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W.P.Nos.33725 of 2022 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.33725, 33728, 33731, 33734,
33735, 33737, 33740, 33743 & 33745 of 2022
and
W.M.P.Nos.33220, 33221, 33224, 33226, 33229,
33230, 33232, 33233, 33237, 33239, 33242, 33243,
33245, 33247, 33250, 33251, 33256 & 33257 of 2022

W.P.No.33725 of 2022

DBTR National Higher Secondary School,
Mayiladuthurai – 609 001.
Mayiladuthurai District,
Rep. by its Secretary & Correspondent,
Soo. Vijaikumar,
S/o.A.Sooriyanarayanan

... Petitioner

Vs.

1.The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.

2.The Chief Educational Officer,
Mayiladuthurai District,
Mayiladuthurai.

3.The District Educational Officer,
Mayiladuthurai Educational District,
Mayiladuthurai District.

... Respondents



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PRAYER in W.P.No.33725 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ, order, or direction more particularly a writ in the nature of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka.No.3610/A2/2022 dated 15.11.2022 and to quash the same and consequently directing the respondents to approve the appointment of Teacher Tmt.T.Sridevi in the regular sanctioned post of B.T.Assistant (English) in the Petitioner school from the date of appointment on 31.07.2019 and to make the payment of salary with interest and other service benefits.

For Petitioner : Mr.G.Sankaran, Senior Counsel for
Mr.S.Nedunchezhiyan

For Respondents : Mr.P.Baladhandayutham,
Special Government Pleader

COMMON ORDER

All these Writ Petitions have been filed by the School Management challenging the impugned orders, dated 15.11.2022 passed by the Educational Authorities rejecting the request for approval of the appointment to the post of B.T.Assistant made by the School Management.

2.Earlier the rejection of the request for approval of appointment was challenged before this Court in W.P.Nos.3194 of 2020 etc., batch wherein this Court, *vide* order, dated 18.04.2022 quashed the rejection order and remitted the matter to the Chief Educational Officer/District



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Educational Officers concerned to consider and to pass order of approval of the appointment made by the School Management and also held that those who are appointed to the post of B.T.Assistant and Secondary Grade Teacher prior to the issuance of G.O.Ms.No.165, School Education Department, dated 17.09.2019 and also, the proposals for approval of such appointments were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165, School Education Department, dated 17.09.2019 alone are entitled to the relief granted and based on the submissions made by the learned Additional Advocate General, this Court has also held that there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.

3.Now, once again the impugned orders, dated 15.11.2022 have been passed mainly on the ground that there is surplus teachers working in other schools within the district and further referred to the judgment passed in W.A(MD)No.76 of 2019 etc., batch, dated 31.03.2019 as well as the appeal filed before the Hon'ble Apex Court in S.L.P(C)No.15702 of 2021.



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4.The learned Senior Counsel appearing for the petitioners submitted that in the present Writ Petitions, the appointments were made prior to the G.O.Ms.No.165, School Education Department, dated 17.09.2019, therefore, the question of invoking the said Government Order, once again, does not arise at all, particularly when the Government Order itself is the subject matter of this Court in W.A(MD)Nos.76 of 2019 etc., batch, wherein this Court, by order, dated 31.03.2021 held that the above said Government Order is inoperative. Even while challenging the said judgment, dated 31.03.2021, the Hon'ble Apex Court has not granted any stay in S.L.P(C)No.15702 of 2021. Hence, it is the contention of the learned Senior Counsel that when the Court on earlier occasion clearly held that the Government Order is not applicable, the respondents cannot reject the request for approval of appointment. Therefore, the impugned orders cannot be sustained in the eye of law and the same are liable to be quashed.

5.Though counter affidavits have been filed by the respondents pleading several facts, the main contention in the counter to the effect that while adopting the rule of reservation, the priority and non priority



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categories have not been adopted in accordance with G.O.Ms.No.142, Personnel and Administrative Reforms, dated 14.10.2009. Further, the Division Bench judgment in W.A(MD)Nos.76 of 2019 etc., batch has been challenged before the Hon'ble Apex Court and the matter is pending in S.L.P(C)No.15702 of 2021.

6.The very contention of the respondents in the counter is that the reservation policy has not been followed, which is raised first time in the counter and the same does not find in the reasons assigned in the impugned orders. Be that as it may, Part-II – General Rules- (b)(2) of G.O.Ms.No.55, Personnel and Administrative Reforms (S) Department, dated 08.04.2010 reads as follows:

“(2) for the explanation in sub-rule (c), the following explanation and provisos shall be substituted, namely:-

Explanation- The vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule III and all selections for appointment shall be started afresh from serial number one in the said Schedule III with effect on and from the said date.

