



W.P.No.5484 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.5484 of 2021
and WMP.Nos. 6091,6094 and 6096 of 2021

Josephine Sinthiya

... Petitioner

Vs.

1. The Director of Elementary Education,
D.P.I. Buildings, College Road,
Chennai – 600 006.
2. The Chief Educational Officer,
Office of the Chief Educational Officer,
Thiruvallur.
3. The District Educational Officer,
Office of the District Educational Officer,
Thiruvallur.
4. The Correspondent,
R.C.M.High School,
Karaiyanchavadi, Poonamalle,
Chennai - 600 056

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 03.03.2020 in Na.Ka,No.391/A3/2019, on the file of the third respondent and quash the same, directing the respondent one to



W.P.No.5484 of 2021

three, to accord approval to the appointment of the petitioner as B.T.Asst.(English), in the fourth respondent, R.C.M.School, Karayanchavadi, Poonamalle, Chennai, w.e.f. 10.08.2018, with all monetary and service benefits.

For Petitioner : Dr.Father Xavier Arul Raj
Senior Counsel
for M/s.Father Xavier Associates

For R1 to R3 : Mr.S.Silambanan
Additional Advocate General - II
Assisted by
Mr.T.Cheziyan
Additional Government Pleader

ORDER

This writ petition impugns the order dated 03.03.2020 passed by the third respondent, besides seeking a direction to the respondents 1 to 3, to accord approval to the appointment of the petitioner as B.T.Asst.(English), in the fourth respondent school with effect from 10.08.2018, with all monetary and service benefits.

2. The case of the petitioner is as follows:

2.1 The petitioner was appointed as B.T.Asst.(English) on 10.08.2018 in the fourth respondent minority school. While so, one Celine Mary who was working as Secondary Grade Assistant in the fourth respondent



school, was promoted as Headmistress and transferred to Christ King Primary School, Irudayapuram, Pudukottai on 31.10.2016. The above said Secondary Grade post was converted as B.T. Asst.(Social Science) by the second respondent and subsequently, one Leema Rose who was working as Secondary Grade teacher in the same school, got promoted as B.T. Asst.(Social Science) on 09.08.2018.

2.3. Consequently, the petitioner was appointed as B.T.Asst.(English) in the fourth respondent school with effect from 10.08.2018 in the vacancy which arose out of the promotion of S.Leema Rose on 09.08.2018. The above said post is a regular sanctioned post with grant-in-aid from the Government and the petitioner has also affixed her signature in the master attendance register, attendance registers of the students and other documents of the fourth respondent school with effect from 10.08.2018 till date and the same was also endorsed by the competent authorities.

2.4.The fourth respondent forwarded the proposal for conversion of the post from Secondary Grade Assistant to B.T.Asst. (English) with relevant documents, to the second respondent on 10.08.2018. The second respondent, *vide* proceedings dated 09.09.2019 in Muu.Mu.No.8414/AA5/2019, accorded approval for the promotion of Leema Rose. The fourth respondent further



forwarded the proposal for conversion of Secondary Grade Assistant to B.T.Asst. (English) with relevant documents, to the second respondent on 18.06.2019, but, no reply was obtained from the second respondent. Again, the fourth respondent sent a proposal to the second respondent on 21.10.2019 for the conversion of the post.

2.5. The fourth respondent, on 21.10.2019, also forwarded the proposal to the third respondent for approval of appointment of the petitioner as B.T.Asst.(English). The second respondent, *vide* proceeding dated 26.11.2019, in Muu.Mu.No.13063/AA5/2018, converted the post from Secondary Grade Assistant to B.T.Asst.(English) and again, on 29.11.2019, the fourth respondent forwarded a proposal for the approval of appointment of the petitioner to the second respondent.

2.6 The third respondent, *vide* proceedings dated 03.03.2020 in Na.Ka.No.3991/A3/2019, returned the fourth respondent's proposal citing G.O.(Ms) No.165, School Education Department, dated 17.09.2019, challenging which, this writ petition has been filed.

