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W.P.No.23141 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13..09..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.23141 of 2023

and

W.M.P.No.22691 & 22692 of 2023

K.Rathna

..... Petitioner

-Versus-

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

2.The District Educational Officer,
(Elementary Education),
Chidambaram, Cuddalore District.

3.The Block Educational Officer,
Kattumannarkoil-608301,
Cuddalore District.

4.The Secretary,
Aided Elementary School,
Keezhapazhanjanallur,
Kattumannarkoil,
Cuddalore District 608 301.

..... Respondent

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.258/Aa2/2022, dated 13.01.2023 and to quash the same and



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consequently, direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher in the 4th respondent School with effect from 12.06.2017 with all consequential monetary benefits.

For Petitioner : Mr.S.N.Ravichandran

*For Respondent (s) : Mr.M.Alagu Goutham,
Government Advocate
for RR1 to 3
Mr.P.Ganesan for R4*

ORDER

Challenging the order of the 2nd respondent dated 13.01.2023 rejecting the proposal submitted by the 4th respondent school seeking approval of the appointment of the petitioner as secondary Grade Teacher and seeking consequential reliefs, the present writ petition has been filed.

2. The 4th respondent school is an aided non-minority institution. It was established in 1947. The petitioner was appointed as on 09.06.2017 as Secondary Grade Teacher in the sanctioned permanent post and she joined duty on 12.06.2017. Pursuant to the appointment of the petitioner, the 4th respondent school submitted a proposal to the 2nd respondent through the 3rd respondent for approval of appointment of the petitioner. The 3rd respondent by his proceedings dated 06.09.2017 had made a recommendation, however, no order was passed thereon. Therefore, a writ petition in W.P.No.866 of 2019



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came to be filed for mandamus and this court by order dated 22.07.2021, disposed of the same with a direction to the 2nd respondent to consider the proposal and pass appropriate orders thereon. Pursuant to the order of this court dated 22.07.2021, the 2nd respondent by his proceedings dated 17.11.2021 rejected the proposal on the sole ground that there were many surplus teaching staff. Challenging the above said rejection order of the 2nd respondent dated 17.11.2021, the petitioner filed W.P.No.25304 of 2021 and by order dated 08.06.2022, 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 13.01.2007 rejected the proposal on the ground that there is no approved educational agency and Secretary in the 4th respondent school. This was not factually correct in a sense, the 2nd respondent himself by his proceedings dated 18.09.2007 approved the Educational Agency and the Secretary of the 4th respondent school and such approval still holds good. Therefore, challenging the rejection of approval, the present writ petition has been filed.

3. Heard both sides and perused the records carefully.



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4. This is admittedly third round of litigation.

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5. The petitioner was appointed as Secondary Grade Teacher in the 4th respondent school on 09.06.2017 and she joined duty on 12.06.2017. She was appointed on account of the vacancy that arose due to the promotion of one Vijalakshmi as Headmistress. In the earlier round of litigation, the approval was rejected by the 2nd respondent by his proceedings dated 17.11.2021 on the account of existence of surplus teachers. When that was put under challenge in W.P.No.25304 of 2021, by order dated 06.2022 this court was pleased to set aside the order of the 2nd respondent rejecting to grant approval of appointment of the petitioner as Secondary Grade Teacher in the 4th 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 17.11.2021 passed by the 2nd respondent rejecting the proposal seeking approval of appointment of the petitioner, this court in W.P.No.25304 of 2021 dated 08.06.2022, in para 9 has held as under:-

9. Having regard to the rival submissions of the parties, taking note of the judgment passed by the



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Division Bench of this Court in W.A.(MD) No.76 of 2019, etc. batch, 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 petition, since the proposal for approval of appointment made by the School Management was 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 that G.O.Ms.No.165 dated 17.9.2019 in proper perspective, has passed the impugned order rejecting the proposal submitted by the School Management. Therefore, the impugned order passed by the second respondent dated 17.11.2021 is 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 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 different ground that the secretary of the school had not furnished the details



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required under the Right to Education Act, 2009.

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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 certain details which were required by the authorities had not been furnished by the school management.

9. When this was pointed out, the learned counsel who represented the school management, on instructions, submitted that the school management have all the details as sought by the authorities and they would furnish them to the authorities concerned as early as possible. It is needless to point out that, in this case, the permission to fill up the vacancy was accorded for as early as on 28.04.2017. Therefore, the authority cannot pass orders rejecting the proposal



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citing different reasons one after another.

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10. 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 2nd respondent for considering the proposal afresh and passing orders granting 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 2nd respondent shall keep in mind the directions given by this court in W.P.No.25304 of 2021 dated 08.06.2022. 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.

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
Neutral Citation : yes / no
Speaking / Non Speaking Order
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N.SATHISH KUMAR.J.,

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