



W.P.(MD).No.7573 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.7573 of 2023

and

W.M.P(MD)No.7059 of 2023

G.Arunadevi

... Petitioner

Vs.

1.The Chief Educational Officer,
Tirunelveli District.

2.The District Educational Officer (Secondary),
Tirunelveli District.

3.The Secretary,
The M.D.T Hindu College Higher Secondary School,
Tirunelveli,
Tirunelveli District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent in his proceedings in O.Mu.Ku.No.1845/A2/2022, dated 23.09.2022 and quash the same and direct the respondents 1 and 2 to approve the appointment of the petitioner as an Office Assistant with effect from 01.09.2021 with all monetary and consequential benefits.



W.P.(MD).No.7573 of 2023

For Petitioner : Mr.V.Panneer Selvam
For RR 1 & 2 : Mr.N.Ramesh Arumugam
Government Advocate
For R – 3 : Mr.R.T.Arivu Kumar

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the second respondent vide proceedings in O.Mu.Ku.No.1845/A2/2022, dated 23.09.2022 and direct the respondents 1 and 2 to approve the appointment of the petitioner as an Office Assistant with effect from 01.09.2021 with all monetary and consequential benefits.

2.Heard the learned counsel appearing for the petitioner, the learned standing counsel appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

3.The petitioner's husband S.Karthikeyan was working as a Night watchman in the third respondent School and unexpectedly, he died on 02.02.2019. He was survived by the petitioner and two minor



W.P.(MD).No.7573 of 2023

sons, namely, K.Akashcharan and K.Aruneshvaran and his aged mother Rajammal. Due to penury caused by the death of the petitioner's husband, the petitioner made a request to the third respondent Management to provide compassionate appointment to her by considering her economic condition and educational qualification on 26.07.2021 i.e., well within three years from the date of the death of her husband and in view of the same, her application for compassionate appointment was considered by the third respondent and she was appointed as an Office Assistant, by an order, dated 31.08.2021 in a permanent sanctioned vacancy of the said School with effect from 01.09.2021. Accordingly, the petitioner joined service on 01.09.2021 in the vacancy arose due to the promotion of an Office Assistant, namely Saravanan as a Library Assistant. Therefore, there was no impediment to approve the appointment of the petitioner and the Management sent a proposal to the respondents on 17.09.2021 enclosing the legal heir certificate, death certificate and integrated certificate issued by the Tahsildar for sanction of the appointment of the petitioner on compassionate ground. However, to the shock and surprise of the petitioner, the impugned order came to be passed on 23.09.2022 by the second respondent for the reason that the said appointment was made without prior permission. Further, as per



W.P.(MD).No.7573 of 2023

G.O.Ms.No.238, School Education Department, dated 13.11.2018, the Department had taken steps to refix the non-teaching strength in order to fix surplus and thereafter to deploy the surplus non-teaching staff in a needy place and hence, at this stage, the proposal cannot be considered. Moreover, the learned counsel appearing for the petitioner vehemently contended that the impugned order passed by the second respondent is not legally sustainable and it is not necessary for a private aided School to get prior permission for making an appointment of non-teaching staff in a sanctioned post.

4.Per contra, the learned Government Advocate appearing for the respondents 1 and 2 vehemently relied on the counter-affidavit and the relevant portion of which is extracted as follows:-

"7.The very G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020 is only applicable to Government service and the same is not applicable to private schools Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder, namely the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 Government is having power to make rules regulating the number, qualifications and conditions of service (including



W.P.(MD).No.7573 of 2023

promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights as respect disciplinary matters) of the teachers and other persons employed in any private school. If so imposing of condition to obtain prior permission from the department does not warrant any interference. It is pertinent to note that each and every action of school management is to be approved by the Department which is specifically stated in G.O.Ms.No.101, School Education (Budget-1) Department, dated 18.05.2018.

8.The third respondent school is non-minority school and they supposed to follow communal rotation in their appointments in the sanctioned aided post in order to ensure social justice in public employment and the same cannot be dispensed with by way of making appointment under compassionate ground. In W.P. (MD). No.11481 of 2008 & etc which is reported in 2016 (3) L.W. 152 (Deva Asir vs. The Secretary to Government, School Education Department, State of Tamil Nadu and Ors). Subject matter of said case is that G.O Ms.No.115 dated 30.05.2007 and G.O Ms.No.203 dated 23.07.2010. By the said G.O., Government abolished certain posts in non-teaching cadre. It clubs posts such as Junior Assistant and Record Clerk. It restricts the number of posts. It outsources the functions of certain posts. Said Government Orders were quashed by the orders of this Hon'ble Court. At this stage issuance of G.O.Ms.No.238, School Education (Pa.Ku.



W.P.(MD).No.7573 of 2023

6(1)) Department, dated 23.11.2018 is nothing but replica of the same and therefore the same is violative of orders passed by this Hon'ble Court.

.....

13. When the department have not granted any permission to fill up the post to the third respondent School till completion of process of refixation of non-teaching staff and deploying surplus non-teaching to needy places in order to reduce grant-in-aid paid to surplus persons and to save the public exchequer, which cannot be found faulted. Hence the reasons assigned by the second respondent that the proposal submitted by the third respondent School would be considered after completion of deployment of surplus non-teaching staffs to needy places does not warrant any interference from this Court."

5. In view of the fact that the second respondent itself has submitted that the proposal of the third respondent School would be considered after the completion of the deployment of the surplus of non-teaching staff to other places, this Court is inclined to rely on the order passed by this Court in ***Deva Asir Vs. The Secretary to Government and others*** reported in **2016 (3) LW 152**, wherein it has been specifically held that the sanction of grant for non-teaching



W.P.(MD).No.7573 of 2023

posts in private aided Schools, prior permission of any authority to fill up the said vacancies is not necessary.

6.The learned counsel appearing for the petitioner also relied upon the order of the Honourable Division Bench of this Court in ***W.A(MD)No.1403 of 2015, dated 10.03.2021 (The Secretary Vs. J.C.Sindhu and others)***, wherein, the Honourable Division Bench of this Court has held that whenever an application on compassionate appointment has been made within a period of three years, the same has to be allowed and the School concerned is competent to accommodate such an appointment and there can be any impediment in making such appointments on the guise that there were no vacancies from the date of the application. However, in this case, the appointment has been made on an available sanctioned post. In view of the same, this Court is inclined to quash the impugned order passed by the second respondent, dated 23.09.2022.

7.Accordingly, the impugned order passed by the second respondent, dated 23.09.2022 is quashed and further, this Court directs the second respondent to approve the appointment of the



W.P.(MD).No.7573 of 2023

petitioner as an Office Assistant with effect from 01.09.2021 with all monetary and consequential benefits within a period of three months from the date of receipt of a copy of this order.

8. With the above observations, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

04.07.2023

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



W.P.(MD).No.7573 of 2023

WEB COPY

To

- 1.The Chief Educational Officer,
Tirunelveli District.
- 2.The District Educational Officer (Secondary),
Tirunelveli District.
- 3.The Secretary,
The M.D.T Hindu College Higher Secondary School,
Tirunelveli,
Tirunelveli District.



WEB COPY



W.P.(MD).No.7573 of 2023

L.VICTORIA GOWRI, J.

ps

W.P.(MD)No.7573 of 2023

04.07.2023