



W.P.(MD).No.15329 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.15329 of 2020

The Correspondent,
Holy Angel Higher Secondary School,
2-A, Kanagavel Colony,
Near Manianagaram, Madurai-625 001,
Madurai District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Madurai, Madurai District.
- 4.The District Educational Officer,
Madurai, Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent



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District Educational Officer vide O.Mu.No.2527/A5/2020, dated 06.10.2020 quash the same and further direct the third respondent Chief Educational Officer herein to approve forthwith the appointment of S.Bharathi as B.T Assistant (Science) in the petitioner school with effect from 02.07.2018 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Mr.T.Cibi Chakraborty

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present writ petition is for a Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent District Educational Officer vide O.Mu.No.2527/A5/2020, dated 06.10.2020 quash the same and further direct the third respondent Chief Educational Officer herein to approve forthwith the appointment of S.Bharathi as B.T Assistant (Science) in the petitioner school with effect from 02.07.2018 with all attendant benefits including the arrears of salary and allowance.

2. Heard the learned Counsel for the petitioner and the learned Government Advocate for the respondents and carefully perused the materials available on record.



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3. The petitioner is a Minority Management School. A post of B.T Assistant (Science) fell vacant in the petitioner School on 01.07.2018 due to the retirement of the previous incumbent D.Sathyavathi on 30.06.2018. In that vacancy, the petitioner School appointed a fully qualified candidate, namely, S.Bharathi as B.T. Assistant (Science) with effect from 02.07.2018. Thereafter, the petitioner School submitted necessary proposal to the Chief Educational Officer seeking approval of the appointment by the proposal, dated 05.07.2018 and the same was submitted through proper channel, that is, the fourth respondent District Educational Officer. However, after two years from the date of appointment, the fourth respondent vide the impugned proceedings, dated 06.10.2020 refused to approve the appointment by relying upon the interim order, dated 09.04.2019 passed by this Court in a batch of writ petitions in W.A(MD)Nos.76 of 2018 etc., and on the basis of G.O(Ms)No.165 of 2019 of the School Education Department, dated 17.09.2019 which was issued pursuant to the order passed by this Court in a batch of writ petitions in W.A(MD)Nos. 76 of 2018 etc., dated 09.04.2019. Assailing the same, this writ petition came to be filed.



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4. The learned Counsel for the petitioner relied upon the order passed by this Court in a batch of writ petitions in W.P.Nos.3194 of 2020 etc., dated 18.04.2022 wherein, a similar case was dealt with and favorable orders were passed to the petitioner and the relevant portion of which is extracted as follows:

“9. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.09.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.09.2019 and proposals for the said appointment were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.09.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.

10. Having regard to the rival submissions of the parties, taking note of the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD)No.76 of 2019, etc., G.O.Ms.No.165 issued by the School Education Department, dated 17.09.2019 will not prohibit the educational authorities to approve the appointment made by the School Management in the instant writ petitions since the proposals for approval of appointment made by



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the School Management were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.09.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.09.2019 in proper prospective and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the impugned orders passed by the respondent department are liable to be quashed.

11. Accordingly, the impugned orders passed by the respondent department in the aforesaid writ petitions are quashed and remitted to the Chief Educational Officers / District Educational Officers concerned, to consider and pass an order of approval of the appointment made by the School Management, provided the said proposals satisfies all the norms prescribed for such appointments and as per the Rules, as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of a copy of the order.”

