



W.P.(MD).No.16602 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.16602 of 2023

and

W.M.P(MD)No.13888 of 2023

R.Nalli Meena

... Petitioner

Vs.

1.The Chief Educational Officer,
O/o.The Chief Educational Office,
Madurai District.

2.The District Educational Officer,
O/o.The District Educational Office,
Madurai,
Madurai District.

3.The Correspondent,
Nadar Higher Secondary School,
South Gate,
Madurai – 625 0001,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second respondent to approve the appointment of the petitioner with effect from 11.03.2019 and pay the arrears of salary within the period stipulated by this Court.



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For Petitioner : Mr.H.Mohammed Imran
For RR 1 & 2 : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present Writ Petition has been filed for issuance of a Writ of Mandamus, directing the second respondent to approve the appointment of the petitioner with effect from 11.03.2019 and pay the arrears of salary within the period stipulated by this Court.

2.Heard Mr.H.Mohammed Imran, learned counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 and 2 and perused the materials available on record.

3.The petitioner was initially appointed as a B.T Assistant (Maths) in the third respondent School on 11.03.2019. The third respondent School is a non-minority single management aided School. The petitioner was appointed in a sanctioned post in the third respondent School which fell vacant on account of the retirement of the previous incumbent S.Tamil Selvi. Pursuant to the same, the



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proposal was submitted by the third respondent School seeking prior permission to fill up the said post of B.T Assistant (Maths) by direct recruitment in terms of Rule 15(4)(1)(c) of the Tamil Nadu Recognized Private Schools (Regulation) Rules. The first respondent vide proceedings dated 24.01.2019 also granted prior permission to fill up the post of B.T Assistant (Maths). The third respondent School appointed the petitioner as B.T Assistant (Maths) in the above-sanctioned post from 11.03.2019 onwards. Pursuant to the same, the third respondent School submitted the proposal to the first respondent in the year 2019 seeking approval of the petitioner's appointment as B.T Assistant (Maths) for disbursement of grant in aid towards salary. The said proposal was considered and the first respondent vide order dated 26.06.2019, returned the proposal seeking certain clarifications. The clarifications were explained and defects were rectified and the proposal was resubmitted on 12.07.2019. On that basis, the second respondent passed a rejection order on 17.08.2020. Assailing the same, the petitioner filed a Writ Petition in W.P(MD)No.11128 of 2020. The said Writ Petition was tagged along with W.A(MD)Nos.76, 225, 341 of 2019 etc., batch and when the said Writ Appeal was finally adjudicated and Judgment was passed, the issue pertaining to this particular writ petition was not considered and all the other cases were



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considered on merits leaving the crux of this Writ Petition alone and thereafter, Special Leave Petition was preferred as against the said order passed by the Hon'ble Division Bench of this Court and the same is pending before the Hon'ble Apex Court. Citing the fact that the Hon'ble Division Bench of this Court did not consider the crux of the matter seized in W.P(MD)No.11128 of 2020, the petitioner preferred a review petition before the Hon'ble Division Bench of this Court in Rev.P(MD)No.28 of 2021 and the same is pending before the Hon'ble Division Bench of this Court. The rejection order dated 17.08.2020 was passed in the line of G.O.Ms.No.165, School Education Department, dated 17.09.2019 however, the Hon'ble Division Bench of this Court in W.A(MD)Nos.76, 225, 341 of 2019 etc., batch held that the said G.O is inoperative in view of the fact that the said G.O was passed pursuant to the interim orders passed in W.A(MD)Nos.76, 225, 341 of 2019 etc., batch. In view of the same, the petitioner's plight remains unanswered till today. Hence, this Writ Petition came to be filed seeking a direction to approve the petitioner's appointment with effect from 11.03.2019.

4.The learned Government Advocate appearing for the respondents 1 and 2 has filed a counter stating that in view of the pendency of the review petition in Rev.P.(MD)No.28 of 2021, this Writ



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Petition being filed seeking the same relief, this Writ Petition has to be dismissed.

5.It is pertinent to mention here that the batch of cases in W.A(MD)Nos.76, 225, 341 of 2019 etc., relates to the approval of the appointment of Teachers refused on the ground that there are surplus Teachers in other Schools under the same management in minority Schools. However, this case has no connection with that whatsoever because the appointment or approval of Teachers in other aided Schools, more particularly single management non-minority Schools, wherein appointments are made only in sanctioned posts and that too after getting necessary permission from the authority and this is a clear case where the appointment has been made in a sanctioned post that too after getting consent from the competent authority. Having granted permission for appointment and taking into fact that this appointment has been made in a sanctioned post that too after getting appropriate permission from the competent authority, the impugned rejection order ought not to have been passed and hence, in view of the same, this Court is inclined to direct the petitioner to withdraw the review petition within a period of one week.



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6.This Court in **W.P.No.3194 of 2020 etc batch, dated 18.04.2022 [B.Kurinjimalaron Vs. The Secretary, Education Department, Chennai]**, while dealing with a similar case has observed 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 17.9.2019 and therefore, it can be considered and an appropriate order may be passed."



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7. Even the petitioner in this Writ Petition was also appointed prior to the date of G.O.Ms.No.165, School Education Department, dated 17.09.2019.

8. In view of the above, the petitioner is directed to withdraw the review petition in Rev.P(MD)No.28 of 2021 within a period of one week from today. Thereafter, the second respondent is directed to approve the appointment of the petitioner with effect from 11.03.2019.

9. With the above observation, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

28.07.2023

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



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L.VICTORIA GOWRI, J.

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