



W.A.(MD)No.129 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.A.(MD)No.129 of 2023

and

C.M.P.(MD)No.1662 of 2023

1.The Chief Educational Officer,
Tirunelveli District.

2.The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli.

3.The Block Educational Officer,
Tirunelveli Nagar,
Tirunelveli District.

... Appellants

Vs.

1.R.Priyatharsini

2.The Correspondent,
STC Branch Upper Clapton Middle School,
Tirunelveli District.



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3. The Administrators,
Church of South India – Tirunelveli Diocese,
No.1680/8.North High Ground Road,
St. Johns College Hostel Campus,
Near Krishna Hospital,
Palaymkottai.

... Respondents

PRAYER : Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.(MD)No.15684 of 2020, dated 02.09.2022.

For Appellants : Mr.S.Shaji Bino,
Special Government Pleader

For Respondents : Mr.Gnanagurunathan
for Mr.K.Samidurai for R1

JUDGMENT

[Judgment of the Court was delivered by D.KRISHNAKUMAR, J.]

This Writ Appeal is directed against the order made in W.P.(MD)No.15684 of 2020, dated 02.09.2022.

2. The first respondent / writ petitioner was appointed as Secondary Grade Teacher in the 2nd respondent school on 15.10.2015 in a sanctioned promotion



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vacancy. The 2nd respondent school has sent a proposal for approving the appointment of the petitioner. The 2nd appellant by the proceedings dated 30.09.2020, has rejected the proposal of the 2nd respondent school. Challenging the same, the first respondent /writ petitioner has filed a Writ Petition in W.P. (MD)No.15684 of 2020. This Court by order dated 02.09.2022, allowed the said writ petition and directed the appellants to approve the appointment of the petitioner, to the post of Secondary Grade Teacher, in the 2nd respondent school with effect from 15.10.2015, together with all service and monetary benefits. Challenging the same, the appellants have filed this Writ Appeal.

3. The learned Special Government Pleader appearing for the appellants submitted that the decision rendered by the Division Bench of this Court in W.A. (MD)No.70 of 2012, dated 13.03.2012, is squarely apply to the case on hand, in which, it has been held that “in fairness is incumbent to deploy the surplus teachers to needy schools in case of running of group of schools by the Management. Therefore, the Management ought to have redeployed one of its surplus teachers to the T.D.T.A. Primary/Middle Schools if there is actually any



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need in the school. Further, the judgment relied on by the first respondent / writ petitioner in the case of ***M.Ranjani Vs. the Joint Director of Elementary Education (Aided)*** in ***W.P.No.35326 of 2019, dated 20.12.2019***, is not applicable to the case on hand. He further submitted that the first respondent / writ petitioner appointed prior to Government Order in G.O.Ms.No.165, School Education Department, dated 17.09.2019 and also prior to the direction passed by this Court in the case of ***the Secretary to Government and others Vs. Iruthaya Amali and another*** reported in ***2021 SCC OnLine Mad 1285*** and therefore, the said decision will not apply to the case on hand. The learned writ Court has wrongly relied upon the aforesaid decision has allowed the Writ Petition and therefore, the same is liable to be dismissed.

4. In support of his submission, the learned counsel for the appellants has drawn the attention of this Court to the judgement of this Court in ***W.A.(MD)No. 136 of 2017, dated 04.08.2017 [The Joint Director of Elementary Education, Chennai & Ots. Vs. Getzy Roopala and Ots.]***, wherein in paragraph No.8, it has been held as follows:



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“8.It is seen from the order impugned in the writ petition that surplus teachers were working in the same management. When there were surplus teachers they had to be redeployed elsewhere. The management cannot make further appointment. Unless there is a sanctioned vacancy, it is not open to the management to make appointment. If the management makes such appointment, it is for them to pay the appointees out of their own resources and the government cannot be saddled with liability for such illegal appointment of teachers.”

5. The learned counsel appearing for the first respondent / writ petitioner submitted that the first respondent / writ petitioner was appointed as a Secondary Teacher on 15.10.2015 and a proposal has been submitted by the 2nd respondent on 30.11.2015, which was rejected and thereafter, the proposal has been resubmitted on 16.12.2019. However, the same was rejected. He further submitted that the stand taken by the appellants that there is a surplus teacher in the 2nd respondent school is not correct and the 2nd respondent school shall be treated as Unit. He further submitted that the petitioner has been appointed prior to the issuance of G.O.Ms.No.165, dated 17.09.2019 and therefore, the order of the learned Single Judge does not warrant interference.



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6. We have heard the learned counsel appearing on either side and perused the materials available on record.

7. The learned counsel appearing on either side drawn the attention of this Court to the judgment of this Court in ***W.P.No.3194 of 2020 [Kurinjimalaron Vs. The State of Tamil Nadu, Chennai], dated 18.04.2022*** and the judgment of the Hon'ble Division Bench consisting one among us in ***W.A.(MD)No.1479 of 2022, [The Chief Educational Officer and Otrs Vs. A. Thamaraiselvi and Otrs] dated 12.12.2022***. In W.P.No.3194 of 2020, etc., batch, dated 18.04.2022, this Court has held as follows:

“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 appointment 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



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made clear 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 dated 17.9.2019 and also, the proposals for approval of the such appointments were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 alone are entitled to the relief granted hereinabove.

12. With the above directions, all the writ petitions stand allowed. No costs. Connected miscellaneous petitions are closed.”

8. In view of the above cited decisions, we are inclined to modify the order of the learned Single Judge. Accordingly, we direct the appellants to consider the resubmitted proposal of the 2nd respondent dated 16.12.2019, for approval of the appointment of the first respondent / writ petitioner, without reference to the G.O.Ms.No.165, School Education Department, dated 17.09.2019 and pass orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. It is needless to say that the petitioner shall also furnish any further particulars to the appellants, within a period of two weeks from the date of receipt of a copy of this order.



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9. To the above extent, the order passed in in W.P.(MD)No.15684 of 2020, dated 02.09.2022 is modified and consequently, this Writ Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] [L.V.G., J.]
14.02.2023

NCC : Yes / No
Index : Yes / No
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Note: Issue order copy on 16.02.2023



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and
L.VICTORIA GOWRI, J.

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