SCHEDULE -III

(See rule 22(c))



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1.General Turn

2.Scheduled Castes (Arunthathiyars on preferential basis)

3.Most Backward Classes and Denotified Communitites

4.Backward Classes (Other than Backward Class Muslims)

5.General Turn

6.Scheduled Castes

7.

8.

9.

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200.”

7.Further, the list provided by the learned Special Government Pleader before this Court makes very clear that while appointing the Teachers in the petitioner School, G.O.Ms.No.55, Personnel and Administrative Reforms (S) Department, dated 08.04.2010 has infact been followed. Such being the position, now the respondents cannot take a contrary view in the counter to the effect that G.O.Ms.No.142, Personnel and Administrative Reforms, dated 14.10.2009 has not been followed while adopting the rule of reservation. When the countenance of the Government



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Order with regard to the reservation passed on 08.04.2010 and the same has been followed, prior Government Order which has been superseded in the subsequent Government Order, cannot be put against the School Management while rejecting the approval. It is also relevant to note that all the appointments have been made after obtaining the permission from the respondents and the permission is also sought on the basis of the guidelines contained in G.O.Ms.No.55, Personnel and Administrative Reforms (S) Department, dated 08.04.2010 as far as the reservation is concerned. Having granted such permission, now the respondents for the first time in the counter cannot introduce new facts on the basis of the old G.O.Ms.No.142, Personnel and Administrative Reforms Department, dated 14.10.2009.

8.It is brought to the notice of this Court that the appointment on the basis of the G.O.Ms.No.55, Personnel and Administrative Reforms (S) Department, dated 08.04.2010 is also approved on 27.12.2010 in respect of one N.Sriram as per the Schedule III. The impugned orders also does not speak about what is the nature of the surplus teachers in the relevant subjects, therefore, without identifying the relevant surplus teachers in the



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specific subjects, the respondents cannot reject the request for approval of appointment in total without availability of any data with them.

Admittedly, all the B.T.Assistants in the present Writ Petitions were appointed prior to the G.O.Ms.No.165, School Education Department, dated 17.09.2019. The said Government Order is said to be inoperative as per the judgment of the Division Bench of this Court in W.A(MD)Nos.76 of 2019 etc., batch. Further, the Division Bench in paragraph No.95(b) held that '*(b)for the purpose of fixing the staff strength of a school, school shall be the unit and not the Educational agency/joint management /corporate management*'. However, without any particulars in this regard merely on the ground that there is surplus teachers, the request for approval of appointment cannot be rejected particularly when the petitioners appointed prior to G.O.Ms.No.165, School Education Department, dated 17.09.2019.

9.Now, the impugned rejection orders are passed mainly on the ground of pendency of S.L.P(C)No.15702 of 2021 before the Hon'ble Apex Court. Added to it, the impugned orders cannot be defended on the basis of the new facts raised in the counter for the first time. This aspect has been clearly held by the Constitutional Bench of the Hon'ble Apex Court in the



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case of “**Mohinder Singh Gill and Ors., Versus The Chief Election Commissioner, New Delhi and Ors.**, reported in **(1978) 1 SCC 405**”

wherein it had held that '*when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out*'. Further, the Hon'ble Apex Court in the case of “**Commissioner of Police, Bombay Versus Gordhandas Bhanji** reported in **AIR 1952 SC 16**” had held that '*public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself*'.



10. In such view of the matter, fresh reasons and explanations in the counter to defend the impugned orders have no *locus standi*. Even such ground when considered as stated above, the G.O.Ms.No.55, Personnel and Administrative Reforms (S) Department, dated 08.04.2010 has been followed while the B.T.Assistants in the present Writ Petitions were being appointed in the petitioner school. Further, in a recent decision taken in a batch of Writ Petitions in W.P.Nos.3194 of 2020 etc., batch, dated 18.04.2022 [***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. 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 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.

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 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.”

11. Therefore, the reasons assigned by the respondents once again rejecting the proposal on the ground of availability of surplus teachers under the management of the petitioner school cannot be sustained.



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12.Despite this Court in earlier writ petitions in W.P.Nos.3194 of 2020 etc., batch, dated 13.04.2022 had held that there is no legal impediments for the respondents to accord approval of the appointment made by the school management in the writ petition, still the respondents rejecting the request for approval of appointment mechanically, cannot be sustained in the eye of law. Accordingly, the impugned orders, dated 15.11.2022 stand quashed. Accordingly, all these Writ Petitions are allowed.

13.The respondents are directed to approve the appointment of the B.T.Assistants in the petitioner school, within a month, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

08.09.2023
(½)

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

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- To
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Directorate of School Education,
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N.SATHISH KUMAR, J.
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(1/2)