



W.P.(MD)No.13071 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.13071 of 2020

and

W.M.P.(MD)Nos.11006 and 11007 of 2020

The Correspondent,
St.Francis Xavier's Higher Secondary School,
Thoothukudi -628 001,
Thoothukudi District.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600009.
2. The Director of School Education,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.
4. The District Educational Officer,
Thoothukudi,
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, calling for the records relating to the impugned proceedings issued by the fourth respondent / District Educational Officer in O.Mu.No.3768/A5/2018, dated 18.09.2018, quash the same and further direct the third respondent / Chief Educational Officer to approve forthwith the promotion of P.Arockiyasamy as PG Assistant (History) in the petitioner School with effect from 08.06.2017, with salary and all attendant benefits.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For Respondents : Mr.T.Amjadkhan
Government Advocate

O R D E R

This Writ Petition has been filed to call for the records of the impugned proceedings issued by the fourth respondent / District Educational Officer in O.Mu.No.3768/A5/2018, dated 18.09.2018, quash the same and further, direct the third respondent / Chief Educational Officer to approve forthwith the promotion of P.Arockiyasamy as PG Assistant (History) in the petitioner School with effect from 08.06.2017, with salary and all attendant benefits.



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2. The case of the petitioner is that the petitioner School is an aided Educational Institution, in which, one post of P.G. Assistant (History) fell vacant on 01.06.2017 due to the retirement of the then incumbent Thiru.M.Maria Xavier Methedal on 31.05.2017. The petitioner School appointed a fully qualified person in the said post by name one P.Arockiasamy with effect from 08.06.2017, who was working as B.T.Assistant (History) in yet another School under the same Management. After appointment, the petitioner School forwarded a proposal on 07.08.2017 to the District Educational Officer, seeking approval of appointment. The District Educational Officer returned the proposal vide proceedings dated 28.08.2017 seeking certain additional particulars and raised a query that when he was appointed as B.T.Assistant on 15.06.2011, how did he study M.A. in the year 2014 without permission from the Department and there is no entry in the Service Register in this regard. Therefore, the petitioner School resubmitted the proposal dated 06.03.2018 along with the details required by the District Educational Officer. Again the District Educational Officer returned the proposal on 18.05.2018 raising certain additional queries with regard to acquiring M.A. without permission



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from the Department. Again, the petitioner School resubmitted the proposal dated 25.06.2018. While so, the fourth respondent passed the impugned order, dated 18.09.2018, stating that, as per the earlier proceedings, the School is directed to resubmit the proposal along with details. Again the School resubmitted the proposal dated 10.10.2018 stating that no law requires a Teacher working in Minority Institution to do higher studies after obtaining permission from the Department and no Teacher can be denied promotion merely on the ground that he did his higher studies without permission from the Department. However, no order was passed. Hence, the School submitted reminder on 11.02.2019 and 24.07.2019 requesting the authorities to approve the appointment of P.Arockiasamy as PG Assistant (History). However, since there is no response, challenging the impugned proceedings dated 18.09.2018, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the issue that arises in the present Writ Petition, is no longer *res integra* and the same was decided by the Hon'ble Division Bench of this Court in the case of ***Director of Elementary Education, Chennai Vs.***



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G.Vijayalakshmi and another reported in ***(2015) 6 MLJ 315*** stating that there is no need for getting prior permission for pursuing higher studies in respect of Minority Schools including Non Minority Schools and the persons, who acquired higher qualifications, are entitled for incentive increment and the ratio laid down by the Hon'ble Division Bench of this Court is applicable to the facts of the present case also. Accordingly, he prayed for allowing the Writ Petition.

4. The learned Government Advocate appearing for the respondents would submit that as per Government Order in G.O.(Ms)No. 101, dated 18.05.2018, the prior permission for acquiring additional qualification must be obtained from the District Educational Officer. Whenever the Government benefits are claimed, namely, the approval of appointments, Government Salary and Government increments, such permissions are required from the competent authority. It is not as if the Private Management can grant permission to undergo courses and thereafter, grant permission. Once the Government benefits are extended to the Teachers, then for the purpose of availing such benefits, proper permission



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and orders are to be obtained from the competent Educational Authorities.

