



WP(MD)No.15130 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.06.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.15130 of 2021
W.M.P(MD).No.12053 of 2021

S.S.Uma Maheswari

... Petitioner

/vs./

- 1.The State of Tamil Nadu
Rep.by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Madurai, Madurai District.
- 4.The District Educational Officer,
Madurai-625 002,
Madurai District.
- 5.The Correspondent,
4-Sourastra Girls Higher Secondary School,
Thepakulam, Anupanadi Road,
Madurai-625 009.

... Respondents



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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 fourth respondent District Educational Officer vide A.Thi.Mu.No.817/A4/2021 dated 08.03.2021 returning the proposal seeking approval of appointment of petitioner as PG Assistant Commerce, quash the same and further direct the third and fourth respondents herein to approve forthwith the appointment of petitioner as PG Assistant Commerce with effect from 24.08.2020 in the fifth respondent School namely Sourashtra Girls Higher Secondary School, Madurai and disburse the grant-in-aid towards her salary with all attendant benefits from the said date.

For Petitioner : Mr.A.Amala

For Respondents : Mr.A.Kannan

Additional Government Pleader
for R1 to R3

ORDER

The fifth respondent school is a recognized Private Minority Institution. When the School had sent a proposal for approving the appointment of the petitioner in the sanctioned post of PG Assistant (Commerce) dated 24.08.2020, the same came to be returned through the impugned order dated 08.03.2021 by directing the fifth respondent School to comply with G.O.Ms.No.13, School



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Education Department dated 30.01.2020. The impugned proceedings cannot be sustained in view of the decision of this Court to the effect that the Government Order in G.O.Ms.No.13, School Education Department, dated 30.01.2020, was issued in exercise of the power under Article 309 of the Constitution of India which should govern only the Government Teachers and not the Teachers in the Private Educational Institutions.

2. In the case of *Director of School Education and others vs. Geldon Wifred Viola* reported in *2009(2) TLNJ 101 (Civil)*, the Hon'ble Division Bench of this Court had held that “the Government Order G.O.Ms.No.361, Education Department dated 31.12.1999 which is questioned though has been issued in exercise of the power under Article 309 of the Constitution of India, in our opinion, that would be made applicable only to the Government Servants viz., the teachers who are employed in the Government Schools and not to the teachers in private schools, as those teachers are governed only by the provisions of the Act and the rules made thereunder”. This proposition was ratified by another Hon'ble Division Bench of this Court in the case of *the Director of Elementary Education vs. G.Vijayalakshmi* in *W.A(MD).No.251 of 2015* dated *14.07.2015*



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and the relevant portion of the judgment reads as under:-

32. On this aspect, firstly we wish to consider the decision made in K.Michael Antony v. State of Tamil Nadu reported in 2010 (4) MLJ 1207. In the reported case, the request of the petitioner therein, for alteration of Date of Birth was rejected, on the ground that as per Rules framed under the Rules, applicable to government servants the respondents therein are not bound to entertain any application for alteration of date of birth, received after lapse of 5 years from the date of entry into service. Adverting to the above, with reference to the service conditions of the employees in a private school, governed under the Tamil Nadu Recognised Private Schools (Regulation) Act 1973, and the Rules made thereunder vis-a-vis the applicability of the Tamil Nadu State and Subordinate Service Rules, framed under Article 309 of the Constitution of India, only to the members of the State service and the decision of this Court in The Director of School Education, College Road, Chennai and others v. Geldon Wifred Viola and others reported in 2009 (2) TNLJ 101 (Civil), wherein, this Court held that, “the Government Order which was issued in exercise of the powers under Article 309 of the Constitution of India would be made applicable only to the Government servants viz., the teachers who are employed in Government schools and not to the teachers in



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Private Schools as they are governed only by the Tamil Nadu Recognized Private Schools (Regulation) Act, 30 1973 and the rules made thereunder.”

3. The aforesaid extract is self-explanatory. As such, directing the School Management to comply with G.O.Ms.No.13, School Education Department, dated 30.01.2020 cannot be sustained. Accordingly, the impugned proceedings dated 08.03.2021 passed in A.Thi.Mu.No.817/A4/2021 by the fourth respondent is quashed and consequently, there shall be a direction to the third respondent/Chief Educational Officer to pass fresh orders on the proposal submitted by the fifth respondent School in connection with the appointment of the petitioner as PG Assistant (Commerce) and grant approval for such appointment, within a period of eight weeks from the date of receipt of a copy of this order.

4. In the result, this Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

23.06.2022

Index : Yes / No
Internet : Yes / No
ssb

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M.S.RAMESH, J.

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