



W.P.(MD)No.1628 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.1628 of 2023

and

W.M.P.(MD)Nos.1470 to 1473 of 2023

The Correspondent,
RC Higher Secondary School,
Peria Anaikaraipatty-621 315,
Trichy District.

... Petitioner

vs.

- 1.The State of Tamilnadu,
represented by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Chief Educational Officer,
Trichy, Trichy District.



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4.The District Educational Officer,
Trichy, Trichy District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the the records relating to the impugned Government orders issued by the 3rd respondent Chief Educational Officer in Na.Ka.No.10730/e2/2018, dated 00.08.2021, to quash the same and further, to direct the 3rd respondent Chief Educational Officer to approve the appointment of Mr.S.Robert Sudhagar as BT Assistant (Maths) with effect from 11.06.2018 in the petitioner school with all attendant benefits including the arrears of salary and allowances.

For Petitioner : Mr.K.Prabhu
For Respondents : Mr.T.Amjad Khan
Government Advocate

ORDER

This writ petition is filed for issuance of writ of Certiorarified Mandamus, to quash the impugned orders issued by the 3rd respondent Chief Educational Officer, dated 00.08.2021 and further direct the 3rd respondent Chief Educational



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Officer to approve the appointment of Mr.S.Robert Sudhagar as B.T. Assistant (Maths) with effect from 11.06.2018 in the petitioner's School with all attendant benefits including the arrears of salary and allowances.

2. The brief facts of the case are that the petitioner's school namely, RC Higher Secondary School is a recognized and Private Aided Minority Educational institution owned and administered by Diocesan Educational Council. The Institution has been recognized as Minority by orders of this Court in W.P.No. 586/ 1976, dated 24.09.1976 and the Government proceedings in R.C.No. 24541-03/76, dated 20.11.1970. The petitioner school is offering education from standards I to XII and among them IX to XII under self-finance. The school was initially established as a primary School in the year 1948. Thereafter, the School was upgraded as Middle School in the year 1990, later on upgraded into High School in the year 1993 and then upgraded as a Higher Secondary School in the year 2002. The medium of instruction is Tamil. There are 9 Teachers (7 BT



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Assistants, 2 Tamil Pandits and 1 Physical Education Teachers) working in the school. There are 749 students studying in the School.

3. One post of B.T. Assistant (Maths) fell vacant from 01.06.2018 on account of retirement of the then incumbent namely S. James on 31.05.2018. In the said vacancy the School appointed a fully qualified candidate namely, S.Robert Sudhagar as B.T. Assistant (Maths) with effect from 11.06.2018. The school submitted proposal to CEO through DEO on 26.07.2018 seeking for approval of appointment of Mr. S. Robert Sudhagar with effect from 11.06.2018. Then the petitioner school filed writ petition in W.P.(MD) No.5535 of 2021 for a direction to grant approval of the appointment and the same disposed on 12.03.2021, directing the 3rd and 4th respondents to consider the proposal on its own merits and pass appropriate orders in accordance with law within the period of twelve weeks. The 4th respondent forwarded the proposal to the 3rd respondent CEO. Through the impugned proceedings, dated 09.08.2021, the



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authorities rejected the proposal submitted by the petitioner's School stating that the Hon'ble Apex Court has stayed the judgment passed in W.A.(MD)No.76 of 2019. Further the order states that the said appointment has been made without deploying the surplus teachers to needy school within the management and without submitting “Nil Surplus” report within the management, thereby rejected the representation, dated 27.02.2020. The contention of the petitioner school is that the 2nd respondent is trying to fill up the present post by the way of deployment counselling, but the incumbent is working from 11.06.2018 to till date. Since the appointment of the incumbent has not been approved by the CEO, the respondents are taking active steps to fill up the post by way of deploying the surplus teachers within the management schools. The management being minority institution is having right to fill up the post through candidates of their choice and the respondents cannot fill up the said post by deployment orders.



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4. The School Committee alone is the authority competent to appoint any teaching and non-teaching staffs in the private schools, as per the provisions of the Tamil Nadu Recognized Private Schools (Regulations) Act and Tamil Nadu Recognized Private Schools (Regulations) Rules. The School Committee proposed to fill up the post and submitted necessary proposal seeking permission to fill up the post in terms of Rule 15 (4) of the Rules. The 3rd respondent CEO is bound to approve the appointment. The CEO is relying on G.O.Ms.No.165, dated 17.09.2019, stating that there is a ban in appointment of teaching staff as per the said G.O. However, the respondents have failed to understand that the said G.O. has become inoperative by the judgment rendered in W.A.(MD)No.76 of 2019, dated 31.03.2021. Since the petitioner being a Minority Educational Institution, the appointment of B.T. Assistant does not require any the prior permission from the authority. The 4th respondent ought to have seen it is our statutory right under the act to submit the proposal for approving the appointment, the DEO have no rights to prevent the petitioner from submitting any proposal before authorities.



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The 3rd respondent CEO while fixing the staff fixation order for the year 2022-2023 sanctioned the said post of B.T. Assistant in Maths as vacant. When vacancy is there, the respondents cannot deny the approval of appointment. Hence, the petitioner is seeking approval to the appointment of the incumbent, namely S.Robert Sudhagar.

