



W.P.(MD)No.4293 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4293 of 2020

and

W.M.P.(MD)Nos. 3613 and 3614 of 2020

D.Rosy

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.

2.The District Educational Officer
Thoothukudi District,
Thoothukudi.

3.The Block Educational Officer
Srivaikundam,
Thoothukudi District.

4.The Correspondent
T.N.D.T.A Primary School,
Mangalapuram,
Srivaikundam Range,
Thoothukudi District.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent in his proceedings in Muo.Mu.No.3307/A2/2019 dated 05-12-2019 and quash the same and to direct the second Respondent to approve the appointment of the petitioner in the post of secondary Grade Assistant Teacher in the fourth Respondent school from the date of appointment on 29-07-2017 by passing appropriate orders on the proposal submitted by the fourth Respondent dated 30-07-2017 with all consequential attendant benefits including arrears of salary with interest.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.S.Saji Bino, - for R1 to R3
Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned order passed by the second respondent in his proceedings in Muo.Mu.No. 3307/A2/2019 dated 05-12-2019 and to direct the second Respondent to



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approve the appointment of the petitioner in the post of secondary Grade Assistant Teacher in the fourth Respondent school from the date of appointment on 29-07-2017 by passing appropriate orders on the proposal submitted by the fourth Respondent dated 30-07-2017 with all consequential attendant benefits including arrears of salary with interest.

2. The learned counsel appearing for the petitioner submitted that the petitioner was qualified with Diploma in Teacher Education, in the year 2009 from Christopher TTI, Vepery, Chennai and also acquired Teacher Eligibility Test in the year 2013 and she was fully qualified for appointment to the post of Secondary Grade Assistant Teacher post. Based on the above said qualification, the fourth respondent School which is a Religious Minority School under the Management of Church of South India, a vacancy arose to the post of Secondary Grade Assistant Teacher in the fourth respondent School, due to transfer of the incumbent S.Devanesam Thangakani. In the resultant vacancy, she was selected and appointed as Secondary Grade Assistant Teacher with effect from 29.07.2017 as per the order of appointment issued by the Correspondent, CSI Education Board,



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dated 27.07.2017. From the date of appointment, the petitioner is working as Secondary Grade Assistant Teacher in the fourth respondent School continuously. Thereafter, the fourth respondent forwarded the proposals to the second Respondent through the third respondent seeking approval of her appointment, whereas, the same was not considered. Hence, the petitioner filed W.P.(MD) No.3553 of 2019 for a Mandamus to direct the second respondent to approve the appointment of the petitioner proposal sent by the fourth respondent School and the same was allowed on 08.03.2019 with a direction to the second respondent to consider the proposal sent by the School Management and pass orders on merits. Thereafter, the second respondent passed the impugned order on the ground that there are surplus teachers available in the fourth respondent Corporate Management instead of transferring the surplus teachers from the fourth respondent management appointing the petitioner in the transferred place is not sustainable one. Challenging the same the present writ petition is filed.

3. The learned counsel for the petitioner further submitted that though the present vacancy is a resultant vacancy of transfer of one



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S.Devanesam Thangakani to some other unit of the fourth respondent Corporate Management and in that School there was a vacancy due to transfer of one teacher and in that School S.Devanesam Thangakani, was transferred to some other School and in the resultant vacancy, the petitioner was appointed and without considering the same, mechanically passed the impugned order which is not sustainable one. Accordingly, he prayed for allowing the writ petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed in the transferred vacancy place, due to the transfer of one incumbent S.Devanesam Thangakani. In the transferred vacancy, the petitioner was selected and appointed as a Secondary Grade Assistant Teacher. However, the said post was not approved by the Educational Authority. Challenging the same, the present writ petition is filed.



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6. This Court perused the proposals forwarded by the fourth respondent as well as the impugned proceedings passed by the Official respondent. On a perusal of the proposal forwarded by the Management reveals that on 29.07.2017 the fourth respondent Corporate Management had transferred one S.Devanesam Thangakani, from Mangalapuram to Mannarayanthattu Primary School in Srivaikuntam Range, for which, the second respondent refused to approve the appointment on the ground that there is no actual vacancy in that School. It is due to transfer, vacancy arose. However, the transferred vacancy can be filled up from the surplus Teachers available in the fourth respondent Corporate Management, thereby, the present impugned order is passed. However, the proposal did not clear that there was a vacancy in the School due to retirement or death or otherwise. In the present case, the transferred vacancy is not an actual vacancy and hence, the impugned order passed by the second respondent cannot be interfered.

7. Accordingly, this writ petition is dismissed. However, this order will not stand in the way of the fourth respondent Correspondent



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Management to appoint the petitioner, if any real vacancy arose in the fourth respondent Correspondent Management due to retirement or death. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM

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M.DHANDAPANI,J.

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