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W.P.No.21445of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.21445 of 2022

&

WMP.No.20442 of 2022

S.Jerlin Sutha

...Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by its Secretary,
School Education Department,
Chennai-600 009.

2.The Director of School Education,
D.P.I. Complex, College Road,
Nungambakkam, Chennai-600 034.

3.The Chief Educational Officer,
Kanyakumari.

4.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

5.The Correspondent,
C.S.I.V.V. Girls High School,
Irenipuram,
Kanyakumari District.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent herein in Na.Ka.No.3656/Aa3/2018 dated 08.02.2021, quash the same and direct the fourth respondent herein to approve the petitioner's appointment as B.T. Assistant (Science) in the fifth respondent school from 01.02.2018, the date of her appointment with all monetary and attended service benefits, including the arrears of salary with interest.

For Petitioner : Mr.S.V.Karthikeyan

For Respondent : Mr.S.Prabakaran, GA
Nos.1 to 4

For Respondent-5: No Appearance

ORDER

By consent of both the parties, this Writ Petition is taken up for final disposal.

2. The fifth respondent School is a Minority Aided Educational Institution. When a vacancy arose owing to the retirement of a teacher in their School, the petitioner was appointed by the fifth respondent, through an appointment order dated 01.02.2018. On the same day, the fifth respondent herein had submitted a proposal to the fourth respondent herein / District Educational Officer



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seeking for approval of the petitioner's appointment with effect from 01.02.2018. The approval petition has now been rejected by the fourth respondent through the order dated 08.02.2021 on the ground that, since the group of schools under the Corporate Management to which the fifth respondent School is attached, has 18 surplus teachers, the approval to the appointment of the petitioner herein, cannot be considered. The petitioner challenges this order of rejection in the present Writ Petition.

3. The issue as to whether the Educational Authorities can reject a proposal of the Management seeking for approval of the appointment of a teacher in Minority Institution on the ground that there are surplus teachers either in the District or under the Corporate Management of the School is no more *res integra*, since it has been dealt with in various decisions, against the Authorities.

4. In a batch of Writ Petitions filed before this Court in the case of ***The Secretary to Government, Government of Tamil Nadu, School Education Department and others Vs. Iruthaya Amali and another*** reported in ***2021 SCC online Madras 1285***, the Honourable Division Bench of this Court had held that for the



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purpose of fixing the staff strength of the School, the School as such, shall be the unit and not the Educational Agencies / School Management / Corporate Management. This finding has been applied in various other orders in Writ Petitions, whereby, it was held that the existence of surplus teachers in other Schools under the same Management, cannot be a ground for rejection of the proposal.

5. In a recent decision taken in a batch of Writ Petitions in ***W.P.No.3194 of 2020, etc., dated 18.04.2022*** in the case of ***B.Kurinjimalaron vs. the State of Tamil Nadu, Represented by its Secretary, Education Department, Fort St.George, Chennai 600 009***, this aspect was dealt with in the following manner:-

"5. The learned counsel appearing for the 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.



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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 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



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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 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.



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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. 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*



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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."

6. Thus, the reason assigned by the respondents for rejecting the proposal, on the ground of availability of surplus teacher, under the Corporate Management of the respondent's School, cannot be sustained.

7. For all the foregoing reasons, the impugned order passed by the fourth respondent herein vide Na.Ka.No.3656/Aa3/2018 dated 08.02.2021, is hereby quashed. Consequently, the fourth respondent herein is called upon to resubmit the proposal to the first respondent herein and on receipt of such proposal, the first respondent herein shall pass appropriate orders approving the appointment of the petitioner to the post of B.T. Assistant (Science) with effect from 01.02.2018. Such orders shall be passed, atleast



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within a period of six weeks from the date of receipt of re-submission of the proposal.

8. Accordingly, the Writ Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Index:Yes/No
Order: Speaking/Non-speaking
Neutral Citation :Yes/No

DP

To

- 1.The Secretary,
Government of Tamil Nadu
School Education Department,
Chennai-600 009.
- 2.The Director of School Education,
D.P.I. Complex, College Road,
Nungambakkam, Chennai-600 034.
- 3.The Chief Educational Officer,
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M.S.RAMESH,J.

DP

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