



W.P.Nos.29543, 29637, 32172 & 32826 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.29543, 29637, 32172 & 32826 of 2023
and W.M.P.Nos.29175, 29176, 29252, 29253, 31772, 31773, 32449 &
32450 of 2023

The Correspondent,
St. Joseph's Girls Higher Secondary School,
Somanur – 641 668,
Coimbatore District.

... Petitioner in WP.Nos.29543
& 32826/2023

The Correspondent,
Rosary Girls High School,
Suthanthirapuram,
Karamadai Road,
Mettupalayam,
Coimbatore - 641301

... Petitioner in WP.No.29637/2023

The Headmaster and Correspondent,
St. Joseph's Girls Higher Secondary School,
Susaigiri, Yercaud,
Salem – 636 601.

... Petitioner in WP.No.32172/2023

Vs.

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



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2.The Commissioner of School Education,
College Road, Chennai – 600 006.

... 1st and 2nd respondents
in WP.No.31772/2023

3.The Chief Educational Officer,
The Chief Educational Office,
No.500, Raja Street, Town Hall,
Coimbatore – 641 001.

4.The District Educational Officer,
District Educational Office,
Raja Street,
Coimbatore – 641 001.

... Respondents in WP.Nos.29543,
29637 & 32826/2023

5.The Chief Educational Officer,
The Chief Educational Office,
Salem – 636 001.

6.The District Educational Officer,
District Educational Office,
Salem.

... 3rd and 4th respondents
in WP.No.31772/2023

Prayer in WP.No.29543/2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent CEO in A.Thi.Mu.No.14051/a4/19 dated 24.10.2019 and the consequential proceedings issued by the 4th respondent DEO in Na.Ka.No.5569/Aa1/2019 dated 22.11.2019 refusing to approve the appointment of Rev.Sr.Amalarani as BT Assistant (Science) with effect from 01.07.2019, quash the same and further direct the 3rd and 4th respondents to approve forthwith the appointment of Sr.Amalarani as



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BT Assistant (Science) in the petitioner-school with effect from the date of her appointment viz., 01.07.2019 and release salary and all attendant benefits with effect from the said date.

Prayer in WP.No.29637/2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by 4th respondent District Educational Officer (DEO) in Na.Ka.No.1081/A2/2019 dated 07.03.2019 as (signed) and in O.Mu.No.5032/A2/2020 dated 01.02.2021 (as signed), quash the same and further direct the 3rd and 4th respondents to approve forthwith the appointment of Rev. Sr. Jeyaseeli as BT Assistant (Tamil) in the petitioner-school with effect from the date of her appointment viz., 03.09.2018 and release salary and all attendant benefits with effect from the said date.

Prayer in WP.No.32172/2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent District Educational Officer vide proceedings in O.Mu.No.1166/A2/2020 dated 13.07.2020, quash the same and further direct the 3rd and 4th respondents to approve forthwith the appointment of Mr.J. Alexander as BT Assistant (English) in the petitioner-school with effect from the date of his appointment viz., 01.07.2019 and release salary and all attendant benefits with effect from the said date.

Prayer in WP.No.32826/2023: Writ Petition filed under Article 226 of



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the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent District Educational Officer (DEO) vide proceedings in O.Mu.No.2414/A2/2019 dated 16.04.2019 (as signed) refusing to approve the appointment of Sr. Caroline Jansy Rani as BT Assistant (Social Science) with effect from 14.06.2017, quash the same and further direct the 3rd and 4th respondents to approve forthwith the appointment of Sr. Caroline Jansy Rani as BT Assistant (Social Science) in the petitioner-school with effect from the date of her appointment viz., 14.06.2017 and release salary and all attendant benefits with effect from the said date.

For Petitioner : Ms.H. Mary Sowmi Rexi
(*in all WPs*) for Isaac Chambers

For Respondents : Mr.V. Manoharan,
(*in all WPs*) Additional Government Pleader

COMMON ORDER

Heard the learned counsel for the petitioners, as well as the learned Additional Government Pleader appearing for the respondents.

