



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.1307 & 18248 of 2021 and
W.M.P.Nos.1452 & 19486 of 2021

Aided Middle School,
Pushpavanam and Post,
Vedaranyam Taluk 614 809,
Nagapattinam District,
Rep by its Secretary,
R.Giridharan,
S/o.Rajagopalan

... Petitioner in both W.Ps

Vs.

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.

3.The District Educational Officer,
Nagapattinam Educational District,
Nagapattinam District.

4.The Block Educational Officer,
Vedaranyam Block,
Nagapattinam District.

... Respondents in both



W.Ps

PRAYER in W.P.No.18248 of 2021 : This Writ Petition has been filed to issue a Writ of Certiorari, to call for the records relating to the impugned communication issued by the third respondent in Na.Ka.No.3303/Aa1/2020 dated 13.07.2021 and quash the same.

PRAYER in W.P.No.1307 of 2021 : These Writ Petitions have been filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 4th respondent in Na.Ka.No.1577/A1/2019 dated 29.11.2019 and to quash the same and consequently, direct the respondents to approve the appointment of Mrs.G.Jansy in the post of Middle School Headmaster in the petitioner School from the date of appointment with effect from 28.09.2018 with all consequential benefits including payment of salary from the date of appointment within a time frame to be fixed by this Court.

In both W.Ps

For Petitioner : Mr.G.Sankaran, Senior Counsel for
Mr.S.Nedunchezhiyan

For Respondents : Mr.T.Arun Kumar, AGP

COMMON ORDER

The Writ Petition in W.P.No.1307 of 2021 has been filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 4th respondent in Na.Ka.No.1577/A1/2019 dated 29.11.2019 and to quash the same and



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consequently, direct the respondents to approve the appointment of Mrs.G.Jansy in the post of Middle School Headmaster in the petitioner School from the date of appointment with effect from 28.09.2018 with all consequential benefits including payment of salary from the date of appointment within a time frame to be fixed by this Court.

2. The Writ Petition in W.P.No.18248 of 2021 has been filed to issue a Writ of Certiorari, to call for the records relating to the impugned communication issued by the third respondent in Na.Ka.No.3303/Aa1/2020 dated 13.07.2021 and quash the same.

3. Heard Mr.G.Sankaran, learned counsel for the petitioner and Mr.T.Arunkumar, learned Additional Government Pleader for the respondents.

4. The petitioner who is an aided school has appointed one Mrs.G.Jansy to the post of Middle School Headmaster vide its resolution dated 27.09.2018 and sent a proposal to the respondents on 30.10.2019



seeking approval. But the approval was returned *vide* impugned order dated 29.11.2019 by the fourth respondent. The fourth respondent has returned the proposal by stating that the petitioner ought to have obtained prior permission from the third respondent before filling up the post and the appointment ought to have been made after due advertisement and following the guidelines and there are surplus teachers in the District and hence, the proposal cannot be forwarded.

5. The learned Senior Counsel for the petitioner submitted that the post for which the petitioner was appointed was a sanctioned post and hence no prior permission is necessary. It is further submitted that due advertisement has been given by inviting applicants and only thereafter, Mrs.G.Jansy has been appointed. It is further submitted that so far as deployment is concerned, the Government Order in this regard has been issued only in the year 2019 and it is not applicable to the appointment of Mrs.G.Jansy which was made in the year 2018 itself.

6. The learned Additional Government Pleader for the respondents



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submitted that the appointment of Mrs.G.Jansy was not done in a proper manner and the reasons for returning the proposal itself will speak about the irregularity and hence, the said appointment is not fit for approval.

7. So far as the prior permission is concerned, law is well settled that as against the sanctioned post, no prior permission is required. The post for which the petitioner appointed Mrs.G.Jansy is not disputed to be a post not sanctioned. So far as the applicability of the excess or deployment, G.O.Ms.No.165, School Education Department dated 17.09.2019 can be applicable only to the appointments made subsequent to the said Government Order. Even with regard to the subsequent appointment, the Government Order has held to be inoperative in view of the reasons stated in W.A.(MD) No.76 of 2019 etc., batch dated 31.03.2019 and the same has been followed in the case of ***B.Kurinjimalaron Vs. State of Tamil Nadu, Represented by tis Secretary, Education Department, Fort St. George, Chennai 600 009,*** and in which, the following observations has been made:

"5. The learned counsel appearing for the



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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 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



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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



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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.



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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 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."



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8. So the applicability of surplus teacher in the District cannot be a bar for granting approval for the appointment made by the petitioner for the post of Middle School Head Master. So far as the due publication of the notification inviting the applications are concerned, no prescribed modality is in place. Since the petitioner is a private aided school, the petitioner school can decide about the modality in which due publication to be made. The petitioner has appointed Mrs.G.Jansy by taking into consideration of her previous experience as a B.T.Assistant.

9. The list of applicants who have been called for interview is also furnished before the Court to show that there is fairness in the selection process. Despite Mrs.G.Jansy has been selected, the resolution passed in the selection committee to accept the appointment of Mrs.G.Jansy to the post of Middle School Head Master by convening a meeting. Unfortunately, in the selection committee meeting, Mrs.G.Jansy who was also a member had participated and affixed her signature in the resolution. This irregularity was pointed by the learned Additional



Government Pleader during his argument.

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10. Even though the said fact was not pleaded in the counter, it is very much true that the appointee had also participated in the selection committee meeting as its member and approved her own appointment. The selection of the petitioner as it appears from the list of candidates who have been called for interview, would show that due consideration has been given to her previous experience as B.T.Assistant. But for the ignorance and insensitivity of the selection committee in including the appointee also as one of the participant in the meeting, the appointee should not be penalised.

11. In fact in the resolution itself, the reasons for appointing Mrs.G.Jansy has been made elaborate and from that it is understandable as to why due consideration has been given to Mrs.G.Jansy than all other candidates and she was accepted to the post of Middle School Head Master of the petitioner School. The fact remains that the selection of Mrs.G.Jansy has been made already and the selection committee's



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resolution has been passed only for approving her selection. Had the selection committee meeting itself was convened for the purpose of selection, then there can be possibility for an element of bias. But the meeting has been held subsequent to the selection on 27.09.2018. The selection was completed on 23.09.2018 when the interview was conducted. So the above irregularity cannot be magnified to the effect of rejecting the proposal of the petitioner who appointed Mrs.G.Jansy, who found to be eligible and qualified to the post of Middle School Head Master in the petitioner School.

12. In fact, Mrs.G.Jansy is serving as Middle School Head Master for the past five years and her services were utilised by the School, especially because there is no post of Head Master for quite sometime. Under such circumstances, the file for granting approval need not be held pending for long and due approval can be accorded in the light of the above observations.

13. For the above said reasons, W.P.No.1307 of 2021 is allowed



and the impugned proceedings issued by the 4th respondent in Na.Ka.No.1577/A1/2019 dated 29.11.2019 is set aside and the fourth respondent is directed to forward the proposal to the third respondent. On receipt of the same, the third respondent shall consider and pass order of according sanction for the appointment of Mrs.G.Jansy to the post of Middle School Head Master within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

14. Since the relief sought in W.P.No.18248 of 2021 is a consequential to the relief granted in this Writ Petition, it is closed as superfluous. No costs. Consequently, connected miscellaneous petition is closed.

18.12.2023

Index : Yes
Internet : Yes/No
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R.N.MANJULA, J.

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To

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.

3.The District Educational Officer,
Nagapattinam Educational District,
Nagapattinam District.

W.P.Nos.1307 & 18248 of 2021 and
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4.The Block Educational Officer,
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