



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) .No.13253 of 2018

and

W.M.P. (MD) .No.12084 of 2018

The Correspondent,
St.Antony's Higher Secondary School,
Enayam Puthenthurai - 629 193,
Kanyakumari District.

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
St.George Fort,
Chennai.

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

3.The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.

4.The District Educational Officer,
Kuzhithurai,
Kanyakumari District - 629 193.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the fourth respondent pertaining to its order bearing Oo.Mu.No.7149/A4/2017 dated 20-03-2018, and to quash the same and consequently directing the respondents to approve the appointment of the petitioner in the post of B.T. Assistant (History) from the date of appointment that is on 01-08-2017 and consequently direct the respondents to disburse monetary and other attendant service benefits, including payment of arrears of salary from the date of appointment that is on 01.08.2017 by considering the proposal resubmitted by the petitioner on 05.06.2018 with interest within a time frame that may be fixed by this Court.



For Petitioner : Mr.S.C.Herold Singh
For Respondents : Mr.A.Kannan,
Additional Government Pleader.

ORDER

The petitioner's School is a minority aided institution, which does not require prior permission for appointment of its teachers. In this background, when they had appointed one Sr.Gnana Savariammal as B.T. Assistant (History) with effect from 01.08.2017 and submitted a proposal to the fourth respondent to approve her appointment, the same came to be returned mainly on the ground that the approval would be considered only after the surplus teachers in the Kanyakumari District are deployed to the needy schools.

2. The justification of such a stand came up for consideration before this Court on many occasions and in one such Writ Petition passed in the case of ***The Correspondent, St.John Vianney's Girls Higher Secondary School Vs. The State of Tamil Nadu and others***, passed in ***W.P. (MD).No.7907 of 2021, dated 25.06.2021***, this Court had negatived the reasoning adopted by the authorities, in the following manner:

'6.The petitioner's School, which is a minority educational institution, appointed one S.Ezhil Shini as BT Assistant (English) in the vacancy arose due to the retirement of one Tmt.V.Sriya Pushpam, Secondary Grade Teacher. The proposal sent by the petitioner's school for approval of appointment was accepted by the third respondent. In the writ petition in W.P. (MD)No.15793 of 2018, filed by the petitioner, this Court, by order, dated 19.07.2018 passed the following order:-

"5.Considering the limited scope of the writ petition, this Court is inclined to pass the following orders:-

"that the second and third respondents are directed to consider the said resubmitted proposal dated 01.03.2018 of the petitioner School, with regard to the appointment of one S.Ezhil Shini as B.T.Assistant on 08.06.2017 and pass necessary orders with regard to the approval of the said appointment, within a period of four weeks from the date of receipt of a copy of this order."

7. The third respondent after the above order of this Court, by the proceedings, dated 29.08.2018, refused to approve the appointment of S.Ezhil Shini stating



District, is deployed to the needy schools, necessary steps will be taken for approving the appointment. Subsequently, the third respondent passed the impugned order, dated 04.02.2021, rejecting the request of the petitioner for approval on the following grounds:-

"i) there are 311 surplus teachers in Kanyakumari District including 8 BT Assistants in English post;

ii) in the petitioner's school there are two BT Assistant (maths) and BT Assistant (Science) were rendered as surplus in the year 2016-2017;

iii) appointment made without prior permission
and without following the subject roster;

iv) in the interim order passed in W.A(MD)No.76 of 2019 etc., batch dated 09.04.2019, a Division Bench of this Court held that only after deployment of excess staffs, new appointments shall be made. Approving the proposal submitted by the petitioner will be a additional financial burden.

The above said reasons given by the third respondent are erroneous.

8. The petitioner's School, which is a minority institution, can fill up the sanctioned vacancy without obtaining prior permission. Subsequent to the interim order, dated 09.04.2019 in W.A(MD)No.76 of 2019 etc., batch referred in the impugned order by the third respondent and G.O.Ms.No.165, School Education Department, dated 17.09.2019, another Division Bench of this Court considering the said issue in the very same Writ Appeal, has suspended the operation of G.O.(Ms)No.165, School Education Department, dated 17.09.2019 passed in pursuant to the interim order dated 09.04.2019 in W.A(MD)No.76 of 2019 etc., batch, by order, dated 20.09.2019, until further orders. Subsequently, another Division Bench of this Court taken up W.A(MD)No.76 of 2019 etc., batch for final hearing and considered the issue in detail, vide judgment dated 31.03.2021, in Para 95(o) declared the said Government Order as inoperative. The relevant portion of the said judgment reads as follow:-

"95. (o) In view of the aforesaid, the G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative." "



3. The aforesaid extract is self-explanatory. As such, the very basis on which the approval application has been returned cannot be sustained in view of the decision of this Court (extracted above). Accordingly, the impugned order, dated 20.03.2018, is quashed. Consequently, there shall be a direction to the District Educational Officer, Kuzhithurai, Kanyakumari District to pass appropriate orders on the proposal re-submitted by the petitioner on 05.06.2018, approving the appointment of Sr.Gnana Savariammal for the post of BT Assistant (History) without insisting for deployment of surplus staff in Kanyakumari District, within a period of eight (8) weeks from the date of receipt of a copy of this order.

4. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

Lm

To

- 1.The Secretary to Government,
School Education Department,
St.George Fort,
Chennai.
- 2.The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.
- 4.The District Educational Officer,
Kuzhithurai,
Kanyakumari District - 629 193.

+1 CC to M/s.S.C. HEROLD SINGH, Advocate (SR-28374[F] dated 28/06/2022)

+1 CC to M/s.SPL.GP (SR-28550[F] dated 28/06/2022)

W.P. (MD) .No.13253 of 2018
27.06.2022

SS/06/07/2022/ 4P 7C