



W.P(MD)No.15818 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15818 of 2020

and

W.M.P.(MD)Nos.13254, 13255 and 13256 of 2020

St.Andrew's Girl's Higher Secondary School For Girls,
Rep. by the Correspondent,
Ramanathapuram.

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
The Office of the Chief Educational Office,
Ramanathapuram District,
Ramanathapuram.
- 4.District Educational Officer,
The Office of the District Educational Officer,
Ramanathapuram District,
Ramanathapuram.

... 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, calling for the records pertaining to the impugned G.O.Ms.No.238, dated 13.11.2018 School Education (Pa.Ku.6(1)) department, passed by the 1st respondent r/w the impugned order of rejection dated 05.08.2019 in Mu.Mu.No.6085/A5/2019 has been misplaced inadvertently passed by the 3rd respondent and quash the same and consequently direct the 3rd respondent to approve the promotion of the said P.Efransi as Junior Assistant, with effect from 12.10.2018 with all consequential benefits.

For Petitioner : Mr.S.Anwar Sameem,
For Mr.C.Fernandas Rathinaraja,

For Respondents : Mr.N.Satheekumar,
Addl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is an aided minority institution. Thomas Sahayaseelan who was working as Junior Assistant in the petitioner's school retired on reaching the age of superannuation on 30.09.2018. The petitioner appointed one P.Efransi by granting her promotion on 11.10.2018. She was earlier working as Record Clerk. The proposal was sent for approving the said



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appointment in December, 2018. Vide impugned proceedings dated 05.08.2019, the proposal was returned. The impugned proceedings has been issued by citing G.O.(Ms) No.238, School Education Department, dated 13.11.2018. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

4.The respondents have filed counter affidavit and the learned Additional Government Pleader took me through it contents. He pointed out that the proposal was submitted after the issuance of G.O.(Ms)No.238, dated 13.11.2018. He also would point out that the retirement of the incumbent was not approved. He reiterated the stand taken in the impugned order. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The validity of G.O.(Ms)No.238, dated 13.11.2018 was sustained by me vide order dated 07.02.2023 in W.P.(MD)No.13428 of 2020.

Paragraph No.12 of the said order reads as follows:-



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“12.For the reasons mentioned above, I hold that no case has been made out for interfering with the impugned policy decision of the government. I uphold the validity of G.O Ms.No. 238 School Education (Pa.Ku.6(1) Department dated 13.11.2018. Of course, in the case on hand the appointment of the petitioner was made on 14.07.2018. Therefore, it was not proper on the part of the authorities to have returned the proposal by referring to a subsequently issued Government Order. Such a view has already been taken by the Hon'ble Division Bench vide order dated 06.12.2021 in WA(MD)No.1052 of 2020 (The State of Tamil Nadu v. The Correspondent, Holy Family Girls Higher Secondary School, Gnanaolivupuram, Madurai). The orders passed by the fourth respondent is set aside. The correspondent of the fifth respondent school shall submit the proposal pertaining to the petitioner's appointment. The third and fourth respondents shall consider the proposal to be re-submitted de hors and without reference to the impugned Government Order. Appropriate orders will be passed on merits and in accordance with law within a period of six weeks from the date of receipt of the re-submitted proposal.”

6.The case on hand is similar. It is true that the proposal of the appointee was submitted only in December, 2018. But that is not a ground to doubt the stand of the management that the appointment was made prior to issuance of the aforesaid government order. Admittedly, Thomas Sahayaseelan retired on



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30.09.2018 itself. Even according to the management, P.Efransi was promoted from the post of Record Clerk only on 12.10.2018 by order dated 11.10.2018.

G.O.(Ms)No.238 was issued only on 13.11.2018.

7.The petitioner is a minority institution. It is not necessary for them to formally get an approval for filling up the vacancy caused by the retirement of the incumbent. This is a well settled proposition. Looked at from any angle, the order impugned in this writ petition cannot be sustained. The learned counsel for the petitioner would assert that even if G.O.(Ms)No.238, dated 13.11.2018 is applied, still in view of the sufficient students' strength in the petitioner's school, the appointment will have to be approved. Looked at any angle, the stand of the respondents cannot be accepted. The order impugned in this writ petition is set aside and the respondents are directed to approve the petition mentioned appointment and also disburse salary grant from the date of appointment as expeditiously as possible. The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

09.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

ias

To:-

- 1.The Principal Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
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