



WP(MD)No.13044 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.13044 of 2020
and
W.M.P.(MD)Nos.10990 & 10992 of 2020

The Correspondent,
St.Xavier's Higher Secondary School,
Palayamkottai 627 002,
Tirunelveli District.

... Petitioner

/vs./

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Higher Education,
Fort St.George, Chennai 600 009.

2.The Director of School Education,
College Road, Chennai 600 006.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4.The District Educational Officer,
Tirunelveli, 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 relating to the impugned proceedings issued by the 4th respondent District



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Educational officer in Na.Ka.No.850/A2/2020 dated 05.03.2020, quash the same, and further Direct the 4th respondent DEO to approve forthwith the appointment of M.Alex John as B.T.Assistant (Maths) in the petitioner school w.e.f 02.07.2018 with salary and all other consequential benefits.

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

For Respondents : Mr.V.Nirmal Kumar
Government Advocate

ORDER

The petitioner school is a Minority Aided Educational Institution. The petitioner school appointed one Mr.M.Alex John, as BT Assistant (Maths) on 11.06.2018 with effect from 02.07.2018, in the vacancy that arose owing to the promotion of a sanctioned post. The proposal sent by the petitioner school seeking for approval of Mr.M.Alex John's appointment, came to be returned through the impugned order dated 05.03.2020, calling upon the School Management to furnish a certificate stating that there were no surplus teachers in their Corporate Management and that all the surplus teachers have been accommodated in the needy schools.



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2.The issue as to whether the educational authorities can refer to surplus teachers of the Schools under the Corporate Management of a Minority Institution for the purpose of rejecting the School's proposal for approval of appointment of its teachers, have 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 considered as one unit and not the Educational Agency/Joint Management or Corporate Management.

3.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 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



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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 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



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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 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



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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.”

4.The aforesaid extract is self explanatory. As such, the reason assigned by the respondents that in view of the surplus teachers in the School run by the



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Corporate Management as a reason for rejection of the proposal, cannot be sustained, since the petitioner school requires to be treated as a single unit.

5. Accordingly, the impugned order dated 05.03.2020 is quashed. Consequently, the petitioner is granted liberty to re-submit the proposal seeking for approval of the appointment of one Mr.M.Alex John as B.T.Assistant (Maths) in their School, if not already re-submitted and on receipt of such a proposal, the fourth respondent herein shall pass orders, approving the appointment of Mr.M.Alex John as B.T.Assistant (Maths) in the petitioner School, with effect from 02.07.2018, together with all service and monetary benefits, within a period of four (4) 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 / No

Internet : Yes / No

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M.S.RAMESH, J.

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TO:

- 1.The Secretary,
Department of Higher Education,
Fort St.George, Chennai 600 009.
- 2.The Director of School Education,
College Road, Chennai 600 006.
- 3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 4.The District Educational Officer,
Tirunelveli, Tirunelveli District.

Order made in
W.P.(MD)No.13044 of 2020

Dated:
29.06.2022