



W.P(MD)No.21593 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21593 of 2022

and

W.M.P(MD)Nos.15735 to 15737 of 2022

The Secretary,
Swami Vivekanandha Primary School,
Silukkuvarpatti – 624 215,
Nilakkottai Taluk,
Dindigul District.

... Petitioner

Vs

1.The Director of Elementary School Education,
College Road,
Chennai – 6.

2.The District Educational Officer,
Vathalagundu Educational District,
Vathalagundu Post,
Dindigul District.

3.The Block Educational Officer,
Office of the Block Educational Officer,
Nilakkottai Post & Taluk,
Dindigul District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the second respondent in O.Mu.No. 5146/A3/2019 dated 05.05.2022 and quash the same and consequently direct the respondents 1 to 3 to approve the appointment of Tmt.R.Vijayalakshmi as Secondary Grade Teacher under S.C.(A) Category in petitioner's school with all attendant and monetary benefits from the date of initial appointment.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is an aided non-minority educational Institution. Vacancy arose in the post of Secondary Grade Teacher on 16.09.2019. The petitioner / Management applied to the competent authority seeking permission to fill up the said vacancy. The competent authority vide order dated 06.12.2019 granted permission to the petitioner to fill up the vacancy in the post of Secondary Grade Teacher as per communal roster. The petitioner appointed one R.Vijayalakshmi and the said R.Vijayalakshmi also joined duty on 23.12.2019. It is relevant to mention here that the post was earmarked for Scheduled Caste (Arunthathiyar) category candidate. The said R.Vijayalakshmi



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belongs to the said communal category. Thereafter, the petitioner approached the Department for approval of the appointment. However, by the impugned order dated 05.05.2022, the second respondent declined to grant approval. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and direct the respondents to grant approval and also disburse the salary grant.

4. The respondents filed counter affidavit and the learned Special Government Pleader took me through its contents. His primary contention is that during the relevant time, G.O(Ms)No.165 School Education Department, dated 17.09.2019 was holding the field. The said Government Order contemplated that if surplus teachers are available in the District, then the vacancies must be filled up only by deployment.

5. Though the Hon'ble Division Bench of this Court had taken the view that the said Government Order is inoperative, by virtue of the interim order granted by the Hon'ble Apex Court in S.L.P (Civil) No.12693 of 2022, dated 22.07.2022 this Government Order sprang back to the life. He called for dismissal of the writ petition.



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6. I carefully considered the rival contentions and went through the materials on record.

7. In my view, the said interim order granted by the Hon'ble Apex Court cannot be put against the writ petitioner, because 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 ascertaining their minority status. The case on hand is different. The School Management had not on their own straightaway appointed the candidate. The vacancy was earmarked for Scheduled Caste (Arunthathiyar). The Management approached the Department. After obtaining permission for filling up the vacancy only in terms of the order granting permission, the Management appointed the said R.Vijayalakshmi. It is not therefore open to the Department to now turn around and rely on G.O(Ms)No.165 dated 17.09.2019.

8. In this view of the matter, the order impugned in this writ petition is set aside. The respondents are directed to approve the petition mentioned appointment. The salary grants and other benefits will be disbursed forthwith and without any delay.



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9. This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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