



W.P(MD)No.6312 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.6312 of 2017

and

W.M.P(MD).No.4990 of 2017

G.Maheswari

: Petitioner

Vs

1. The Principal Secretary,
School Education Department,
St. George Fort,
Chennai - 600 009.

2. The Director of Elementary Education,
DPI Complex,
College Road,
Chennai

3. The District Elementary Educational Officer,
Madurai

4. The Judge Administrator,
TELC Schools,
TELC Church Compound
19/2, M.K.Reddy Street,
Thambaram West,
Chennai.

: 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 pertaining to the impugned proceedings of the third respondent in ஓ.பி.எண்.1021/ஆவண2/2017 dated 03.03.2017 and quash the same and consequently direct the third respondent to approve the appointment of petitioner as Secondary Grade Teacher in the TELC Elementary School, Kurayur, based on the proposal of the fourth respondent dated 24.02.2017 and pay arrears of salary and other attend benefits with effect from the date on which she was appointed.

For Petitioner : Mr.R.Gowrishankar

For R1 to R3 : Mr.V.Omprakash

Government Advocate(Civil Side)

For R4 : Mr.S.Kadarkarai

ORDER

This writ petition had been filed for issuance of Certiorarified Mandamus to quash the impugned proceedings of the third respondent in ஓ.பி.எண்.1021/ஆவண2/2017 dated 03.03.2017 and consequently direct the third



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respondent to approve the appointment of petitioner as Secondary Grade Teacher in the TELC Elementary School, Kurayur, based on the proposal of the fourth respondent dated 24.02.2017 and pay arrears of salary and other attend benefits with effect from the date on which she was appointed.

2. The brief facts as stated in the affidavit is that the petitioner was appointed as Secondary Grade Teacher in the sanctioned vacant post by the fourth respondent on 29.11.2016 in the TELC Elementary School, which fell vacant due to death of one Prince Christopher Singh. The TELC is under the administrative control of the fourth respondent. In pursuance of the appointment order of the fourth respondent, the petitioner joined duty on 19.05.2016. The fourth respondent is a Judge Administrator, who was appointed to oversee and manage the TELC Schools in the place of President, Vice President, Secretary and Treasurer of the Church Council of TELC as per the interim order passed in M.P.Nos.1 and 1 of 2015 in LPA Nos. 3 and 5 of 2015 by the High Court, Madras.

3. The contention of the petitioner is that the fourth respondent was empowered to make appointments in TELC Schools, however the



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appointment is subject to the approval of the third respondent. The fourth respondent has sent a proposal along with required documents on 24.02.2017, requesting the third respondent to approve the appointment of the petitioner. But the third respondent, vide proceedings dated 03.02.2017, informed the Assistant Elementary Educational Officer, Kallikudi on misconception that he is not in a position to consider the request of approval of the petitioner's appointment and the said proceedings was also marked to the fourth respondent vide letter, dated 17.03.2017. Through the impugned order, the third respondent declined to approve the petitioner's appointment stating that it is a temporary vacancy and hence the appointment of the petitioner cannot be approved. Aggrieved over the same, the present writ petition has been filed.

4. The third respondent had filed a counter stating that the fourth respondent namely, Tamil Evangelical Lutheran Church is a society registered under the Society Registration Act and their administration was supervised by the Hon'ble Mr. Justice J.Kanakaraj (Retired), who was appointed through L.P.A order. The contention of the third respondent is that the fourth respondent is not empowered to appoint the petitioner, since the powers are



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not vested with him. The Judge Administrator of the TELC is having power to appoint substitutes in the vacant post purely on temporary basis and the fourth respondent is not having any power to appoint any Secondary Grade Teachers as per the LPA order. Also the second respondent vide proceedings, dated 28.07.2016 passed an order for direct payment to the staff of TELC management and also directed that TELC is supervised by Hon'ble Mr.Justice J.Kanakaraj (Retired). This order was passed based on the direction of the second respondent. The third respondent has passed an order based on the rules and regulations and as per the direction of the Division Bench. Therefore, the respondents prayed to dismiss this petition.

5. Heard Mr.R.Gowrishankar, the Learned Counsel appearing for the petitioner, Mr.V.Omprakash, the Learned Government Advocate (Civil Side) appearing for the respondents 1 to 3 and Mr.S.Kadarkarai, the Learned Counsel appearing for the 4th respondent and perused the materials available on records.

