



W.P.No.24814 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P. No. 24814 of 2021

and

W.M.P.Nos.26097, 26098, 26099 of 2021

A.Arul Pragasam

Petitioner

Vs.

1. The Commissioner of School Educational
The Directorate of School Educational
DPI Campus
College Road
Chennai - 600 006.
2. The Chief Educational Officer,
The Office of the Chief Educational Officer
Alagesan Nagar,
Varadjaraja Nagar,
Chengalpattu - 603 001.
3. The District Educational Officer
Office of the District Educational Officer,
St.Thomas Mount @ Chrompet
Chengalpattu.
4. The Correspondent
St.Helen's Girls Higher Secondary Schools,
St.Thomas Mount, Chennai - 600 016.

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 04.02.2021 in O.Mu.No.2828/A1/2021, on the file of the third respondent and quash the



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same, directing the respondents 1 to 3, to accord approval to the appointment of the petitioner Mrs.A.Arul Pragasam, working as P.G.Asst. (Biology) in the fourth respondent school, viz., St.Helen's Girls Higher Secondary School, St.Thomas Mount, Chennai- 600 016, w.e.f. 03.06.2019 with all monetary and service benefits.

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

For respondents : Mr.T.Cheziyan
Addl. Government Pleader

ORDER

The case of the petitioner is that she completed B.Sc (Zoology) in the year 1999, B.Ed in the year 2001 and M.Sc (Zoology) in the year 2010 and she was appointed as Graduate Assistant (Biology) in the fourth respondent school, St.Helen's Girls Higher Secondary School. The said school is run by “Franciscan Missionaries of Mary” shortly called as ‘FMM’, which is a Catholic religious congregation, constituted exclusively by the Catholic nuns. It is registered as a society for the purpose of legal perpetuity, bearing registration No.S.3 of 1922 in the name of “The Institute of the Franciscan Missionaries of Mary”. The said society has established and is administering a number of educational institutions, including colleges and schools for the welfare and development of women and girl children with a special focus on the



Catholic Christian Community and the said educational institutions are Minority Educational Institutions (MEI) under Article 30(1) of the Constitution of India.

2. The learned Senior Counsel appearing for the petitioner submitted that the petitioner was appointed as a Post Graduate Assistant (Biology) teacher in St.Helen's Girls Higher Secondary School, St.Thomas Mount, Chennai, with effect from 03.06.2019 in the vacancy arising out of retirement of one Maria Pushpam on 31.05.2019 and the said post is a regularly sanctioned post with grant-in-aid from the Government and the petitioner joined as a PG Assistant on 03.06.2019.

3. He further submitted that the proposal for appointment for the petitioner as PG Assistant (Biology) in the above said school with effect from 03.06.2019 was forwarded to the competent educational authorities for approval on 22.12.2019. According to him, it is also clear and evident from the records issued by the competent educational authorities that the staff fixation for the above said school for the academic year 2017-2018 and 2018-2019 clearly reveals that there is an eligibility for the said post.



4. The learned Senior Counsel also submitted that the third respondent had returned the proposal *vide* proceedings in O.Mu.No.2828/A1/2021 dated 04.02.2021, stating that as per G.O.Ms.No.165, (School Education (Tho.Ka.Thu.1)), dated 17.09.2019 this Court has stayed all the new appointments by order dated 09.04.2019 and hence, no approval could be entertained for any new appointments. Due to the rejection of approval by the third respondent, the petitioner has been working without any salary from 03.06.2019.

5. The learned Senior Counsel would further submit that the petitioner school is a Higher Secondary School and there is only one post (Biology) sanctioned for Std. XI and Std. XII of that school and the students have to take up their public examination, which necessitates the appointment of teacher for the said post and also, the petitioner has affixed her signature in the master attendance register in the fourth respondent school with effect from 03.06.2019 till date and has also affixed her signature in the attendance register of the students and other allied documents, from the date of joining in the said school, which has further been endorsed by the competent authorities, including the fourth respondent.