5. He also relied on another order passed by the Hon'ble Division Bench of this Court in ***W.A(MD)No.1479 of 2020, dated 12.12.2022***. The relevant portion of which is extracted as follows:

6. Learned counsel for the 1st respondent further submitted that the proposal seeking approval of the appointment of the 1st respondent/writ petitioner was submitted even before the date of G.O.Ms.No.165, dated 17.09.2019 which was the subject matter of



W.A(MD)No.76 of 2019 & etc, dated 31.03.2021. The said G.O is having prospective effect only and therefore, there is no bar for considering the proposal seeking approval of the 1st respondent's appointment. In support of the said contention, the learned counsel relied on an order passed in W.P(MD)No.3194 of 2020 etc., batch dated 18.04.2022, wherein, it has been held as follows:-

"8. According to the learned Additional Advocate General, the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021 as against the judgment passed by the Division Bench of this Court in the Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc. and obtained stay insofar as Clause (i) of paragraph 95 of the said judgment. Except the aforesaid clause (i) of paragraph 95, there was no stay in respect of remaining portion of the judgment. It is agreed by the learned Additional Advocate General that the writ petitioners were appointed prior to the G.O.Ms.No.165 dated 17.09.2019 and therefore, it can be considered and an appropriate order may be passed.

9. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.09.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.09.2019 and proposals for the said appointment were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.09.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.

10. Having regard to the rival submissions of the parties, taking note of the judgment passed by the Division



Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., G.O.Ms.No.165 issued by the School Education department, dated 17.09.2019 will not prohibit the educational authorities to approve the appointment made by the School Management in the instant writ petitions since the proposals for approval of appointment made by the School Management were forwarded to the educational authorities prior to the issuance of G.O.Ms.No. 165 dated 17.09.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.09.2019 in proper perspective and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the impugned orders passed by the respondent department are liable to be quashed.

11. Accordingly, the impugned orders passed by the respondent department in the aforesaid writ petitions are quashed and remitted to the Chief Educational Officers/District Educational Officers concerned, to consider and pass an order of approval of the appointment made by the School management, provided the said proposals satisfies all the norms prescribed for such appointments and as per the Rules, as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of copy of the order. It is made clear that those who are appointed to the post of B.T. Assistant and Secondary Grade Teacher prior to the issuance of G.O.Ms.No.165 dated 17.09.2019 and also, the proposals for approval of the such appointments were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.09.2019 alone are entitled to the relief granted hereinabove."

7. At this juncture, learned Additional Advocate General appearing for the appellants submitted that in the light of the aforesaid order made in W.P(MD)No.3194 of 2020 etc., batch dated



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18.04.2022, the order made in W.P(MD)No.20402 of 2021 dated 30.06.2022, requires modification as the learned Single Judge in W.P(MD)No.20402 of 2021 dated 30.06.2022, has issued a positive direction to approve the appointment of the 1st respondent/writ petitioner.

8. We have heard the learned counsel appearing for the parties and perused the materials available on record.

9. In the present case, there is no dispute that the proposal seeking to approve the appointment of the 1st respondent was made on 30.08.2019. Therefore, considering the aforesaid rival submissions and in the light of the order made in W.P(MD)No.3194 of 2020 etc., batch dated 18.04.2022, the order of the learned Single Judge in W.P(MD)No.20402 of 2021 dated 30.06.2022, directing the 1st appellant to pass appropriate orders approving the 1st respondent's appointment as Post Graduate Assistant with effect from 30.08.2019, is modified to the effect that the appellants shall consider on merits and pass an order of approval of the appointment of the 1st respondent made by the 2nd respondent school management, provided, the proposal dated 30.08.2019 satisfies all the norms prescribed for such appointment and the Rules therefor.....”

6. Since the date of appointment of the said Bharathi and the date of proposal to approve her appointment are much before the date of G.O(Ms)No. 165, dated 17.09.2019, this Court is fully in consonance with the aforesaid



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order and in line of the same, the impugned order, dated 06.10.2020 is hereby quashed and the fourth respondent is directed to consider the proposal in the light of the order passed by this Court in a batch of writ petitions in W.P(MD)No.3194 of 2020 etc., dated 18.04.2022 within a period of twelve (12) weeks from the date of receipt of a copy of this order.

7. This writ petition stands disposed of, accordingly. There shall be no order as to costs.

09.08.2023

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

To

1.The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Madurai, Madurai District.

4.The District Educational Officer,
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L.VICTORIA GOWRI, J.

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