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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.4021 of 2023
and W.M.P No.4066 of 2023

The Manager,
RC Schools, Salem Diocese Society,
(Salem _ Namakkal Districts)
Mary Palace, No.63, Thammannan Road,
Salem – 636 009.

Petitioner

vs.

- 1.The State of Tamil nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Chief Educational Officer,
District Collectorate Compound,
Salem – 636 001.
- 4.The District Educational Officer,
District Collectorate Compound,
Salem - 636 007.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent District Educational officer



in O.Mu.No. 7337/A2/2020 dated 24.12.2020, quash the same and further direct the 3rd and 4th respondents to approve forthwith the appointment of Mr.S.Madalaimuthu as BT Assistant (History) in the petitioner's the Little Flower Higher Secondary School, Salem with effect from the date of his appointment viz. 25.09.2020 and release salary and all attendant benefits with effect from the said date.

For Petitioner : Ms.H.Mary Sowmi Rexi

For Respondents : Mr.D.Ravichander
Special Government Pleader

ORDER

Considering the limited issue involved in this writ petition and also the fact that it is covered by the earlier judgment of the Division Bench in W.A.(MD)No.76 etc., of 2019, dated 31.03.2021, the main writ petition itself is taken up for final hearing.

2.The case of the petitioner is that there were three sanctioned posts of B.T. Assistant (History). One post fell vacant due to the resignation of the incumbent on 19.02.2020. The petitioner had submitted the proposal for the approval of the resignation of the previous incumbent to relieve him from service. The 3rd respondent through proceedings dated 13.06.2022, approved the resignation w.e.f. 19.12.2020.



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3. Pursuant to the above, the petitioner School appointed one S. Madalaimuthu in the vacant position through appointment order dated 24.09.2020. When the same was sent for approval, the 4th respondent had returned back the proposal through the impugned proceedings dated 24.12.2020 by stating that the previous resignation was yet to be approved and hence, the post itself cannot be treated as a vacant post. That apart, the 4th respondent has also placed reliance upon G.O.Ms.No.165, dated 17.09.2019. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Heard Ms. H. Mary Sowmi Rexi, learned counsel appearing on behalf of the petitioner and Mr. D. Ravichander, learned Special Government Pleader appearing on behalf of the respondents.

5. It is seen from records that the resignation of the previous incumbent has already been approved from the date of his resignation from 19.02.2020. In view of the same, the post has fallen vacant. Insofar as the approval for the fresh appointment is concerned, the same cannot be denied by the respondents while placing reliance upon G.O.Ms.No.165, dated 17.09.2019.



6.This Court had an occasion to deal with the very similar issue in

W.P.No.2115 of 2013 and the following order was passed by this Court.

8.It is not necessary for this Court to go into the merits of the case, since the entire issue is focused on the applicability of G.O.Ms.No.165, dated 17.09.2019. The Division Bench of this Court in W.A.(MD) Nos.76 etc., of 2019 has considered the issue in detail and final orders have been passed on 31.03.2021. A series of directions have been issued by the Division Bench. The Division Bench has declared that the G.O.Ms.No.165, dated 17.09.2019 is declared to be inoperative. In view of the same, the very basis on which the impugned order has been passed by the 4th respondent on 27.09.2022, becomes unsustainable.

9.In the light of the above discussion, the impugned proceedings of the 4th respondent dated 27.09.2022, is hereby quashed. There shall be a direction to the 4th respondent to consider the request made by the petitioner School for approving the appointment of the B.T. Assistant. If any Special Leave Petition is pending in this regard, such approval can be granted subject to the result of the Special Leave Petitions before the Apex Court. This exercise shall be completed by the 4th respondent, within a period of four weeks from the date of receipt of copy of this order.

7.This writ petition can also be disposed of in the above terms. Hence,

the impugned proceedings of the 4th respondent dated 24.12.2020, is hereby



quashed. There shall be a direction to the petitioner to make a fresh representation to the 4th respondent along with all the relevant documents and also a copy of this order. The 4th respondent is directed to grant approval for the appointment and it can be made subject to the result of the Special Leave Petitions, pending before the Apex Court. This process shall be completed by the 4th respondent, within a period of four weeks from the date of receipt of the fresh representation from the petitioner.

8. In the result, this writ petition stands allowed with the above directions.

No Costs. Consequently, connected miscellaneous petition is closed.

13.02.2023
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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

1. The Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.



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N. ANAND VENKATESH, J.

SSR

3.The Chief Educational Officer,
District Collectorate Compound,
Salem – 636 001.

4.The District Educational Officer,
District Collectorate Compound,
Salem - 636 007.

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