6. According to the learned Senior Counsel, a Division Bench of the Madurai Bench of the Madras High Court, in W.A.No.(MD) No.76 of 2019 etc., batch which was finally decided *vide* the judgement dated 31.03.2021, passed an interim order dated 09.04.2019 directing not to appoint anyone in the Government school and Private Aided schools all over Tamil Nadu. Based on the said order, the Government issued G.O.Ms.No.165, with various conditions relating to staff fixation, excess staff and the process of deployment of such excess staff to the needy schools. The subsequent Division Bench of this Court *suo motu* suspended the said G.O.Ms.No.165 by order dated 20.09.2019 and even after such suspension, the educational authorities continued to return the proposals for the appointment based on the very same Government Order. The Madurai Bench of the Madras High Court, by order dated 31.03.2021 in W.A.(MD) No.76 of 2018 issued various directions and quashed the relevant portion of the judgement and the same is extracted below:

"93.8. *After having gone through the two interim orders passed by two Co-ordinate Division Benches in this batch of cases, one is dated 09.04.2019 and another is dated 19.09.2019, we are of the considered view that, the said G.O.Ms.No.165 ought not to have been issued as a fall out of the interim order passed by this Court. Therefore we are in agreement with the view expressed by a Co-ordinate Bench of this Court by order, dated 20.09.2019, that the said G.O. is a fall out of the interim direction*



issued in the batch of writ appeals, therefore the operation of the said G.O. shall be suspended until further orders.

93.9. In that view of the matter and the comprehensive decision since having been arrived at by us in this batch of cases, the said G.O.Ms.No.165, in our considered view, can very well be declared to be inoperative."

1. The learned Senior Counsel further submitted that as per the above said order, G.O.Ms.No.165 was declared inoperative and the authorities were directed to appoint the petitioner without any further delay. There is no legal bar or embargo against the approval to the petitioner and the non-approval by the competent authority had greatly affected not only the livelihood of the petitioner but also impacted her performance in terms of her profession and future.

8. The learned Senior Counsel relied on the judgement dated 15.02.2023 of this Court in W.A.No.1155 of 2020, the relevant portion of which is extracted below:

"16. Therefore, once a teacher is appointed to the sanctioned post the Government cannot refuse approval. We don not think we should go into the question as to whether school should be given an oppourtunity before staff strength is reduced or withdrawn. In view of the above facts, the writ appeal will have to fail on these grounds itself."



9. The learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that counter has been filed on 22.12.2021. He relied on the order dated 18.04.2021 passed by this Court in W.P.No.3194 of 2020 and G.O.Ms.No.165 for rejecting the proposal for approval of new appointments.

10. Heard both sides and perused the materials available on record.

11. The proposal for appointment of the petitioner in the above said school from 03.06.2019 was forwarded to the competent educational authorities for approval which was rejected by the third respondent stating that this Court had passed an interim order dated 09.04.2019 directing not to appoint anyone in the Government school and Private Aided schools all over Tamil Nadu and subsequently, no approval was given for any new appointments. But the above said ground is not true, since there is no whisper to that effect in the order dated 15.02.2020 passed by the Division Bench of this Court in W.A.No.1155 of 2020 dated 15.02.2020.



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12. In view of the above facts and circumstances of the case, the order passed by the third respondent is liable to be quashed and the same is accordingly quashed and the matter is remitted back to the third respondent for fresh consideration and passing orders on merits and in accordance with law, and in light the of the order dated 15.02.2020 passed by the Division Bench of this Court in W.A.No.1155 of 2020, within a period of six weeks from the date of receipt of a copy of this order.

In the result, this writ petition is disposed of with the above directions. No costs. Cosequently, all the writ miscellenaous petitions are dismissed.

19.09.2023

vca

Index : Yes/No

Speaking Order : Yes/No

To:

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The Directorate of School Educational
DPI Campus
College Road
Chennai - 600 006.



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