3 The issue involved in this writ petition has already been considered by this Court in Manager & Correspondent, Nusrathul Islam Aided



WEB COPY

Primary School v The State Tamil Nadu and others (W.P. No.27910 of 2021),

which was allowed by this Court *vide* order dated 26.09.2023 in the following

terms:

“10. The petitioner was appointed as the Secondary Grade Teacher (Urdu) vide order dated 01.12.2019 by the petitioner school and the proposal dated 14.12.2019 seeking approval of the appointment of the petitioner as Secondary Grade Teacher with effect from 01.12.2019 was forwarded to the 4th respondent. **The main contention of the learned counsel for the petitioner is that the 4th respondent without forwarding the proposal to the 3rd respondent has passed the impugned order vide A.Thi.Mu.No.199/A1/2019, dated 10.03.2020 returning the proposal for approval of the petitioner school to appoint Tmt.Shabana Begum as Secondary Grade Teacher on the ground that as per G.O.Ms.No.165, dated 17.09.2019 if surplus posts are available approval could not be granted for appointment and the order was passed by the 4th respondent without jurisdiction and the competent authority to pass order is only the third respondents. The vacancy was caused in the school for the sanctioned post on the ground of retirement for earlier incumbent on 13.11.2019 and the institution being a linguistic minority institution imparting education in Urdu Medium.**

11. The Madurai Bench of Madras High Court vide interim order dated 20.09.2019 has suspended the operation of G.O.Ms.No.165, School Education Department, dated 17.09.2019. Subsequently, the Division Bench declared the G.O.Ms.No.165 dated 17.09.2019, as in-operative in the order passed in W.A.(MD).No.76 of 2019 etc., batch dated 31.03.2021 hence the reason given by the 4th respondent in the impugned order is not sustainable and the same is **also passed without jurisdiction**. The learned counsel for the petitioner has rightly relied upon the order passed by this Court in a similar case vide W.P.No.14240 of 2022 dated 15.06.2022 and the relevant portion is extracted as below:-

“2. *The prayer as sought for in the instant writ petition is squarely covered by the judgment of this Court dated 18.04.2022 in W.P.No.3194 of 2020 etc. Batch case [B.Kurinjimalaron Vs The State of Tamil Nadu rep. By its Secretary, Education Department, Fort St.George, Chennai – 9] wherein this Court held as follows:*

“9. *On perusal of the judgment of the*



WEB COPY



W.P.No.5484 of 2021

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 17.09.2019, 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 17.09.2019 and proposals for the said appointments were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.09.2019. 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 17.09.2019 will not prohibit the educational authorities to approve the appointments made by the School Management in the instant writ petitions since the proposals for approval of appointments made by the School Management were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.09.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.09.2019 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.

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



appointments 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 Secondary Grade Teacher/B.T. Assistant/Middle Grade Assistant prior to the issuance of G.O.Ms.No.165 dated 17.09.2019 and also the proposals for approval of such appointments were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.09.2019 alone are entitled to the relief granted hereinabove.”

and also in another judgment passed by this Court in W.P.No.19229 of 2023 dated 02.08.2023 and the relevant portion is extracted as below:-

3. The earlier order dated 25.06.2020 in respect of Mrs.Fahmidunnisa is put in challenge before this Court in a writ petition in W.P.No.14240 of 2022. This Court, by order dated 15.06.2022 set aside the Order dated 25.06.2020 and directed the respondent to consider the appointment of approval of the petitioner. The relevant portion of the order is extracted below:-

“...3. In the light of the judgment cited supra, the impugned order passed by the second respondent is quashed and remitted to the second respondent to consider and pass an order of approval of the appointment made by the fourth respondent School, in the light of the judgment cited supra, provided the said proposals satisfies all the norms prescribed for such appointment 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.”

12. In view of the above factual matrix of the case and the ratio laid down by this Court in W.P.No.19229 of 2023 dated 02.08.2023 and W.P.No.14240 of 2022 dated 15.06.2022, this Court is of the considered view that the impugned order passed by the 4th respondent vide A.Thi.Mu.No.199/A1/2019 dated 10.03.2020 is liable to be quashed and the same is hereby quashed.



W.P.No.5484 of 2021

WEB COPY

13. In the result, this writ petition stands allowed and the respondents are directed to approve the appointment of Tmt.Shabana Begum as Secondary Grade Teacher in the petitioner school with effect from 01.12.2019 with all consequential monetary benefits in the light of the order passed in W.P.No.3189 of 2020 dated 26.02.2020 dated 26.02.2020 within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is also closed.”

In view of the above, this writ petition also stands allowed in the same terms, however, without costs. Connected W.M.Ps. are closed.

07.09.2023

vca

Index : Yes /No

Speaking/Non speaking order



W.P.No.5484 of 2021

WEB COPY

- To
1. The Secretary to Government
Education Department,
Government of Tamil Nadu
Chennai – 9
 2. The Director of Elementary Education,
D.P.I. Buildings, College Road,
Chennai – 600 006.
 3. The District Educational Officer,
Vaniyambadi,
Thirpattur District.
 4. The Block Educational Officer,
Peranambut Range,
Peranambut.



WEB COPY



W.P.No.5484 of 2021

J. SATHYA NARAYANA PRASAD, J.

vca

W.P.No.5484 of 2021

07.09.2023