



W.P.(MD)No.7069 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 20.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)No.7069 of 2020

Sri Veerappa Vidyalaya Higher Secondary School,
Rep., by its Secretary,
M.Veerasekaran

... Petitioner

Vs

1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
O/o., The Chief Educational Officer,
Virudhunagar District.

3.The District Educational Officer,
O/o., The District Educational Officer,
Aruppukottai, Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the second respondent to grant approval to the appointment made by the petitioner in the post of B.T.Assistant (Mathematics) at the petitioner's school with effect from 28.11.2018 with all consequential benefits by considering the proposal submitted by the petitioner dated 10.12.2018 within the time period stipulated by this Court.



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For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.N.Satheeskumar
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is a Non-Minority Educational Institution. A vacancy arose in the post of B.T.Assistant (Mathematics) following the retirement of one N.Sundararajan on 31.05.2018. The school committee applied to the competent authority seeking permission to fill up the said vacancy. The competent authority, namely, Chief Educational Officer, Virudhunagar, vide proceedings bearing Mu.Mu.No.7463/A2/2018, dated 26.10.2018 granted permission to the school management to fill up the said vacancy subject to certain conditions. Adhering to the said stipulations, the school committee appointed one S.Ravikumar in the said vacancy with effect from 28.11.2018. The appointee also joined in the said post and is working ever since. Thereafter, proposal was submitted to the second respondent for approval of the said appointment. Since no order was passed in the proposal, the present writ petition came to be filed in June-2020.



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3. During the pendency of the writ petition, the proposal was returned on the ground that since surplus teachers are available in Virudhunagar District, no new appointment can be approved. Since this order returning the proposal came to be passed after the filing of the writ petition, this Court is entitled to mould the relief.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the order dated 23.10.2020 returning the proposal and direct the respondents to approve the appointment of the said S.Ravikumar as B.T.Assistant (Mathematics).

5. Per contra, the respondents have filed a detailed counter affidavit and the learned Additional Government Pleader appearing for the respondents reiterated all the contentions set out therein. His primary contention is that the Hon'ble Apex Court is seized of the matter in SLP (Civil) No.12693 of 2022. A compilation set has been filed. It is seen therefrom that one E.K.M.Abdul Gani Matharasa Islamia Primary School, Erode, filed W.P.No.2991 of 2020 for directing the department to



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grant approval of appointment of certain B.T.Assistant teachers. The said writ petition was opposed by the respondents on the ground that G.O.Ms.No.165, School Educaiton SE2(1) Department, dated 17.09.2019 envisages_deployment of surplus teachers in the district and that therefore, no approval can be granted for appointment.

6.The learned Single Judge noted that the said Government Order had been suspended by the Hon'ble Division Bench and that therefore, the said Government Order ought not to come in the way. In that view of the matter, the writ petition was disposed of on 10.02.2020 by directing the competent authority to consider the proposal seeking approval of appointment of B.T.Assistant. Questioning the same, the department filed W.A.No.1177 of 2022. In the meanwhile, the Hon'ble Division Bench had disposed of a batch of writ appeals vide a common order dated 31.03.2021 in W.A.No.76 of 2019 etc., batch. A set of directions had been issued therein. The department had pointed out that the said order dated 31.03.2021 passed by the Hon'ble Division Bench had been put to challenge before the Hon'ble Apex Court in SLP(Civil)No.15702 of 2021 and that an interim stay was also granted. The Hon'ble Division Bench hearing W.A.No.1177 of 2022, noted that only one direction



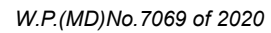
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issued by the Hon'ble Division Bench in W.A.No.76 of 2019 etc., batch alone has been stayed and that the operation of the entire judgment had not been stayed. In that view of the matter, the writ appeal in W.A.No. 1177 of 2022 was dismissed. The appointees were however asking to give an undertaking that they would abide by the outcome of SLP.

7.W.A.No.1177 of 2022 was dismissed on 27.04.2022. The learned Additional Government Pleader pointed out that this judgment was put to challenge in SLP No.12693 of 2022 before the Hon'ble Apex Court, which by order dated 22.07.2022 stayed the judgment of the High Court. According the learned Additional Government Pleader, thus, the issue projected in this writ petition is the subject matter of SLP pending before the Hon'ble Supreme Court and that therefore, the adjudication of this writ petition ought to be deferred.

8.I carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned counsel appearing for the writ petitioner, there is one fundamental factual distinction. The institution that is subject matter of W.A.No.1177 of 2022 is a minority institution. It had filled up three vacancies, on their



9. In the case of hand, G.O.Ms.No.165, School Education SE2(1) Department, dated 17.09.2019 had been relied upon. The appointment in question was made on 28.11.2018 i.e., some 10 months before the issuance of the aforesaid Government Order. The said Government Order cannot operate retrospectively. The validity of any appointment has to be tested with reference to the legal and factual position that prevailed on the date of appointment and not on the date when the appointment is considered for approval. Thus, looked at from any angle, the Government Order dated 23.10.2020 returning the proposal cannot be sustained.

The proceedings of the competent authority namely Chief Educational



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Officer, Virudhunagar, issued in Mu.Mu.No.7463/A2/2018, dated 23.10.2020 is hereby quashed. The respondents are directed to approve the petition mentioned appointment forthwith w.e.f., 28.11.2018. Grant-in-aid shall be disbursed towards the appointee's salary and other allowance without any delay and forthwith.

10.The Writ Petition stands allowed on these terms. No costs.

20.09.2022

Index : Yes/No

Internet : Yes/No

Rmk

To

1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
O/o., The Chief Educational Officer,
Virudhunagar District.

3.The District Educational Officer,
O/o., The District Educational Officer,
Aruppukottai, Virudhunagar District.

G.R.SWAMINATHAN, J.,



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