6. It is an admitted fact that the petitioner was appointed by the Judge Administrator on 29.11.2016 in the vacancy arose due to the death of one



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Prince Christopher Singh. After appointment, the papers were forwarded to the official respondents for approval. In earlier communication, the Judge Administrator has stated that on the recommendation of the Judge Administrator to appoint substitutes in the vacant posts consequent on the leave vacancies purely on a temporary basis. Because of this communication, the respondents have refused to approve the petitioner's appointment, by stating that the post is leave vacancy post and hence approval cannot be granted. After this rejection order, it has been further clarified by the Judge Administrator through letter dated 17.03.2017, where he has stated as follows:

“In this connection, I would like to stress on you that the para 2 of the proceedings cited pertains to SUBSTITUTES in the Vacant Posts consequent on the LEAVE VACANCIES and the instant case pertains to substitutes in the vacant post consequent on the PERMANENT VACANCY. Both the cases are distinct though inter-connected.”

Therefore, according to the fourth respondent, it is only permanent vacancy and the petitioner was appointed in the permanent vacancy.

7. In the meanwhile one E.D.Charles had filed an impleading petition and the same was pending. When the matter was taken up for hearing, the



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learned Counsel, who had filed the impleading petition, has not appeared before this Court. On perusing the affidavit, it is seen that the said E.D.Charles has stated that the Judge Administrator is appointed only for day-to-day administration and he has no power to appoint any teacher.

8. Now a question arose for consideration whether the Judge Administrator has power to appoint teachers or not in the permanent post. However, there is no clarification from the pleading. In the order, dated 29.04.2016, the powers of the Judge Administrator were narrated, where, it is stated that the Judge Administrator may be empowered to exercise the powers of the President, Vice President, Secretary and Treasurer of the Church Council of TELC for proper administration of TELC. There is no power conferred under the said order to appoint teachers. There is no power to the Judge Administrator to act as Selection Committee or Appointing Authority.

9. On a perusal of staff fixation order, it is seen that the school is functioning in a remote area and it is a primary school, which has the student strength upto 58. In the first to fifth standards, the students strength is 4, 7, 8, 4 and 8 respectively. The post that is vacant is the Secondary Grade Teacher.



Interestingly, a communication was enclosed in the typeset dated 24.02.2017,

where it is stated as follows:

“Keeping the post vacant in the school was not conducive for the qualitative improvement of Education of the pupil studying there and with a view to avoid the school being run as a single Teacher school, the request dated 11.06.2016, referred to in the reference 3rd cited, was considered and Mrs.Reeta Selvakumari, Secondary Grade Teacher TELC Middle School Machuvadi was transferred to the school in the proceedings 4th cited unfortunately she did not join duty.

The Headmaster reported the fact in his letter 5th cited. In as much as the post was not filled up by the Department with the Teacher deployed from any other School, it was left to the choice of the Management to fill up the post in the interest of the school.

While such was the state of affairs, in her application 6th cited Mrs. Mahesswari qualified secondary Grade Teacher applied for appointment. Considering her request, orders were issued in the proceedings 7th cited, appointing her against the sanctioned post, vacated by the said Mr.Prince Christopher.

In his letter 8th cited, the Headmaster, TELC Primary School Kurrayur (which has been brought under direct payment system as per your proceedings dated 16.08.2016 due to the litigation referred to in the judgment 1st cited) has sent necessary proposals and documents in the absence of Correspondent and thus the matter is pending with the Department.”

10. If there are any vacancy, the TELC has the power to transfer any teacher among the Corporate Management. Admittedly, TELC is the Corporate Management having several schools and rightly the School



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Management has transferred one Reeta Selvakumari. However, the said teacher refused to join the post. The Headmaster has stated in the letter that the Department has not filled up the vacancy by way of deployment orders from other schools and since the department has not passed such order, it has been left to the choice of the management to fill up the post in the interest of the school.

11. The respondents ought to have taken into account the recurring financial implications to the government for any fresh recruitment. In the general public interest the 4th respondent ought to have transferred any other teacher from surplus teachers list instead of appointing fresh teacher. The official respondents have not taken such steps and is silent about the surplus teachers in TELC. There are more than six thousand Secondary Grade Teachers as of now. Therefore, this Court is of the considered opinion that the appointment of the petitioner would increase the strength of the surplus teachers, hence the officials respondents are directed to pass the deployment order or transfer order to fill the vacancy. Until then the school has no power to appoint anybody. They ought to have reported to the official respondents to fill up the post by passing the deployment order or transfer order. Therefore,



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this Court is of the considered opinion that because of the existence of surplus teachers, the petitioner is not entitled for any approval. The Department is directed to pass the deployment order within a period of four weeks from the date of receipt of a copy of this order. The Director of Elementary Education is directed to take necessary steps to pass deployment order as and when the post fell vacant, without giving no room for any fresh appointment.

12. Therefore, the claim of the petitioner fails. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To
1. The Principal Secretary,
School Education Department,
St. George Fort,
Chennai - 600 009.

2. The Director of Elementary Education,
DPI Complex,

10/12



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S.SRIMATHY, J.

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