5. On instructions, the Learned Government Advocate appearing for the respondents submitted that since the staff fixation order states that the said post is vacant, the respondents are empowered to pass deployment orders. As per the judgment of this Court in W.A.(MD)No.76 of 2019, the respondents are taking effective steps to pass deployment orders. Since the entire State is having surplus Teachers in the category of B.T. Assistants as well as Secondary Grade Teachers and until the surplus Teachers are “Nil”, Private Aided Schools, both minority and non-minority are not empowered to fill any posts. Therefore, the respondents prayed to dismiss this writ petition.



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6. On perusing the records, it is seen that the petitioner's School has appointed the said S.Robert Sudhagar on 11.06.2018. The respondents have not considered the proposal of approval submitted by the petitioner. Hence, the school approached this Court by filing W.P.(MD)No.5535 of 2021. In the meanwhile, W.A.(MD)No.76 of 2019 was filed before this Court and there was an interim stay banning recruitment and granting approval to any recruitment. By taking into consideration of the interim stay, this Court has simply disposed of the writ petition filed by the petitioner's School directing the respondents to consider the proposal and pass appropriate orders in accordance to law. After considering the claim, the respondents have rightly rejected the claim, since there was an interim stay in W.A.(MD)No.76 of 2019 banning fresh recruitment. However, the claim of the petitioner's School is that the appointment of S.Robert Sudhagar is prior to the stay order. The said claim cannot be entertained, since aided Schools are well aware of the issue of surplus Teachers and they are not supposed to have appointed any Teacher in the said vacancy. Since the appointment of S.Robert



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Sudhagar was not approved, the respondents have rightly shown the said vacancy in staff fixation order for the academic year 2022-2023, which means the said post was not approved. The said vacancy is still a vacancy in the academic year 2022-2023. The petitioner's School cannot claim that they are minority institution and they have every right to appoint and seek grant in aid. The Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and the Rules Made thereunder govern the aided schools in Tamil Nadu. Grant-in-aid to such schools is governed by the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. Under Rule 6 it is categorically stated that schools may be paid grant-in-aid subject to the orders and instructions issued by the government from time to time. When the order of approval was not granted, then as per Rule 6 the school is not entitled to claim grant-in-aid. Therefore this Court is of the considered opinion that the plea that the said teacher was appointed prior to the stay is rejected.



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7. Moreover there are several judgments where it has been held that the grant-in-aid is not a fundamental right and it is not automatic. The Honourable Supreme Court has held in the case of State of Odisha and another Vs Anup Kumar Senapati and another (Civil Appeal No. 7295 of 2019) in paragraph No.8, that grant-in-aid cannot be claimed as matter of right merely on completion of the prescribed period and it is dependent upon fulfillment of various conditions. In the case of the state of Bihar Vs Sachindra Narayan (2019 3 SCC 803), the Hon'ble Supreme Court had held that the release of grant is in discretion of the grantor and cannot be forced by the grantee. In the case of the State of West Bengal Vs Subhas Kumar Chatterjee (2010 11 SCC 694) has held that no court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law, such direction may result in destruction of rule of law. In the case of Maria Grace Rural Middle School Vs the Government of Tamil Nadu (2007 2 MLJ 497) the Hon'ble Division Bench had held that grant-in-aid is neither a fundamental right, nor a



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statutory right and it depends upon the economic capacity of the State. In the judgment dated 25.03.2021 in case of the Government of Tamil Nadu and others Vs the Correspondent in Review Application No. 180 of 2018 the Hon'ble Division Bench had held that the grant-in-aid is not automatic and the same depends on various factors. This review judgment is followed in the case of Sri Kumaragurubara Swamigal Middle School Vs the Government of Tamil Nadu in W.P.No.30796 of 2019 vide order dated 07.10.2021, the Hon'ble Court had held that the grant-in-aid is not automatic and the same depends on various factors. Therefore this Court is of the considered opinion that the claim of the petitioner school cannot be entertained and the impugned order passed by the authority is legally sustainable.

8. The next contention of the petitioner school is that the school being minority institution is having right to fill up the post through candidates of their choice and the respondents cannot fill up the said post by deployment orders. This



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Court is of the considered opinion even though the right to appoint a person of their choice may be a right of minority institution, but that cannot over ride when there are surplus teachers. Especially when the claim of grant-in-aid comes in, it should be with certain conditions. The Government is spending crores of money on surplus Teachers alone. The petitioner's School is also having public duty and social responsibility not to seek any grant-in-aid, when the State is suffering financially to disburse salary for more than 6000 surplus teachers. Therefore, the respondents have rightly initiated action to pass deployment order in the said vacancy. The said S.Robert Sudhagar cannot have any equity right when his appointment is not approved.

9. Therefore, the claim of the petitioner's School ought to be rejected for the above said reasons. The impugned order is passed as per the directions rendered in W.A.(MD)No.76 of 2019. Hence, the impugned order is legally sustainable and the writ petition is liable to be dismissed.



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10. For the reasons stated above, the writ petition is dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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To

1.The Secretary,
State of Tamilnadu,
Department of School Education,
Fort St. George, Chennai - 600 009.

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

3.The Chief Educational Officer,
Trichy, Trichy District.

4.The District Educational Officer,
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