



W.P.(MD).No.17421 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.17421 of 2023

Nallasamy Jeyasekar

... Petitioner

Vs.

- 1.The Secretary to Government,
Department of School Education,
St.George Fort,
Chennai-600 009.
- 2.The Director of School Education,
DPI Compound,
College Road, Chennai.
- 3.The Chief Educational Officer,
Tenkasi District,
Tenkasi.
- 4.The District Educational Officer,
Tenkasi District,
Tenkasi.
- 5.The Correspondent,
Baren Bruck Higher Secondary School,
Bangalow Surandai,
Tenkasi District.

... 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 Mandamus, direct the third and fourth respondents to relieve the petitioner from the post of Junior Assistant and consequently approve the petitioner promotion to the post of B.T Assistant (Science) at the fifth respondent School from the date of appointment (i.e. 28.07.2021) without insisting TET and teaching experience and confer all other service benefits and monetary benefits to him.

For Petitioner : Mr.S.Chellapandian
For R-1 to R-4 : Mr.N.Ramesh Arumugam
Government Advocate
For R-5 : Mr.Alvin Balan
Standing Counsel

ORDER

The present writ petition has been filed seeking direction to the third and fourth respondents to relieve the petitioner from the post of Junior Assistant and consequently approve the petitioner's promotion to the post of B.T Assistant (Science) at the fifth respondent School from the date of appointment



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(i.e. 28.07.2021) without insisting TET and teaching experience and confer all other service benefits and monetary benefits to him.

2. Heard the learned Counsel for the petitioner, the learned Government Advocate for the respondents 1 to 4 and the learned Standing Counsel for the fifth respondent and carefully perused the materials available on record.

3. The petitioner was appointed as Junior Assistant in a sanctioned post in the fifth respondent School on 17.02.2014 in the vacancy, which arose on the retirement of one Mr.L.Michael, who retired on 31.12.2013. The petitioner's appointment was approved by the competent authority on 01.02.2017. From the date of his appointment, he is receiving service and monetary benefits in the post of Junior Assistant. While so, one R.Jemimah Sugunabai, who worked as B.T Assistant (Science) was transferred on 12.07.2021. In the said sanctioned vacancy, the fifth respondent School promoted the petitioner and appointed him as B.T Assistant (Science) vide order, dated 27.07.2021. The petitioner is fully qualified to hold the said post of B.T Assistant in the light of Section 15 (4) of the Tamil Nadu Private Schools Regulation Act. Thereafter, the fifth



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respondent School had sent a proposal to the fourth respondent seeking approval of the appointment of the petitioner to the post of B.T Assistant (Science). The fifth respondent School is an aided Minority Corporate Management School. However, the fourth respondent refused to approve the petitioner's appointment as B.T Assistant (Science). The said proposal was returned by the fourth respondent on the ground that the petitioner was not qualified in TET examination. Thereafter, with elaborate explanation, the proposal was re-sent by the fifth respondent School on 20.05.2022. However, the same was not considered so far and hence, this writ petition came to be filed.

4. The learned Government Advocate for the fourth respondent has filed a counter and he submitted that the post of B.T Assistant (Science) was sanctioned only to the fifth respondent School and therefore, it is only the School Management, which is entitled to make a claim and the writ petitioner has no *locus standi* for filing this writ petition. That apart, this Court in its order, dated 13.03.2012 in W.A(MD)No.70 of 2012 has held that in cases relating to Tirunelveli Diocesan Trust Association (T.D.T.A) Schools, the



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Management of which is running group of Schools observed that, in fairness the School has to deploy the surplus teachers to needy or aided Schools incase of running a group of Schools by the Management. Therefore, the fifth respondent School being one of the Schools under the T.D.T.A Corporate Management ought to have filled the said vacancy with surplus teachers in their Corporate Management rather filling the same with by means of a promotion within the School and on that basis, pressed for dismissal of this writ petition.

5. The only reason which has been put-forth by the fourth respondent in the order of returning the earlier proposal was that, the petitioner was not qualified in TET. However, now the learned Government Advocate has improved the case by filing a counter has raised the issue of surplus and that exercise is not permissible and I have held in a similar case in W.P(MD)No. 19818 of 2020, dated 10.07.2023 in favour of the petitioner thereat and the relevant portion of which is extracted as follows:

*"11.In furtherance of the same, the Honourable Division Bench of this Court in the Judgment in **A.Rebekkal Vs. District Elementary Educational Officer and others** reported in (2016) 7 MLJ 155, held that the Teachers appointed in Minority*



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Educational Institution need not possess TET qualification and hence, there is no requirement for the Teachers, who are serving in the Minority Educational Institutions to pass in the TET. That apart, this Court in W.P(MD)No.7966 of 2018, in its order, dated 19.04.2018 (The Correspondent Vs. The Director of Elementary Education and others), while dealing with the same issue has passed appropriate orders and the relevant portion of which is extracted as follows:-

“22.Though a particular Management can run several educational institutions, it is a common knowledge that each and every educational institution run by the same Management, will be a separate entity in the eye of law. For instance, if a Management runs Schools and a College of Engineering and College of Education and Polytechnic etc., one cannot say that all these institutions are run by the same Management and therefore, wherever the Teachers recruitment is made, the same can be adjusted among themselves of the said Schools under the same Management by way of deployment/re-deployment.

23.The reason for such impossibility is concerned, the institution/School alone is taken as an unit for the purpose of identifying and fixing the Teacher-Pupil ratio.”

12.In view of the above Judgment, this Court is of the considered view that the rejection made by the second respondent/District Educational Officer is not legally



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sustainable. In fine, invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, the impugned proceedings issued by the second respondent in A.Thi.Mu.No. 356/A1/2019, dated 11.06.2019, is quashed and the second respondent is directed to process the proposal seeking sanction of the petitioner's appointment and forward the same to the first respondent within a period of four weeks from the date of receipt of a copy of this order."

6. In line of the said judgment, this Court hereby direct the fourth respondent to consider the proposal which has been forwarded by the fifth respondent School to the fourth respondent without insisting TET, within a period of twelve (12) weeks from the date of receipt of a copy of this order. However, this order is subject to the final outcome of the S.L.P(C)No.15702 of 2021, which is pending before the Hon'ble Supreme Court.

7. With the above said observation, this writ petition stands disposed of. There shall be no order as to costs.

26.09.2023



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NCC : Yes
Index : Yes
Internet : Yes
BTR

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L.VICTORIA GOWRI, J.

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