



W.P.No.27910 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.27910 of 2021
and WMP.No.29461 of 2021

Manager & Correspondent
Nusrathul Islam Aided Primary School
Peranambut – 635 810.

... Petitioner

Vs.

1. The State Tamil Nadu
Rep. By its Secretary to Government
Education Department, 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.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus to call for the entire records



W.P.No.27910 of 2021

connected with the impugned order passed by 4th respondent vide A.Thi.Mu.No.199/A1/2019, dated 10.03.2020 and quash the same and consequently direct the respondents 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.

For Petitioner : Mr.R.D.Ashok Kumar

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

ORDER

The petitioner has filed the above writ petition praying for a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by 4th respondent vide A.Thi.Mu.No.199/A1/2019, dated 10.03.2020 and quash the same and consequently direct the respondents 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.

2. The learned counsel for the petitioner submitted that the petitioner



W.P.No.27910 of 2021

WEB COPY

school is a Linguistic and as well as religious minority institution started way back in the year 1967, with noble object to cater the education to the needy and poor downtrodden people in and around Vaniyambadi and got permanent recognition from the Government with effect from 01.06.1995 and continues to be a primary school imparting education in Urdu Medium. The school is governed by certain provisions of Tamil Nadu (Recognised) Private Schools (Regulations) Act, 1973 and various other Government orders issued from time to time and as on date the school has around 941 students studying from 1st to Vth standard with 1 Headmaster, 16 Secondary Grade Teacher, one teacher under Regional Language Teacher (RLT) and a Music Teacher.

3. The learned counsel for the petitioner further submitted that the vacancy arose for the post of Secondary Grade Assistant on 01.12.2019, due to retirement of one Mrs.Haseen Taj Secondary Grade Urdu Teacher, on 30.11.2019. The petitioner school management being Religious and as well as linguistic Minority School selected and appointed one Tmt.Shabana Begum, who possessed all requisite qualifications as Secondary Grade Teacher (Urdu) vide an order dated 01.12.2019 and she joined the school on the same day. Pursuant to her appointment, the school submitted a proposal dated 14.12.2019



W.P.No.27910 of 2021

WEB COPY

seeking approval of appointment of Tmt.Shabana Begum, as Secondary Grade Teacher with effect from 01.12.2019. The 4th respondent without forwarding the proposal to the 3rd respondent passed impugned order vide O.Mu.No.199/A1/2019, dated 10.03.2020 and returned the proposal for approval of appointment of 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 passed by the 4th respondent is without jurisdiction.

4. The learned counsel for the petitioner further submitted that the competent authority to grant approval of appointment is only the 3rd respondent. The 4th respondent being the forwarding authority has no jurisdiction to reject the proposal and the petitioner school is a religious and as well as linguistic minority institution imparting education in Urdu Medium and the vacancy was caused in the school in the sanctioned post on account of retirement of earlier incumbent on 30.11.2019 and the recruitment process commenced way prior to issuance of G.O.Ms.No.165, dated 17.09.2019. 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.



W.P.No.27910 of 2021

Subsequently, the Division Bench declared the G.O.Ms.No.165 dated 17.09.2019, as in-operative in W.A.(MD).No.76 of 2019 etc., batch dated 31.03.2021 and brushing aside these vital factors, the 4th respondent mechanically rejected the proposal for approval of appointment of the petitioner. The Education Department, every year, after inspecting the school would fix the staff strength for the school and the post of Secondary Grade Assistant has been shown in the staff strength and the school having enormous strength and requires the work of Secondary Grade post and without this post, the education of the students would be jeopardised.

5. The learned counsel for the petitioner further submitted that the 4th respondent failed to consider the fact that G.O.Ms.No.165, dated 17.09.2019 was passed only in respect of Corporate Managements or other cluster of Managements and in the present case the school is a single unit and the bare perusal of the fixation of the staff strength would prove that there is no surplus staff working in the school. Therefore the G.O.Ms.No.165 dated 17.09.2019, was declared to be in-operative by the Division Bench of this Court and the same cannot put against the School. As per the provisions of the Tamil Nadu Private School Regulation Act, 1973, the petitioner School is the competent



W.P.No.27910 of 2021

WEB COPY

person to appoint teachers and there is no ban on appointment of teaching posts in an Aided Institution which is imposed under the Tamil Nadu Recognised Private School Regulation Act. The Educational Authorities are Supervising Authorities under the Act and the respondents being a supervisory authority cannot step into the shoes of Appointing Authority and thereby make deployment in the permanent vacancy caused in the sanctioned post contrary to the Tamil Nadu Private School Regulation Act and Rules.

