



W.P.(MD)No.4305 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.10.2022**

CORAM

THE HON'BL MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.4305 of 2015

and

M.P.(MD)No.1 of 2015

R.Raja Chandra

... Petitioner

Vs.

1. The State of Tamil Nadu
represented 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,
Kanyakumari District,
Kanyakumari District – 629 001.
4. The District Educational Officer,
Thuckalay – 629 175,
Kanyakumari District.
5. The Correspondent,
St.Mary Goretty Higher Secondary School,
Manalikari – 629 164.
Kanyakumari District.

... Respondents



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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 relating to the impugned proceedings issued by the fourth respondent District Education Officer vide Ni. Mu. No 345/ Aa1/ 09, dated 27.01.2009, Quash the Same, and further, Direct the fourth respondent herein to approve the petitioner's appointment as BT Assistant in the fifth respondent school from the original date of appointment i.e., 01.06.2006 onwards with salary and other attendant benefits.

For Petitioner : Mr.E.V.N.Siva

For R1 to R4 : Mr.S.Kameswaran
Government Advocate (Civil side)

For R5 : Mr.S.Xavier Rajini



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ORDER

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This Writ Petition is filed to quash the impugned order, dated 17.01.2009, with the consequential relief to approve the petitioner's appointment as BT Assistant in the fifth respondent School from the original date of appointment i.e., 01.06.2006.

2. The contention of the petitioner is that in the fifth respondent School one Secondary Grade post for standards VI to VIII fell vacant on 31.05.2006, on account of the promotion of the previous incumbent namely, Tmt.Espin Mary as BT Assistant. In view of the new norms set out by the State Government, the post should be upgraded as BT Assistant as and when the Secondary Grade Teacher post fell vacant and accordingly, the fifth respondent School appointed the petitioner on 01.06.2006 with B.T. qualifications. The fifth respondent School submitted a proposal on 09.08.2007 for approval and to disburse grant-in-aid towards salary. The DEO returned the proposal stating that the appointment has been made without following the subject roster as per G.O.Ms.No.100, School Education dated 27.06.2003, vide proceedings,



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dated 14.11.2007 and the said reasoning is invalid since the 5th respondent school is Minority School and subject roster is not applicable to minority schools and relied on judgement rendered in Corporate Manager, CSI Corporate Schools vs. State of Tamil Nadu reported in 2006 (5) CTC 504. Therefore, the claim of the petitioner is that the order passed by the respondent is not in accordance to the judgment rendered by this Court. Hence, the petitioner prayed to approve the appointment from the date of original appointment.

3. The fourth respondent has filed a counter affidavit stating that the Government has passed G.O.Ms.No.79, School Education Department, dated 14.06.2002, whereby, the Government had upgraded Education's level in Standards VI to VIII. As and when the vacancy of Secondary Grade Teacher post arises the same shall be filled up by Graduate Teacher with B.Ed., qualification. The fifth respondent School has not obtained any approval for upgradation from the Director. Moreover, the school has not followed G.O.Ms.No.100, School Education Department, dated 27.06.2003. The respondent further



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submitted that G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008 para (3),(ii), the power is delegated to the concerned Chief Educational Officer to convert the vacancy of a permanent post of Secondary Grade Teacher in a Government Aided Schools into BT Assistant post in a required subject as the basis of need and eligibility and by considering classes VI-X as one unit. The fifth respondent School has not obtained any permission from the Education Department. Therefore, the approval was not granted. Hence, the respondent prayed to dismiss the writ petition.

4. Heard Mr.E.V.N.Siva, learned Counsel appearing for the petitioner, Mr.S.Kameswaran, learned Government Advocate appearing for the respondents No.1 to 4 and Mr.S.Xavier Rajini, learned Counsel appearing for the fifth respondent.

5. The reasoning stated by the respondent for not approving is that the 5th respondent has not obtained prior permission for converting the existing Secondary Grade Teacher post to B.T. Assistants and the



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Director is empowered to accord permission. The object behind is to ascertain whether the school is in need of the said post by taking into consideration of students-strength. It is also to ascertain whether any other teacher is available in the same subject. But the minority institutions alleges that it would interfere in their administration. This issue was considered in several judgments wherein it is held that the conversion from Secondary Grade Teacher post to B.T. Assistants is automatic and permission is not necessary.

6. The next contention is that as per G.O.Ms.No.144 the Chief Educational Officer is authorized to approve but the 5th respondent has not obtained any orders from the CEO. However, the G.O.Ms.No.100 and G.O.Ms.No.144 were considered by the Hon'ble High Court and held the same is not applicable to minority institutions.

7. It is seen from the records that the proposal was submitted from 07.09.2007 only. The respondents submitted that the petitioner was appointed long back and the respondents cannot verify the records prior



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to 2007 since it is old records. Therefore this Court is of the considered opinion that the approval shall be granted from the date of proposal i.e., 09.08.2007 onwards and the salary shall be paid from the date i.e., 09.08.2007 along with the service benefits.

8. The petitioner as well as the respondents have not submitted any details about the surplus details. Hence, the respondents are directed to ascertain surplus status of the school and if there are any surplus teachers in the school, the respondent shall issue an order restraining the 5th respondent from appointing any further teachers in any vacancy until the surplus teachers are reduced to nil. The respondents are further directed to consider to pass transfer orders or deployed orders.

9. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
jbr



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S.SRIMATHY, J

jbr

Order made in
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