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W.P.No.1045 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P.No.1045 of 2021
and WMP.No.10707 of 2022

E.K.M.Abdul Gani Matharasa Islamia High School,
No.26, Cauvery Road,
Erode 638 001.
Rep. by its Correspondent
G.Muhammad Thaj Muhyideen

... Petitioner

-Vs-

1. The Chief Educational Officer
Erode District,
Erode.
2. The District Educational Officer
Erode Educational District,
Erode.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to grant approval of appointment of B.T.Assistant Teachers viz., Tmt.D.Asiya Zehara and Mr.A.Mohammed Irshath in the post of B.T.Assistant (English) and B.T.Assistant (Maths) respectively appointed in the sanctioned posts in petitioner school on 01.06.2019 and 01.07.2019 based on the proposal submitted by the petitioner school dated 13.03.2020 with all consequential and



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other attendant benefits including payment of salary from the date of appointment.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

ORDER

This Writ Petition has been filed to direct the respondents to grant approval of appointment of B.T.Assistant Teachers viz., Tmt.D.Asiya Zehara and Mr.A.Mohammed Irshath in the post of B.T.Assistant (English) and B.T.Assistant (Maths) respectively appointed in the sanctioned posts in petitioner school on 01.06.2019 and 01.07.2019 based on the proposal submitted by the petitioner school dated 13.03.2020 with all consequential and other attendant benefits including payment of salary from the date of appointment.

2. The case of the petitioner is that the petitioner School is a Religious Minority Institution established by Matharasa Islamia Sangam in 1956, assessed with teaching grant by Government of Tamil Nadu and governed by the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules made thereunder. In the petitioner School, two vacancies have been arisen viz., Secondary Grade Teacher and



B.T.Assistant (Maths). The vacant post of Secondary Grade Teacher has been upgraded as B.T.Assistant (English) as per G.O.Ms.No.100 School Education Department dated 27.06.2003 in which one Tmt.D.Asiya Zehara has been selected and appointed on 01.06.2019. In the vacant post of B.T.Assistant (Maths), one Mr.A.Mohamed Irshath has been selected and appointed on 01.07.2019. Both the teachers have joined their respective posts in the petitioner School on 01.06.2019 FN and 01.07.2019 FN respectively and working as such. Consequently, the petitioner School has forwarded separate proposals to the 2nd respondent on 13.03.2020 for approval of appointment of the teachers Tmt.D.Asiya Zehara and Mr.A.Mohamed Irshath in the post of B.T.Assistant (English) and B.T.Assistant (Maths) respectively from the date of appointment. Whereas the 2nd respondent has returned proposals by referring to the order of CEO dated 20.03.2020 that was issued by referring to the orders passed in W.A.(MD).No.76 of 2019 etc., cases dated 09.04.2019 and by which some of the teachers working in Christian Minority School are sought to be deployed to the petitioner School which remain to be Islamic Minority Institution.

2.1. Further it is averred that the Government Order in G.O.Ms.No.165 dated 17.09.2019 came to be issued based on the interim order



granted in W.A.(MD).No.76 of 2019 etc., cases dated 06.04.2019 which relates to appointment made by a Corporate Management Schools when there are surplus teachers working under the Corporate Management Schools. Whereas the petitioner School is a single Management and there is no other schools running by the petitioner School Management. The Government Order issued on 17.09.2019 cannot be applied against the appointment already made on 01.06.2019 retrospectively. Further, the order of Government issued in G.O.Ms.No.165 School Education Department dated 17.09.2019 has been suspended by the orders of Madurai Bench of Madras High Court in W.A.(MD).No.76 of 2019 etc., cases dated 20.09.2019. Therefore, the appointments made by the petitioner School on 01.06.2019 and 01.07.2019 ought to be approved by the department without reference to G.O.Ms.No.165 dated 17.09.2019. Hence the writ petition.

3. The learned counsel appearing for the petitioner would submit that the Government has passed G.O.Ms.No.165 dated 17.9.2019 based on the interim order passed by the Division Bench of this Court at Madurai in W.A.(MD) No.76 of 2019 etc. cases (Batch), dated 9.4.2019 and thereafter, in the said batch of cases in W.A.(MD) No.76 of 2019 the Division Bench of this Court by judgment, dated 31.3.2021 issued comprehensive directions to the respondent department and also this Court observed that till the rules are



framed, directions issued by the Division Bench of this Court in the aforesaid order shall be strictly followed by both the State Government and the Educational Institutions. The learned counsel appearing for the petitioner would further submit that G.O.Ms.No.165 has been passed by the Government on 17.9.2019 and subsequently, the subject matter of the G.O.Ms.No.165 challenged in the Writ Appeals in W.A.(MD) No.76 of 2019, etc. Batch cases and judgment also passed in the aforesaid Batch cases. However, Tmt.D.Asiya Zehara and Mr.A.Mohamed Irshath are not covered under the G.O.Ms.No.165 dated 17.9.2019 or the final order passed by the Division Bench of this Court in the aforesaid Batch cases for the reason that in the instant writ petition, B.T. Assistants and Secondary Grade Teachers are appointed prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. The learned counsel appearing for the petitioner also drew the attention of this Court to the Clause (t) of paragraph 95 of the aforesaid judgment wherein the Division Bench of this Court has held as under: (t) This exercise shall be completed on or before 31st July, 2021, so that the identification of excess staff and follow up action as indicated in the compendium of schedule herein above can be undertaken and be followed strictly".

4. The learned counsel appearing for the petitioner 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.

5. The learned Additional Government Pleader 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 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".

6. The learned counsel appearing for the petitioner 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 petitioner seeks to 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 petition.

7. 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 Government Pleader that Tmt.D.Asiya Zehara and



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Mr.A.Mohamed Irshath 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.

8. Heard the rival submissions of the parties and perused the materials available on record.

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 petition was 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 petition.

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



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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 petition 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.

11. Accordingly, the respondents are directed 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.165 dated 17.9.2019 alone are entitled to the relief granted herein above.



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12. In the result, this writ petition stands allowed with the above direction. No costs. Connected miscellaneous petitions are closed.

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Index : Yes/No

Speaking order/Non-speaking order

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To

1. The Director General
Central Industrial Security Force,
CGO Complex,
Lothi road,
New Delhi.
2. The Inspector General
Office of the Inspector General
CISF NS Hqrs Saket,
New Delhi – 110 017.
3. The Deputy Inspector General
South Zone,
Central Industrial Security Force,
Rajaji Bhavan,
Chennai.
4. The Senior Commandant
Central Industrial Security Force
Neyveli Lignite Corporation Unit,
Neyveli,
Cuddalore district.



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J. SATHYA NARAYANA PRASAD, J.

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