



W.P.(MD) No.24741 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.24741 of 2019
and W.M.P.(MD).No.21344 of 2019

P.Gladious

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanniyakumari District,
Nagercoil.

2.The District Educational Officer,
Thiruvattar, Kanniyakumari District.

3.M.J.K.M.M.S.C. Higher Secondary School,
Rep. by its Correspondent,
Christurajapuram, Marthandam Post,
Kanniyakumari District – 629 165.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 1st respondent herein Na.Ka.No.13096/E2/2018, dated 24.07.2019, quash the same and further direct the 1st respondent herein to approve forthwith the appointment of petitioner as BT Assistant (Social

1/10



W.P.(MD) No.24741 of 2019

Science) in the 3rd respondent school from 02.04.2018 onwards with salary and other attendant benefits.

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

For Respondents : Mr.S.Shaji Bino for R1 and R2
Special Government Pleader

No Appearance for R3

ORDER

Heard the counsel on either side.

2. The third respondent school is a Minority Aided Educational Institution. The petitioner herein was appointed as a BT Assistant (Social Science) in the third respondent's School on 02.04.2018 in the sanctioned vacancy that arose due to the retirement of another BT Assistant. The third respondent school had submitted a proposal to the Chief Educational Officer herein, seeking for approval of the petitioner's appointment with effect from 02.04.2018, which was rejected on the ground that there were surplus teachers working in other Schools run by the same Management of the third respondent School.



W.P.(MD) No.24741 of 2019

WEB COPY

3.The issue as to whether the Educational Authorities can reject a proposal of the Management seeking for approval of the appointment of a teacher in Minority Institution on the ground that there are surplus teachers either in the District or under the Corporate Management of the School is no more *res integra*, since it has been dealt with in various decisions, against the Authorities.

4.In a batch of writ petitions filed before this Court in the case of ***The Secretary to Government, Government of Tamil Nadu, School Education Department and others Vs. Iruthaya Amali and another*** reported in ***2021 SCC online Madras 1285***, the Honourable Division Bench of this Court had held that for the purpose of fixing the staff strength of the School, the School as such, shall be the unit and not the Educational Agencies/ School Management/ Corporate Management. This finding has been applied in various other orders in writ petitions, whereby, it was held that the existence of surplus teachers in other Schools under the same Management, cannot be a ground for rejection of the proposal.



W.P.(MD) No.24741 of 2019

WEB COPY

5. In a recent decision taken in a batch of writ petitions in **W.P.No.3194 of 2020, etc.**, dated **18.04.2022** in the case of ***B.Kurinjimalaron vs. the State of Tamil Nadu, Represented by its Secretary, Education Department, Fort St.George, Chennai 600009***, this aspect was dealt with in the following manner:

5. The learned counsel appearing for the petitioners would submit that the G.O.Ms.No.165 dated 17.9.2019 as well as the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019 are prospective in nature. In the present cases, the appointment was made prior to the Government order passed in G.O.Ms.No.165 issued by School Education Department, dated 17.9.2019. Therefore, there is no legal impediment for approving the appointment made by the School Management to the aforesaid posts in the light of the existing Rules thereunder.

6. The learned Additional Advocate General submitted that as against the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021. It is further submitted that the Hon'ble Supreme Court



WEB COPY

W.P.(MD) No.24741 of 2019

stayed the judgment only in respect of Clause (i) of paragraph 95 of the said judgment. Further, it is also brought to the notice of this Court that the Division Bench in paragraph 6 of the said judgment, has observed that, "no fresh appointment even in the sanctioned vacancy shall be made by any school which are managed by the Corporate Management.

7. The learned counsel appearing for the petitioners would submit that in the instant case, no appointment was made by the School Management pursuant to the judgment passed by the Division Bench of this Court. All the appointments were made prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and the proposals were also sent to the educational authorities prior to the said G.O.Ms.No.165 dated 17.9.2019. Thus, G.O.Ms.No.165 dated 17.9.2019 and the Division Bench judgment will not bind over the appointment made by the School Management in the instant writ petitions. Therefore, the learned counsel appearing for the petitioners seeks to quash the impugned orders and consequently, direct the educational authorities to accord approval to the appointment to the post of B.T. Assistant and Secondary Grade Teacher, made by the School Management in the instant writ petitions.

8. According to the learned Additional Advocate General, the State Government has preferred an appeal



WEB COPY

W.P.(MD) No.24741 of 2019

before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021 as against the judgment passed by the Division Bench of this Court in the Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc. and obtained stay insofar as Clause (i) of paragraph 95 of the said judgment. Except the aforesaid clause (i) of paragraph 95, there was no stay in respect of remaining portion of the judgment. It is agreed by the learned Additional Advocate General that the writ petitioners were appointed prior to the G.O.Ms.No.165 dated 17.9.2019 and therefore, it can be considered and an appropriate order may be passed.

9. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.9.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and proposals for the said appointment were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.



W.P.(MD) No.24741 of 2019

WEB COPY

10. Having regard to the rival submissions of the parties, taking note of the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., G.O.Ms.No.165 issued by the School Education department, dated 17.9.2019 will not prohibit the educational authorities to approve the appointment made by the School Management in the instant writ petitions since the proposals for approval of appointment made by the School Management were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.9.2019 in proper perspective and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the impugned orders passed by the respondent department are liable to be quashed.”

6. Thus, the reason assigned by the respondents for rejecting the proposal, on the ground of availability of surplus teacher, under the Corporate Management of the respondent's School, cannot be sustained.



W.P.(MD) No.24741 of 2019

WEB COPY

7. For all the foregoing reasons, the impugned order passed by the 1st respondent herein vide Na.Ka.No.13096/E2/2018, dated 24.07.2019, is hereby quashed. Consequently, the third respondent herein is called upon to resubmit the proposal to the first respondent herein and on receipt of such proposal, the first respondent herein shall pass appropriate orders approving the appointment of the petitioner to the post of BT Assistant (Social Science) with effect from 02.04.2018. Such orders shall be passed, atleast within a period of six weeks from the date of receipt of re-submission of the proposal.

8. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

05.07.2022

Index : Yes
Speaking Order
TM

To

1. The Chief Educational Officer,
Kanniyakumari District,
Nagercoil.



W.P.(MD) No.24741 of 2019

WEB COPY

2. The District Educational Officer,
Thiruvattar, Kanniyakumari District.



WEB COPY



W.P.(MD) No.24741 of 2019

M.S.RAMESH,J.

TM

W.P.(MD) No.24741 of 2019

05.07.2022