudi, Trichy,
Trichy District 621 601.

Order made in
W.P.(MD)No.2921 of 2020

Dated:
29.06.2022