



W.A(MD)No.1479 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD)No.1479 of 2022
and
CMP(MD)No.12103 of 2022

1. The Chief Educational Officer,
Tenkasi, Tenkasi District.

2. The District Educational Officer,
Sankarankovil, Tenkasi District.

... Appellants

vs.

1. A.Thamaraiselvi

2.Rayagiri Hindu Nadar Uravinmurai
Thiru SI.BA.Sivanthiathithanar Higher Secondary School,
Represented by its Secretary,
Rayagiri, Sivagiri Taluk,
Tenkasi District.

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent,
against the order passed in W.P(MD)No.20402 of 2021 dated
30.06.2022.



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For Appellants

: Mr.R.Baskaran,
Additional Advocate General, assisted by
Mr.D.Sadiq Raja
Additional Government Pleader

For R1

: Mr.T.Pon Ramkumar

JUDGMENT

(Judgment of the Court was made by D.KRISHNAKUMAR, J.)

The Writ Appeal is directed against the order made in W.P(MD)No.20402 of 2021 dated 30.06.2022.

2. By consent of both parties, the writ appeal itself is taken up for final disposal at the admission stage.

3. Learned Additional Advocate General appearing for the appellants submitted that the 2nd respondent school is an aided non-minority school, in which, one post of P.G. Assistant fell vacant on 02.07.2018 due to the promotion of the then incumbent as Headmaster. The 2nd respondent school management sought for prior permission to fill up the said post and the same was granted by the 1st



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appellant vide proceedings dated 26.07.2019. Pursuant to the same, the 2nd respondent school appointed the 1st respondent/writ petitioner as P.G. Assistant(Chemistry) in the said vacancy with effect from 30.08.2019 and on the same day, the 2nd respondent school forwarded a proposal to the appellants seeking approval of the said appointment. The said proposal was initially returned by the 2nd appellant by raising certain queries on 07.05.2021 and the same was represented by the 2nd respondent school on 06.07.2021 and after due consideration, the 1st appellant had returned the same to the 2nd appellant vide proceedings dated 29.09.2021, stating that the proposal submitted by the school management can be considered only after completion of the deployment process carried out by the department as per the directions issued by this Court in W.A(MD)No.76 of 2019 & etc, dated 31.03.2021 and the same was duly communicated by the 2nd appellant vide proceedings dated 27.10.2021 to the 2nd respondent school. Challenging the same, the 1st respondent/writ petitioner filed W.P(MD)No.20402 of 2021 and the same was allowed by this Court vide order dated 30.06.2022 setting aside the orders impugned



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therein, on the ground that the Hon'ble Apex Court has granted stay only in respect of paragraph 148(i) of the order passed in W.A(MD)No. 76 of 2019 & etc and the said portion does not relate to the issue involved in the writ petition. Challenging the said order, the Education Department has come up with this appeal.

4. According to the learned Additional Advocate General, the direction issued by the learned Single Judge to the 1st appellant to pass orders approving the 1st respondent's appointment as Post Graduate Assistant is contrary to the Division Bench judgment in W.A(MD)No.76 of 2019 & etc, dated 31.03.2021 and therefore, he would pray for setting aside the order passed by the learned Single Judge.

5. Learned counsel for the 1st respondent submitted that the learned Single Judge finding that the only condition touching upon a ban, is on fresh appointments, which is in paragraph 148 sub para (u), wherein the Hon'ble Division Bench was of the view that till the excess



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teaching staffs are identified, no recruitment shall be made by the Government or the Education Department for the purpose of appointment of teachers under various categories and apparently, the Hon'ble Division Bench refers to fresh appointments only and does not touch upon appointments that had already been made and where approvals are required to be granted, rightly held that the reason assigned in the impugned order that the conditions laid down by the Hon'ble Division Bench in Iruthaya Amali's case has to be complied with as a pre-requirement for the grant of approval of an appointment already made, is baseless and un-sustainable and the learned Single Judge further finding that the Apex Court declined to stay the judgment made in W.A(MD)No.76 of 2019 & etc, dated 31.03.2021, except paragraph 148(i) alone which portion does not relate to the issue raised in the writ petition, held that there are no impediments for the appellants to process the proposal sent by the 2nd respondent school seeking approval of the 1st respondent's appointment and accordingly set aside the impugned orders which is perfectly right.



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6. Learned counsel for the 1st respondent further submitted that the proposal seeking approval of the appointment of the 1st respondent/writ petitioner was submitted even before the date of G.O.Ms.No.165, dated 17.09.2019 which was the subject matter of W.A(MD)No.76 of 2019 & etc, dated 31.03.2021. The said G.O is having prospective effect only and therefore, there is no bar for considering the proposal seeking approval of the 1st respondent's appointment. In support of the said contention, the learned counsel relied on an order passed in W.P(MD)No.3194 of 2020 etc., batch dated 18.04.2022, wherein, it has been held as follows:-

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



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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.

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



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11. Accordingly, the impugned orders passed by the respondent department in the aforesaid writ petitions are quashed and remitted to the Chief Educational Officers/District Educational Officers concerned, to consider and pass an order of approval of the appointment made by the School management, provided the said proposals satisfies all the norms prescribed for such appointments and as per the Rules, as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of copy of the order. It is made clear that those who are appointed to the post of B.T. Assistant and Secondary Grade Teacher prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and also, the proposals for approval of the such appointments were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.



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7. At this juncture, learned Additional Advocate General appearing for the appellants submitted that in the light of the aforesaid order made in W.P(MD)No.3194 of 2020 etc., batch dated 18.04.2022, the order made in W.P(MD)No.20402 of 2021 dated 30.06.2022, requires modification as the learned Single Judge in W.P(MD)No.20402 of 2021 dated 30.06.2022, has issued a positive direction to approve the appointment of the 1st respondent/writ petitioner.

8. We have heard the learned counsel appearing for the parties and perused the materials available on record.

9. In the present case, there is no dispute that the proposal seeking to approve the appointment of the 1st respondent was made on 30.08.2019. Therefore, considering the aforesaid rival submissions



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and in the light of the order made in W.P(MD)No.3194 of 2020 etc., batch dated 18.04.2022, the order of the learned Single Judge in W.P(MD)No.20402 of 2021 dated 30.06.2022, directing the 1st appellant to pass appropriate orders approving the 1st respondent's appointment as Post Graduate Assistant with effect from 30.08.2019, is modified to the effect that the appellants shall consider on merits and pass an order of approval of the appointment of the 1st respondent made by the 2nd respondent school management, provided, the proposal dated 30.08.2019 satisfies all the norms prescribed for such appointment and the Rules therefor. Such an exercise shall be completed within a period of eight weeks from the date of receipt of copy of this judgment. Except the above modification, the order of the learned Single Judge remains intact.

10. With the above direction, the Writ Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K.,J.] & [R.V.,J.]
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Index : Yes / No

Internet : Yes

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