2. The petitioners-school is the Minority Aided Educational Institution. When a vacancy arose owing to the retirement of a teacher in



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their School, Rev.Sr.Amalarani, Rev. Sr. Jeyaseeli, Mr.J. Alexander and Sr. Caroline Jansy Ranione respectively, were appointed by the petitioners-school, through an appointment order dated 01.07.2019, 03.09.2018, 01.07.2019 and 14.06.2017 respectively. On the same day, the petitioners-school herein had submitted a proposal to the third and fourth respondents herein namely the Chief Educational Officer and the District Educational Officer respectively, seeking for approval of the appointment of Rev.Sr.Amalarani, Rev. Sr. Jeyaseeli, Mr.J. Alexander and Sr. Caroline Jansy Ranione respectively, with effect from their date of appointment. The approval petitions have now been rejected by the third and fourth respondents respectively, through their orders dated 24.10.2019, 22.11.2019, 07.03.2019, 01.02.2021, 13.07.2020 and 16.04.2019 respectively, on the ground that, since the group of schools under the Corporate Management to which the petitioners-school are attached, have surplus teachers, the approval to the appointment of Rev.Sr.Amalarani, Rev. Sr. Jeyaseeli, Mr.J. Alexander and Sr. Caroline Jansy Ranione respectively, cannot be considered. The petitioners-school has challenged these orders of rejection in the present Writ Petition.



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3. Learned Special Government Pleader appearing for the respondents, submitted that since there are some surplus teachers in the Corporate Management of the Schools and in view of the instructions from the Government in the letter dated 04.12.2019, the approval of the teachers cannot be considered.

4. I am not in agreement or appreciation with such a submission, particularly, when this Court in numerous orders have deprecated the practice of citing the surplus teachers in the Corporate Management, as the reason for denying the approval of teachers in a sanctioned post.

5. 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.

6. In a batch of Writ Petitions filed before this Court in the case of
'The Secretary to Government, Government of Tamil Nadu, School



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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 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.

7. 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*



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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. 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.



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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 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*



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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.

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.



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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 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



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to be quashed.”

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8. 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 petitioners-School, cannot be sustained.

9. For all the foregoing reasons, the impugned orders dated 24.10.2019, 22.11.2019, 07.03.2019, 01.02.2021, 13.07.2020 and 16.04.2019 respectively, passed by the third and fourth respondents herein, are hereby quashed. Consequently, the petitioners herein are called upon to resubmit the proposal to the third and fourth respondents herein and on receipt of such proposal, the third and fourth respondents herein shall pass appropriate orders, approving the appointments of Rev.Sr.Amalarani, Rev. Sr. Jeyaseeli, Mr.J. Alexander and Sr. Caroline Jansy Ranione respectively, to the posts of BT Assistant (Science), BT Assistant (Tamil), B.T. Assistant (English) and BT Assistant (Social Science) respectively, with effect from 01.07.2019, 03.09.2018, 01.07.2019 and 14.06.2017 respectively. Such orders shall be passed, at least within a period of six (6) weeks from the date of receipt of re-submission of the proposals.



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10. Accordingly, the Writ Petitions stand allowed. No costs.

Connected Miscellaneous Petitions are closed.

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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To

1.The Secretary to State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai – 600 009.

2.The Commissioner of School Education,
College Road, Chennai – 600 006.

3.The Chief Educational Officer,
The Chief Educational Office,
No.500, Raja Street, Town Hall,
Coimbatore – 641 001.

4.The District Educational Officer,
District Educational Office,
Raja Street, Coimbatore – 641 001.

5.The Chief Educational Officer,
The Chief Educational Office,
Salem – 636 001.

6.The District Educational Officer,
District Educational Office,



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M.S.RAMESH,J.

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