



W.P(MD)No.17044 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.17044 of 2023

and

W.M.P(MD)No.14259 of 2023

The Correspondent,
Lourdhu Annai Girls Higher Secondary School,
K.Pudur-625 007,
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-600 009.
- 3.The Chief Educational Officer,
Madurai, Madurai District.
- 4.The District Educational Officer,
Melur, Madurai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to call for the records relating to the impugned order issued by the 3rd respondent Chief



W.P(MD)No.17044 of 2023

Educational Officer in O.Mu.No.12389/A4/2019 dated --.03.2020, Quash the Same and further direct the 3rd respondent Chief Educational Officer herein to approve forthwith the appointment of S.Rajesh as Office Assistant, w.e.f., 03.07.2019 in the petitioner's school namely, Lourdhu Annai Girls Higher Secondary School, K.Pudur, Madurai and disburse the grant-in-aid towards his salary with all attendant benefits from the said date.

For Petitioner : M/s.A.Amala

For Respondents : Mr.V.Om Prakash
Government Advocate

ORDER

The present writ petition has been filed to quash the order of the 3rd respondent herein wherein the request of the petitioner school management to approve the appointment of Office Assistant has been rejected citing G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018.

2. As per the staff fixation order of the educational authorities issued in December 2019, th petitioner school is eligible to appoint one Office Assistant. The said post has not been declared to be surplus in the staff fixation order relating to the year 2019-20.



W.P(MD)No.17044 of 2023

WEB COPY

3. One S.Rajesh has been appointed as an Office Assistant in the vacancy that arose on 01.07.2019 due to retirement of one K.Shanmugam on 30.06.2019. The said S.Rajesh has been appointed as Office Assistant with effect from 03.07.2019. The school has submitted the proposal to the District Educational Officer on 19.08.2019 requesting him to approve the said appointment and to disburse the grant-in-aid towards the salary. However, under impugned order, the 3rd respondent on 23.03.2020 had rejected the said approval on the ground that there are available surplus Office Assistants in other aided institutions. Without exhausting the said surplus staff in the other aided institutions, the post of Office Assistants in the school cannot be filled up. Challenging the said order, the present writ petition has been filed.

4. According to the learned counsel appearing for the writ petitioner, the order impugned in the writ petition points out the surplus Office Assistants available in the other aided schools which do not form part of the corporate management of the petitioner school. Therefore, the question of directing the petitioner school to avail the services of the said surplus employees would not arise. Further, the learned counsel for the



W.P(MD)No.17044 of 2023

petitioner brings to the notice of the Court that G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 has been stayed by this Court on 14.06.2019 in W.M.P(MD)No.9975 of 2019 in W.P(MD)No.13404 of 2019 by a learned Single Judge of this Court. The said order has been followed by the Hon'ble Division Bench in C.M.P(MD)Nos.6675 and 6677 of 2023 in W.A(MD)No.816 of 2023, dated 14.06.2023. Therefore, it is clear that as on today, the said G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 is not in force.

5. Per contra, the learned Government Advocate appearing for the respondents contended that the said Government Order has been put to challenge by different institutions and the order in those writ petitions may not be applicable to the present case. This Court is not inclined to accept the said contention.

6. The Court has stayed the implementation of G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 on 14.06.2019. Only thereafter, the order of appointment has been issued by the petitioner school management in favour of one S.Rajesh on



W.P(MD)No.17044 of 2023

03.07.2019. Hence, it is clear that the order of appointment in favour of S.Rajesh has been issued when G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 was under the stay orders of this Court. Therefore, it is clear that the order impugned in the writ petition relying upon G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 is not legally sustainable. Therefore, the order impugned in the writ petition is set aside and the matter is remitted back to the file of the 3rd respondent for passing fresh orders in the light of the observations made by this Court in the preceeding paragraphs. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. This Writ Petition stands allowed to the extent as stated above.

No costs. Consequently, connected Miscellaneous Petition is closed.

10.10.2023

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

gbg



W.P(MD)No.17044 of 2023

WEB COPY

- 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-600 009.
 - 3.The Chief Educational Officer,
Madurai, Madurai District.
 - 4.The District Educational Officer,
Melur, Madurai District.



WEB COPY



W.P(MD)No.17044 of 2023

R.VIJAYAKUMAR,J.

gbg

Order made in
W.P(MD)No.17044 of 2023

Dated:
10.10.2023