



W.P.(MD)No.10104 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.10104 of 2021

N.Jothimani

... Petitioner

Vs

- 1.The State represented by
Its Secretary,
Education Department,
Fort Station George,
Chennai – 9.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The Chief Educational Officer,
Chief Educational Office,
Tiruchirappalli.
- 4.The District Educational Officer,
District Educational Office,
Tiruchirappalli.
- 5.The Correspondent,
Savitri Vidyasala Hindu Girl's
Higher Secondary School,
Chathiram Bus Stand,
Tiruchirappalli.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 within the specified time to confirm the petitioner's appointment as a permanent staff as per the order issued by Chief Educational Officer, Tiruchirappalli vide proceedings No. MU MU 2819/A6/2017 dated 12.01.2018 and frame that may be fixed by this Court along with agreed monthly salary of Rs.20,600/- from the date of appointment and arrears of monthly salary along with usual increments and allowances till the disposal of this petition.

For Petitioner : Mr.P.Balasubramanian

For Respondents : Mr.J.Ashok
Additional Government Pleader for R.1 to R.4

No Appearance for R.5

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as Physical Education Teacher with effect from 19.04.2018 in the fifth respondent School. One Manimegalai was working in the said School in a sanctioned post. On reaching the age of superannuation, she retired. The School Management approached the third respondent seeking permission to fill up the resulting vacancy. The third respondent vide proceedings dated 12.01.2018 granted permission to the School Management to fill up vacancy. Certain conditions were also stipulated. Only in terms of the said conditions, the petitioner herein was appointed. There



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is no dispute that the petitioner is eligible and qualified to be appointed to the said post. However, the proposal seeking approval was not acted upon. The petitioner also gave her representation. Since there was no favorable response the present writ petition came to be filed.

3. In the counter affidavit, the Department was taken the stand on the date of the petitioner was appointed, there were 13 surplus Physical Education Teacher in the District. If that be so, the third respondent ought not to have granted permission to the School Management to fill up the vacancy. Having permitted the School Management to fill up the vacancy, it is not open to the Department to now do an about-turn.

4. Counter affidavit has been filed and the learned Additional Government Pleader appearing for the respondents 1 to 4 reiterated all the contentions set out therein. For the reasons set out in the order dated 20.09.2022 in W.P(MD).No.7069 of 2020, the order impugned in the writ petition will have to be set aside. The respondents cannot rely on G.O.Ms.No. 165, School Education SE2(1) Department, dated 17.09.2019 for the simple reason that the petition mentioned appointment was made earlier in point of time. The validity of the appointment will have to be tested with reference to the legal and factual position that obtained on the date when the appointment was made and not in the light of the subsequent development. It is true that the



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issue regarding the validity of the appointment made when there are surplus teachers available in the district is pending before the Hon'ble Apex Court.

5. The learned Additional Government Pleader relied on the interim order of stay granted by the Apex Court in SLP.No.12693 of 2022, dated 22.07.2022, but, the said interim order cannot be put against the writ petitioner for the simple reason that the said case pertains to a minority institution, which appointed as many as three B.T.Assistants without getting any prior permission from the competent authority by asserting their status as a minority institution. The case on hand is different. The school management appointed the writ petitioner only in terms of and pursuant to the permission granted by the third respondent herein. Therefore, the case on hand can be easily distinguished.

6. In these circumstances, the third respondent is directed to approve the appointment of the writ petitioner with the effect from 19.04.2018 and also release the grant in aid towards the salary and other allowances. This writ petition is allowed. No costs.

22.09.2022

Index : Yes / No
Internet : Yes/ No
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To

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G.R.SWAMINATHAN, J.

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