



W.P.(MD).Nos.17689 of 2020 & 18245 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.17689 of 2020 & 18245 of 2021

and

W.M.P(MD)Nos.14773 of 2020 and 15085 & 15087 of 2021

W.P(MD)No.17689 of 2020:

A.Mary Isabella

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Secretariat,
Chennai.
- 2.The Director of School Education,
O/o. The Director of School Education,
D.P.I.Complex,
Chennai.
- 3.The District Educational Officer,
O/o. The District Educational Officer,
Vallioor,
Tirunelveli District.
- 4.The Hon'ble Mr.Justice D.Hariparnthaman (Retd),
The Hon'ble Administrator,
Concordia Higher Secondary School,
Vallioor,
Tirunelveli District.



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5. The Correspondent,
Concordian Higher Secondary School,
Vallioor,
Tirunelveli District.

... Respondents

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 relating to the impugned order passed by the 3rd respondent vide his proceedings in Na.Ka.No.1953/A2/2022, dated 12.06.2023 and quash the same as illegal and consequentially to direct the 3rd respondent to approve the petitioner's promotion as Junior Assistant in the 5th respondent's institutions w.e.f 13.06.2018 in conformity with the order passed by the Hon'ble Administrator, the 4th respondent herein vide his proceedings Nil dated 17.06.2020 and consequently to disburse the salary along with the arrears thereof within the period that may be stipulated by this Court.

*(Prayer amended vide Court Order, dated 11.07.2023 in
W.M.P(MD)No.13984 of 2023)*

For Petitioner : Mr.Mohammed Imran
for M/s.Ajmal Associates

For R1 – R3 : Mr.N.Ramesh Arumuugam
Government Advocate

W.P(MD)No.18245 of 2021:

E.Sudhakar Daniel

... Petitioner

Vs.



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- 1.The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Secretariat,
Chennai.
- 2.The Director of School Education,
O/o. The Director of School Education,
D.P.I.Complex,
Chennai.
- 3.The District Educational Officer,
O/o. The District Educational Officer,
Tirunelveli,
Tirunelveli District.
- 4.The District Educational Officer,
O/o. The District Educational Officer,
Vallioor,
Tirunelveli District.
- 5.The Hon'ble Mr.Justice D.Hariparnthaman (Retd),
The Hon'ble Administrator,
Concordia Higher Secondary School,
Vallioor,
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- 6.The Correspondent,
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proceedings Na.Ka.No.5461/A3/2020, dated 01.04.2021 and consequential Impugned order passed by the 4th respondent vide his proceedings in Na.Ka.No. 1953/A2/2022, dated 12.06.2023 and quash the same as illegal and consequentially to direct the respondents to approve the petitioner's appointment as Record Clerk in the 6th respondent's institution w.e.f 13.06.2018 in conformity with the order passed by the Hon'ble Administrator, the 5th respondent herein vide his proceedings Nil dated 17.06.2020 and consequently to disburse the salary along with the arrears thereof within the period they may be stipulated by this circumstances of the case.

For Petitioner : Mr.Mohammed Imran
for M/s.Ajmal Associates

For R1 – R4 : Mr.N.Ramesh Arumuugam
Government Advocate

ORDER

W.P(MD)No.17689 of 2020 has been filed to call for the records relating to the impugned order passed by the 3rd respondent vide his proceedings in Na.Ka.No.1953/A2/2022, dated 12.06.2023 and quash the same as illegal and consequentially to direct the 3rd respondent to approve the petitioner's promotion as Junior Assistant in the 5th respondent's institutions w.e.f 13.06.2018 in conformity with the order passed by the Hon'ble Administrator, the 4th respondent herein vide his proceedings Nil dated 17.06.2020 and



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consequently to disburse the salary along with the arrears thereof within the period that may be stipulated by this Court.

2. W.P(MD)no.18245 of 2021 has been filed to call for the records relating to the impugned order passed by the 3rd respondent vide his proceedings Na.Ka.No.5461/A3/2020, dated 01.04.2021 and consequential Impugned order passed by the 4th respondent vide his proceedings in Na.Ka.No. 1953/A2/2022, dated 12.06.2023 and quash the same as illegal and consequentially to direct the respondents to approve the petitioner's appointment as Record Clerk in the 6th respondent's institution w.e.f 13.06.2018 in conformity with the order passed by the Hon'ble Administrator, the 5th respondent herein vide his proceedings Nil dated 17.06.2020 and consequently to disburse the salary along with the arrears thereof within the period that may be stipulated by this Court in the circumstances of the case.

3. The 5th respondent school is a minority corporate management school. The petitioner in W.P(MD)No.17689 of 2020 i.e., Mary Isabella was promoted to the post of Junior Assistant on 13.06.2018 on account of the retirement of the erstwhile incumbent. Thereafter, a proposal was sent by the 5th respondent



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school to the 3rd respondent seeking approval of the petitioner's promotion and the same was pending on the file of the 3rd respondent. In the meanwhile, on account of the internal dispute in the corporate management of the 5th respondent school, various litigations arose resulting in the appointment of one Hon'ble High Court Retired Judge as the Administrator of the India Evangelical Lutheran Church (hereinafter referred as IELC) exclusively for dealing with the proceedings relating to the approval of the appointment of teaching / non-teaching staffs in the IELC Schools, Nagercoil Synod pursuant to the directions issued in various orders to the Administrator by this Court. Thereafter, the Hon'ble Retired Judge, who was appointed as an Administrator to IELC school, verified all appointments and other administrative works and duly passed an order vide his proceedings, dated 17.06.2020 thereby approving the appointment of the petitioner as Junior Assistant in the Concordia Higher Secondary School at Vallioor from 13.06.2018 i.e., the date on which she joined the school. Pursuant to the promotion of the petitioner / Mary Isabella to the post of Junior Assistant post, the post of Record Clerk from where the said Mary Isabella was promoted fell vacant. The erstwhile management of the 5th respondent school had appointed the petitioner in W.P(MD)No.18245 of 2021 i.e., one Sudhakar Daniel to the said post of Record Clerk on 13.06.2018.