However, in the present case, the petitioner School is unable to establish that the Teacher has obtained prior permission for acquiring the additional educational qualifications. As such, the rejection orders are in consonance with the Government Orders issued. Even the Minority Schools have to follow the guidelines of the State Government. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and persued the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner School appointed one Arockiasamy as PG Assistant (History), who was working as B.T.Assistant (History) in yet another School under the same Management. The petitioner School submitted a proposal to the District Educational Officer to approve the appointment of the said Arockiasamy and the said proposal was returned on the sole ground that the said Arockiasamy acquired higher qualification without obtaining prior



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permission from the respondent Educational Department. As rightly pointed out by the learned counsel for the petitioner that the issue that arises in the present Writ Petition is no longer *res integra* and the very same issue came up for consideration before this Court with regard to higher qualification and incentive increments in W.P.(MD)No.1892 of 2020 dated 17.12.2022. The relevant portion of the order reads thus:

".....

4. The issue that arises in the present Writ Petition, is no longer res integra and the same was decided by the Hon'ble Division Bench of this Court in the case of "The Director of School Education, DPI Campus, College Road, Chennai and others vs. U.Subbulakshmi and another in W.A.(MD)No.822 of 2021. The relevant portion of the Hon'ble Division Bench reads thus:

*"7.The learned Writ Court, after considering the submissions of the other side, taking note of the decision in the case of **Director of Elementary Education, Chennai Vs. G.Vijayalakshmi and another** reported in (2015) 6 MLJ 315, allowed the writ petition. Aggrieved by the same, the department is before us.*

8.After we have elaborately heard Mrs.S.Srimathy, learned Special Government Pleader



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appearing for the appellants and Mr.D.Shanmugaraja Sethupathi, learned Counsel for the first respondent / writ petitioner, we are of the considered view that the order passed by the learned Single Bench is perfectly justified and calls for no interference. We had an occasion to consider a similar case, though there was a slight difference in the facts of the case in W.A.(MD)No.271 of 2021 and we have dismissed the appeal filed by the Government.

9.The case on hand is a better case on facts. Thus for the reasons assigned by the learned Writ Court, as well as the reasons assigned by us and in terms of our earlier judgments referred above, we find no good grounds to interfere with the order of the learned Writ Court.

10.After we have dictated the judgment, the learned Special Government Pleader submitted that the matter has to be placed for ratification before the Court.

11.In the facts and circumstances of the case, we find no justification for doing so because no such ratification needs to be automatic because the head of the department namely, the Director of School Education has already issued proceedings dated 18.02.2019. This should be taken note of by the appellants.

12.Accordingly, this Writ Appeal stands dismissed. However, there shall be no order as to costs.



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Consequently, the connected miscellaneous petition is closed."

.....

"3.In W.P(MD).No.1049 of 2012, a learned single Judge of this Court has considered the similar question and has rejected the claim of the department that if the higher education is pursued without consent of the permission of the department, the teacher was not entitled to the incentive increments for obtaining such higher qualification. Following the said Judgment, another learned single Judge of this Court in W.P.No.18086 of 2017 has held that want of permission cannot stand in the way of the petitioner being favoured with the incentive increments for having obtained higher qualifications. While doing so, paragraph 7 of the order, this Court has observed as follows:

"7.This Court in the unreported decision made in W.P(MD).No.21895 of 2015 dated 08.12.2015, while considering the claims for conferment of incentive increment for acquiring qualification and the contention that they were acquired without prior permission, held that conferment of incentive increment cannot be denied on that score. Acquiring higher education by the teacher is only for the benefit of students. In that view of the matter, the first ground



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of opposition stands rejected “

4. In view of the above, the sole ground on which the authorities rejected the claim of the petitioner towards incentive increments fails and the writ petition is liable to succeed. The impugned order of rejection is therefore, quashed. The respondents are directed to sanction the incentive increments to the petitioner for obtaining the higher qualifications namely M.A.History and B.Ed Degree from the date of acquisition of the respective qualifications. The said exercise shall be completed within 8 weeks from the date of receipt of a copy of this order.

5. Accordingly, this Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed."

7. In view of the above decision makes it clear that no candidate in Minority School is required to get prior permission for acquiring higher qualification. Hence, applying the ratio laid down by the Hon'ble Division Bench of this Court, the impugned order passed by the fourth respondent dated 18.09.2018, is not sustainable and therefore, it is liable to be set aside.



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8. Accordingly, this Writ Petition is allowed and the impugned order passed by the fourth respondent dated 18.09.2018 is set aside and the respondents are directed to approve the appointment of Arockiasamy within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

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The State of Tamil Nadu,
Department of School Education,
Fort St.George,
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