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WP.No.19468 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.19468 of 2023
and W.M.P.Nos.17042 & 17044 of 2023

K.Elizabeth Rani

.. Petitioner

Versus

1.The State of Tamil Nadu Rep by its Secretary
Education Department
Fort St.George, Chennai – 600 009

2.The Chief Educational Officer
Tiruvannamalai

3.The District Educational Officer
Tiruvannamalai

4.The Block Educational Officer
Keezhpennathur, Tiruvannamalai District

5.The Correspondent
Danish Mission Elementary School
Somasipadi, Tiruvannamalai District

6.The Central Manager & Chairman
Education Board
D.M.Elementary Higher Elementary School
Parikkal, Cuddalore District

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings issued by the 3rd respondent in proceeding



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Na.Ka.No.384/A2/2022 dated 01.12.2022 and to quash the same and consequently directing the respondents to approve the appointment of the petitioner in the post of Secondary Grade Teacher in the 5th respondent school from the date of appointment on 01.03.2019 with all consequential and attendant benefits including the payment of salary from the date of appointment along with interest.

For Petitioners : M/s.T.Dharani

For Respondents : Mr.P.Baladhandayutham
Special Government Pleader

ORDER

Challenging the order of the third respondent dated rejecting the proposal submitted by the 5th respondent school seeking approval of the appointment of the petitioners as secondary Grade Teacher and seeking consequential reliefs, the present writ petition has been filed.

2. The 5th respondent school is an aided Minority institution. The petitioner was appointed as 01.03.2019 as Secondary Grade Assistant in the sanctioned permanent post. Pursuant to the appointment of the petitioner, the 5th respondent school submitted a proposal to the 4th respondent for approval of appointment of the petitioners, the 4th respondent by proceedings dated 28.08.2019 rejected the proposal on the sole ground that there were many surplus teaching staff. Challenging the above said rejection order of the 4th respondent dated 28.08.2019, the petitioner filed W.P.Nos.5596 of 2020 etc



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batch cases and by order dated 18.04.2022, this court while setting aside the order of rejection, remitted the matter back to the 2nd respondent for passing appropriate orders afresh. In the order, it was made clear by this court that approval could not be denied on the ground of existence of surplus teachers. However, the 2nd respondent by his proceedings dated 25.05.2023 rejected the proposal on the ground that the petitioners were appointed in the surplus post notwithstanding the fact that it remain to be a sanctioned post. Therefore, challenging the rejection of approval, the present writ petition has been filed.

3. Heard both sides and perused the records carefully.

4. This is admittedly second round of litigation.

5. The petitioner was appointed as Secondary Grade Assistant on 01.03.2019 as Secondary Grade Assistant. In the earlier round of litigation, the approval was rejected by the 4th respondent by his proceedings dated 28.08.2019 on the account of existence of surplus teachers. When that was put under challenge in W.P.Nos.5596 of 2020 etc batch cases, vide Order dated 18.04.2022, this court was pleased to set aside the order of the 4th respondent rejecting to grant approval of appointment of the petitioner as Secondary Grade



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Teacher in the 5th respondent school, remitted the matter back with a positive direction to the 2nd respondent to pass orders afresh granting approval of appointment of the petitioner as Secondary Grade Teacher, provided the said proposal satisfies all the norms prescribed for such a appointment and as per the rules.

6. It is relevant to note that while setting aside the order dated 07.01.2020 passed by the 4th respondent rejecting the proposal seeking approval of appointment of the petitioner, this court in W.P.No.5596 of 2020 dated 18.04.2022, in para 10 has held as under:~

“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.”

7. In the earlier round of litigation, proposal was rejected citing that G.O.(Ms).165 dated 17.09.2019 was operating in the field. It is to be noted that this court in its order has clearly held that G.O.(Ms) No.165 dated



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17.09.2019 would not be a bar to the case of the petitioner and it would not be applicable to the teachers who were appointed prior to the Government Order in G.O.(Ms) No.165 dated 17.09.2019. Still the impugned order came to be passed on the ground that surplus teachers.

8. It is relevant to note that the very issue was whether G.O.Ms.No.165 dated 17.09.2019 was applicable to the petitioner case or not? This court has categorically stated that G.O.(Ms) No.165 dated 17.09.2019 was only prospective in nature and approval have to be given in the cases where appointment of teachers were made prior to the said Government Order. Having non-suited the petitioner in the earlier round of litigation citing G.O.(Ms) No.165, now the impugned order has been passed on a different ground. The authorities cannot take different stand at different points of time to stick on their stand so as to negate the claim of the petitioner. Be that as it may, the impugned order came to be passed not on merits but the proposal was rejected merely on the ground that there are surplus teachers.

9. In the light of the above discussion and the factual matrix of the case, the impugned order is set aside and the matter is remitted back to the 3rd respondent for considering the proposal afresh and passing orders granting



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approval as sought by the school management, provided it satisfies all the norms prescribed for such appointment and the rules. While passing orders of the proposal, the 3rd respondent shall keep in mind the directions given by this court in W.P.No.3439 of 2020 dated 18.04.2022. If the authority concerned wants to raise any further query or make clarification, the same may be had from the school management. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

10. This writ petition is allowed accordingly with the directions as indicated above. No costs. Consequently, connected WMPs are closed.

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Index: Yes/No

Internet: Yes/No



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To

WEB CUM

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Fort St.George, Chennai – 600 009
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- 3.The District Educational Officer
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N.SATHISH KUMAR, J.



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