6. The learned counsel for the petitioner further submitted that the issue involved in the writ petition is covered by the order of this Court rendered in W.P.No.3189 of 2020, dated 26.02.2020 and the same was confirmed in W.A.No.1090 of 2020 dated 04.02.2021 and the said order was implemented by the respondent. The third respondent has granted approval to the appointments made in other aided institutions and altogether a different yardstick was applied in respect of the petitioner for extraneous reasons and the impugned order passed by the 4th respondent rejecting to approve the appointment of the petitioner is a clear case of discrimination under Article 14 of Constitution of India. In a similar matter the intra-court appeal filed by the Government in W.A.No.941 of 2021 against the order passed in W.P.No.35326 of 2019 dated



W.P.No.27910 of 2021

20.12.2019 was confirmed by an order dated 18.08.2021. Therefore, there is no impediment in approving the appointment of Tmt.Shabana Begum Secondary Grade Teacher with effect from 01.12.2019.

7. In this context, the learned counsel for the petitioner relied upon the order passed by this Court in W.P.No.14240 of 2022 dated 15.06.2022 and W.P.No.19229 of 2023 dated 02.08.2023, wherein this Court has directed the respondent to consider the appointment of approval of the petitioner.

8. Counter affidavit dated 04.02.2022 has been filed by the 3rd respondent and it is relevant to extract paragraph No.7 of the counter affidavit and the same is extracted as hereunder:-

7. Regarding the averments in para 4 and 5 of the affidavit of the petitioner, it is submitted that it is not disputed that the vacancy was caused due to the retirement of one Hassen Taj who was working as Secondary Grade Teacher in petitioner's School on 30.11.2019. It is not correct to say that the petitioner has commenced the recruitment process well before the issue of the Government order in G.O.Ms.No.165 School Education Department dated 17.09.2019. But a perusal of the letter dated 01.12.2019 seeking approval of the said appointment reveals that there was no such earlier process since the appointment was made on very next date of the retirement of previous incumbent. Though the reason assigned for returning the proposal is the guidelines in the above government



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orders, there are several violations in the matter of the appointment as follows:-

(a) that the vacancy arose only on 30.11.2019 and even without getting approval of the said retirement order by the competent authority, fresh appointment was made on the very next day i.e., 01.12.2019.

(b) that the said appointment was made after getting list of suitable candidates from the District Employment exchange and after making advertisement in two daily news papers as prescribed in G.O.Ms.No.44, Labour and Employment Department dated 11.03.2015 which was issued as per the observations of this Hon'ble Court in W.A.No.1027 of 2013 dated 09.06.2014 in order to comply with Article 14 and Article 16 of the Constitution of India.

(c) the petitioner has not obtained prior permission from the competent authority as required under Section 35(2) of Tamil Nadu Private Schools (Regulation) Act, 2018.

(d) a perusal of the letter dated 01.12.2019 seeking approval of the said appointment reveals the proposal did not contain the following documents.

(i) genuineness certificate of the applicant's Educational Certificates.

(ii) School Committee resolution is not available.

(iii) physical fitness Certificate is not available.

(iv) copy of orders declaring the petitioner's institution as Minority one

(v) copy of orders approving the Manager/Correspondent of the School by the competent authority.

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



W.P.No.27910 of 2021

WEB COPY

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 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



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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.”



W.P.No.27910 of 2021

WEB COPY

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.

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 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.

26.09.2023

dpq

Index : Yes /No

Speaking/Non speaking order



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W.P.No.27910 of 2021

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WEB COPY



W.P.No.27910 of 2021

J. SATHYA NARAYANA PRASAD, J.

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W.P.No.27910 of 2021

26.09.2023