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4. The Hon'ble Administrator, vide order, dated 17.06.2020 had also approved the appointment of Sudhakar Daniel as Record Clerk in Concordia Higher Secondary School at Vallioor with effect from 13.06.2018 i.e., from the date on which he joined the post. Even after that, the proposal of the petitioners' approval in both the writ petitions was pending for consideration. Both the petitioners have filed W.P(MD)No.5113 of 2019 and this Court was pleased to dispose of the same on 05.03.2019 directing the respondents to consider the petitioners' representation, dated 07.12.2018.

5. Pursuant to the same, a detailed enquiry was conducted by the 4th respondent with regard to the various appointments and thereafter, the 5th respondent had sent a proposal, dated 01.10.2020 to the 3rd respondent to approve the promotion of Mary Isabella and the appointment of Sudhakar Daniel. Though the said Mary Isabella was promoted as earlier as on 13.06.2018 to the post of Junior Assistant and for the past 2 years she had been working there at, she is receiving only a salary of Record Clerk. Hence, these writ petitions came to be filed by both the petitioners seeking to approve the



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promotion of Mary Isabella as Junior Assistant and appointment of Sudhakar Daniel as Record Clerk in the 5th respondent school.

6. Thereafter, during the pendency of these writ petitions, the petitioners claim came to be rejected by the impugned proceedings, dated 12.06.2023. Pursuant to the same, the petitioners in both the writ petitions filed the amendment petitions in W.M.P(MD)No.13984 of 2023 in W.P(MD)No.17689 of 2020 and W.M.P(MD)No.14902 of 2023 in W.P(MD)No.18245 of 2021 challenging the proceedings, dated 12.06.2023.

7. The 3rd respondent has filed a counter in W.P(MD)No.17869 of 2020 and 4th respondent has filed a counter in W.P(MD)No.18745 of 2021 and the learned Government Advocate vehemently submitted that the approval of promotion to Mary Isabella was delayed only for the purpose of ascertaining from the Administrator as to which post is to be retained, that is Junior Assistant or Record Clerk. The Government had already issued revised guidelines for filling non-teaching post in G.O.Ms.No.238 School Education SE 6(1) Department, dated 13.11.2018. In view of the fact that the use of computers had increased and there is a decrease in man power, the



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Government issued revised guidelines for reducing the number of non-teaching staff. On the basis of the said G.O.Ms.No.238, dated 13.11.2018, the 5th respondent school is entitled only to one post of Record Clerk or to one post of Office Assistant and hence, the Administrator was expected to clarify the position as to which post approval has been retained. However, the said kind of clarification did not emerge from the orders passed by the Hon'ble Administrator since both the orders have been passed without consideration of G.O.Ms.No.238, dated 13.11.2018. Only in view of the same, the impugned orders came to be passed and there is no illegality in the same. He further submitted that the method adopted by the Hon'ble Administrator during the selection and promotion was the one which was followed by the 5th respondent school management and not the legal right of the person who made appointment in the capacity of correspondent. That apart the learned Government Advocate submitted that the correspondentship of the person who appointed the petitioners has been questioned before this Court and the right of the person who held the said post of correspondent has been quashed by this Court. On that basis, the appointment made by the said correspondent is not legally sustainable and on that basis, the impugned order came to be passed and pressed for dismissal of the writ petition.



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8. However, a critical perusal of the records before this Court would reveal that the date of promotion of Mary Isabella and the date of appointment of Sudhakar Daniel was 13.06.2018. However, the date of G.O relied upon by the learned Government Advocate in G.O.Ms.No.238, dated 13.11.2018 and the fact that the Government Orders cannot have any retrospective effect, is no more *res integra*.

9. A learned former Judge of this Court had been appointed as Hon'ble Administrator of IELC schools only for the purpose of looking into the appointments of the teaching / non-teaching staff in the IELC schools in Nagercoil Synod and with his rich experience in this area of jurisprudence, the Hon'ble Administrator only after taking into account all the relevant aspects pertaining to the promotion and appointment of the petitioners had considered and duly approved the promotion and appointment of the petitioners and had forwarded the same before the respondents for further approval. The submission of the learned Government Advocate that the said order of approval by the Hon'ble Administrator has been passed without application of mind and



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without considering G.O.Ms.No.238, dated 13.11.2018 is not sustainable and in view of the same, this Court quashes the impugned order and thereafter, directs the 3rd respondent to forthwith approve the promotion of Mary Isabella and appointment of the Sudhakar Daniel with effect from 13.06.2018 and to disburse the salary of both the petitioners along with arrears within a period of sixteen (16) weeks from the date of receipt of a copy of this order. That apart, the 3rd respondent without challenging the order passed by the Hon'ble Administrator approving the promotion and appointment of the petitioners herein, they ought not have passed the impugned order.

10. With the above said observations, both the Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.09.2023

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

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To

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The State of Tamil Nadu,
School Education Department,
Secretariat,
Chennai.
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O/o. The Director of School Education,
D.P.I.Complex,
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L.VICTORIA GOWRI, J.

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