



W.P.(MD)No.8163 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.8163 of 2020

and

W.M.P(MD).No.7573 of 2020

N.Prathibha

... 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,
Thoothukudi District.

3.The District Educational Officer,
O/o., The District Educational Officer,
Thoothukudi, Thoothukudi District.

4.S.A.V.Higher Secondary School,
rep., by its Secretary,
Thoothukudi, Thoothukudi District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in O.Mu.No.4022/A4/2019 dated 10.03.2020 on the file of the third respondent and quash the same as illegal and consequently for a direction, directing the second respondent to grant approval to the appointment of the petitioner in the post of



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B.T.Assistant in Mathematics at fourth respondent School within a time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.J.Ashok (for R1 to R3)
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.A vacancy arose in the sanctioned post of B.T.Assistant (Mathematics) in the fourth respondent School. It is a non-minority institution. The fourth respondent approached the competent authority, namely the Chief Educational Officer, Thoothukudi and obtained permission from him for filling up the said vacancy. A copy of the proceedings dated 31.07.2018 in மு.மு.எண்.1696/ஆ4/2018 issued by the second respondent has been enclosed in the typed set of papers. Adhering to the stipulations set out in the said proceedings, the writ petitioner was appointed by the school management w.e.f., 27.09.2018. She also joined duty on the said date. However, when proposal was submitted seeking approval of her appointment, by the impugned order dated 10.03.2020, the third respondent rejected the proposal. The reason set out in the said order is that there are already surplus teachers in the



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said district. Challenging the said rejection order, the writ petition has been filed.

3.Counter affidavit has been filed and the learned Additional Government Pleader appearing for the respondents 1 to 3 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 is made and not in the light of the subsequent development. It is true that the 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.

4.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



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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 second respondent herein. Therefore, the case on hand can be easily distinguished.

5.In this view of the matter, the order impugned in this writ petition is quashed and the respondents 1 to 3 are directed to approve the petition mentioned appointment forthwith and without any delay, with effect from on the date of the writ petitioner appointment i.e., on 27.09.2018. Grant-in-aid towards her salary and allowance shall be released forthwith.

6.The Writ Petition stands allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

20.09.2022

Index : Yes/No

Internet : Yes/No

Rmk



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G.R.SWAMINATHAN, J.,

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