



WP(MD)No.10963 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.10963 of 2020
and
W.M.P.(MD)No.9618 of 2020

A.Franklin Raj

... Petitioner

/vs./

1.The Chief Educational Officer,
Tirunelveli.

2.The District Educational Officer,
Tirunelveli.

3.The Correspondent,
St.Xavier's Higher Secondary School,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of CERTIORARIFIED MANDAMUS, calling for the records pertaining to the proceedings issued by the 1st respondent in his proceedings in Na.Ka.Mo.195/a4/2020 dt 28.07.2020 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as B.T.Assistant with effect from 02.07.2015 with all attended benefits.



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For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.A.Kannan (R1 & R2)

Additional Government Pleader

ORDER

The third respondent School is a Minority Aided Institution. When the sanctioned post of one Secondary Grade Teacher became vacant on 31.05.2015, owing to retirement of one Mr.S.Xavier, another secondary grade teacher, namely, Mr.M.Nepolean was promoted to this vacancy. Consequently, the post of Secondary Grade Teacher which Mr.M.Nepolean was holding, got upgraded as B.T.Assistant, as per G.O.Ms.No.144, School Education Department, dated 04.07.2008.

2.In this background, when one A.Arulraj, who was working in the same school as Secondary Grade Teacher was given promotion as BT Assistant, the petitioner herein was appointed in the said post, since the post stood upgraded as BT Assistant. When the third respondent School had sent a proposal seeking for approval of the petitioner's appointment, the same came to be rejected by the first respondent on 28.07.2020, stating that the writ petition filed by A.Arulraj in W.P.



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(MD)No.16393 of 2019 was pending, with a further reference to GO.Ms.No.144, School Education Department, dated 04.07.2008, alleging pre-requirement of approval of the Authorities for such upgradation.

3.Insofar as the pendency of the writ petition in WP(MD)No.16393 of 2019 cited by the first respondent is concerned, it is seen that the writ petition came to be subsequently allowed on 09.07.2021 whereby the second respondent was directed to approve the appointment of the petitioner therein for the post of BT Assistant (History). In view of the disposal of this Writ Petition, this impediment stands whittled down.

4.Insofar as reference to GO.Ms.No.144, School Education Department, dated 04.07.2008 is concerned, the Division Bench of this Court in the case of **the Chief Educational Officer, Tirunelveli and another vs. S.Josephin Vijaya and another** passed in **W.A.(MD)No.1497 of 2017** dated **14.12.2017** has held that when a secondary grade teacher retires on superannuation, the post of secondary grade teacher “automatically” stands upgraded into that of a Graduate Teacher as per G.O.Ms.No.79, Secondary Education (U-1) Department, dated 14.06.2002.



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5. In view of such automatic upgradation, the Authorities cannot insist for prior permission of their approval for upgradation of the sanctioned post. As a matter of fact, such a claim for permission would only be a futile exercise. Thus, both the reasons cited by the first respondent for rejection of the proposal, cannot be sustained.

6. In the result, the impugned order dated 28.07.2020 is quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, approving the appointment of the petitioner, namely, A. Franklin Raj, as B.T. Assistant, with effect from 02.07.2015. Such an order 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 Petition is closed.

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Index : Yes
Internet : Yes
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TO:

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Tirunelveli.
- 2.The District Educational Officer,
Tirunelveli.



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M.S.RAMESH, J.

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Order made in
W.P.(MD)No.10963 of 2020

Dated:
29.06.2022