



W.P.(MD).No.11271 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.11271 of 2022

and

W.M.P(MD)No.8026 of 2022

Jasmine Graceli

... Petitioner

Vs.

- 1.The Secretary to Government,
Education Department,
State of Tamil Nadu,
St. Fort George,
Chennai-9.
- 2.The Director of School Education,
College Road,
Chennai-6.
- 3.The Chief Educational Officer,
Tenkasi District,
Tenkasi.
- 4.The District Educational Officer,
Tenkasi District,
Tenkasi.
- 5.The Correspondent,
Baren Bruck Higher Secondary School,
Bangalow Surandai,
Tenkasi District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in respect of order passed by the third respondent in O.Mu.No. 517/அ2/2021, dated 28.06.2021 and consequential order passed by the fourth respondent in O.Mu.No.1183/அ3/2021, dated 26.08.2021 and quash the same as illegal and consequently direct the third and fourth respondents to approve petitioner's appointment as Lab Assistant at fifth respondent School and disburse all her service and monetary benefits from 05.10.2020.

For Petitioner : Mr.S.Chellapandian
For R-1 to R-4 : Mr.N.Ramesh Arumugam
Government Advocate
For R-5 : Mr.P.P.Alwin Balan

ORDER

The present writ petition has been filed for a Writ of Certiorarified Mandamus, to call for the records in respect of order passed by the third respondent in O.Mu.No.517/அ2/2021, dated 28.06.2021 and consequential order passed by the fourth respondent in O.Mu.No.1183/அ3/2021, dated 26.08.2021 and quash the same as illegal and consequently direct the third and fourth respondents to approve petitioner's appointment as Lab Assistant at fifth respondent School and disburse all her service and monetary benefits from 05.10.2020.



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2. Heard the learned Counsel for the petitioner, the learned Government Advocate for the respondents 1 to 4 and the learned Counsel for the fifth respondent and carefully perused the materials available on record.

3. The petitioner applied for the post of Lab Assistant in the fifth respondent School and thereafter, on 05.10.2020 in a sanctioned vacancy, which arose due to the retirement of the incumbent one D.Jeyamathi Retnabai, the petitioner was appointed on 05.10.2020. The said D.Jeyamathi Retnabai retired from service on attaining the age of superannuation on 30.04.2020. The fifth respondent Management appointed the petitioner in the said post. The petitioner joined duty on the same day. The petitioner thereafter continued service for more than one year in the said post without salary. Hence, the fifth respondent had sent a proposal to the fourth respondent seeking approval of the appointment of the petitioner in the said sanctioned vacancy to get grant-in-aid in respect of the said approved vacancy, in which the petitioner was appointed. However, vide the impugned order, dated 29.06.2021, the proposal of the fifth respondent School was rejected by the third respondent. Consequent to the same on 26.08.2021, the fourth respondent also passed another order, rejecting



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the proposal of the petitioner. Assailing both the orders, this writ petition came to be filed.

4. The learned Government Advocate for the fourth respondent has filed a counter and submitted that as per para 3 (x) of G.O(Ms)No.238 of the School Education (SE6(1)) Department, dated 13.11.2018, the vacancy of Lab Assistant, which arose in the fifth respondent School ought to have been filled up by redeployment of surplus candidates from the same Management and no fresh appointment ought to have been made. Hence, the proposal sent for approval of appointment of the petitioner in the fifth respondent School as Lab Assistant from 05.10.2020 was rightly rejected by the third respondent vide impugned order, dated 28.06.2021. He categorically submitted that the post of Lab Assistant that arose on fifth respondent School has to be filled up only by surplus hand and not from open market by direct recruitment. Since the fifth respondent School is one among the several Schools maintained by the Tirunelveli Diocesan Trust Association, which is the Corporate Minority Management registered under the Companies Act, the said post should be filled up only by way of deployment of surplus Lab Assistant from within the same corporate Management.



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5. However, the learned Counsel for the petitioner drew my attention to clause 3(iii) of the G.O(Ms)No.238 of the School Education Department, dated 13.11.2018 wherein, it is mandated that as far as the post of Lab Assistant is concerned, the staff position which prevailed during the academic years 1991-1992 would continue and no new post of Lab Assistant would be permitted. Thus, this Court could infer that the post of Lab Assistant is a single cadre post and there cannot be more than one Lab Assistant in whichever School which is functioning under the Corporate Management of the Tirunelveli Diocesan Trust Association. When the question is as to the vacancy which arose in a single cadre post, (i.e.,) the Lab Assistant post, the contention of the respondents with respect to the impugned order that the single cadre post of Lab Assistant ought to have been filled up by the surplus post from the other Schools of the same Management could not arise. It is as clear as noon day that in a single cadre post, each and every School will have only one post. Hence, the question of surplus will not arise.

6. Observing the same, this Court hereby quash both the impugned orders, dated 28.06.2021 and 26.08.2021 and remand the entire file to the office



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of the third respondent and the third respondent is directed to forward the same to the fourth respondent. The fourth respondent on receipt of the same will grant approval forthwith to the post of Lab Assistant to the petitioner in the fifth respondent School within a period of four (4) weeks from the date of receipt of a copy of this order.

7. This writ petition stands allowed, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

12.09.2023

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

To

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Chennai-9.
- 2.The Director of School Education,
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- 3.The Chief Educational Officer,
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L.VICTORIA GOWRI, J.

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