



W.P.(MD).No.19818 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2023

PRONOUNCED ON : 10.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.19818 of 2020

Sr.A.Jeyanthi Stella Mary

... Petitioner

Vs.

1.The District Educational Officer,
Devakottai,
Sivagangai District.

2.The Block Educational Officer,
Devakottai,
Sivagangai District.

3.The Correspondent,
St. John's Primary School,
Devakottai,
Sivagangai District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by the second respondent Block Education Officer in A.Thi.Mu.No.356/A1/2019, dated 11.06.2019, quash the same and further direct the respondents herein to approve forthwith the appointment of petitioner as Secondary Grade



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teacher in the third respondent School, namely St.Johns Primary School, Devakottai, w.e.f 01.04.2019 and disburse the grant-in-aid towards her salary and allowances w.e.f., the said date with all attendant benefits.

For Petitioner : Ms.A.Amala

For RR 1 & 2 : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present Writ Petition has been filed to quash the impugned proceedings issued by the second respondent/Block Education Officer in A.Thi.Mu.No.356/A1/2019, dated 11.06.2019 and further to direct the respondents 1 and 2 to approve forthwith the appointment of the petitioner as Secondary Grade teacher in the third respondent School, namely St.Johns Primary School, Devakottai, with effect from 01.04.2019 and disburse the grant-in-aid towards her salary and allowances with effect from the said date with all attendant benefits.

2.The petitioner is working as a Secondary Grade Teacher in the third respondent School and the third respondent School is established and administered by the Roman Catholic Religious



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Congregation of Immaculate Conception. The third respondent School is a recognized Religious Minority in terms of Article 30(1) of the Constitution of India. It is a Minority School, wherein 182 students are currently studying, offering education from standards I to V. The said School receives grant-in-aid from the Government and the medium of instruction is Tamil. The School receives aid from the Government for one Headmistress and five Secondary Grade Teachers.

3.While so, one post of Secondary Grade Teacher fell vacant in the third respondent School on 01.04.2018 due to the retirement of then incumbent M.Sarpirasadhamary on 31.03.2019. In the said vacancy, the School appointed the petitioner as a Secondary Grade Teacher with effect from 01.04.2019. The petitioner joined duty on the same day and is continuing to work in the said School till date.

4.The third respondent School submitted a proposal to approve the appointment of the petitioner and disburse grant-in-aid towards the salary of the petitioner to the first respondent/District Educational Officer through the second respondent/Block Educational Officer on 03.05.2019. However, to the shock and surprise of the petitioner, the second respondent, without forwarding the proposal to



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the first respondent, returned the proposal vide impugned proceedings in A.Thi.Mu.No.356/A1/2019, dated 11.06.2019 stating to produce the certificate to the effect that there is no surplus of Secondary Grade Teacher under the same Management and further to produce the Teacher Eligibility pass certificate of the petitioner. Challenging the same, this Writ Petition came to be filed.

5.The learned counsel appearing for the petitioner vehemently contended that the petitioner is appointed in a regularly sanctioned vacancy that arose on account of the retirement of the previous incumbent, one M.Sarpirasadhamary and the petitioner is also fully qualified to be appointed as Secondary Grade Teacher. Though the third respondent School is one among the several recognized School under the Roman Catholic Congregation of Immaculate Conception, each School under the group of institutions has been assessed individually with regard to (a) recognition (b) granting aid and (c) number of students, fixation of staff strength etc. Hence, the assessment is made on every individual institution and the same is not based on a group.



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6.The learned counsel appearing for the petitioner further submitted that in as much as the appointment of the petitioner is concerned, it is against a sanctioned regular vacancy which was available in terms of the staff fixation settled by the first respondent/District Educational Officer himself. Accordingly, the District Educational Officer is bound to approve the same and the BEO's action of not forwarding the proposal to the DEO is not legally sustainable. The petitioner is working without salary from the date of her appointment, ie., from 01.04.2019 till date. Moreover, surplus of Teachers in some other Schools under the same Management cannot be the reason to deny approval to the appointment of the Teacher in another School, who is appointed in the sanctioned vacancy. Hence, the reasons assigned by the Block Educational Officer are completely in violation of the order passed by this Court and is against various settled legal proposition of law.

7.Per contra, the learned Government Advocate appearing for the respondents 1 and 2 would vehemently contradict that it is not at all proper on the part of the petitioner's School to keep on appointing afresh when surplus teachers were available at the time of appointment of the petitioner on 01.04.2019 which causes financial



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burden on the State Government. Insofar as the surplus teachers are concerned, it is necessary to furnish some particulars relating to surplus teachers and as per the audit objection raised by the Accountant General, Chennai, vide the report No.Pri.AG (G & SSA)/SSI/C-4/1/2003/16-17, dated 04.04.2016, the pay and allowances paid to the surplus teachers from the period from 2012 to 2016 is Rs.17.67 crores. Hence, the District Elementary Educational Officer concerned issued instructions to all the private Schools periodically that the Management should not go for fresh appointments when surplus teachers are still working within the same Management. Even then, without following specific instructions, all the School Managements are always intending to fill up the vacant post which arises on account of promotion, retirement, transfer or death only by way of fresh appointment. It is unfortunate that the private School Management is always preferring fresh appointments for getting benefits one way or other. The petitioner's School is a single Management and periodically during every academic year surplus teachers are available in the Schools under Religious Congregation of Immaculate Conception Management. However, without deploying the surplus teachers to the vacancies, afresh appointments are made and that is not permissible.



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8.However, the learned Government Advocate appearing for the respondents 1 and 2 fairly conceded that the rejection made by the second respondent citing the necessity of being qualified in Teacher Eligibility Test is already dealt with by this High Court in many cases.

9.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2 and anxiously perused the materials available on record.

10.On perusal of the materials available on record, this Court is of the considered view that the reasons assigned by the second respondent/Block Educational Officer for not approving the petitioner's appointment as Secondary Grade Teacher is arbitrary and unreasonable. The second respondent/Block Educational Officer cannot insist upon the petitioner to produce the Teacher Eligibility Test pass certificate while the third respondent School is the Minority Educational Institution and hence, the petitioner is exempted from passing the Teacher Eligibility Test prescribed under the Right of Children to Free and Compulsory Education Act, 2009. This is a settled proposition of law as decided in the case in ***Pramati Educational and Cultural***



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Trust and other Vs. Union of India and others reported in **(2014) 4 MLJ 486**, wherein it was held that the Right of Children to Free and Compulsory Education Act, 2009, itself is not applicable to the Minority Educational Institutions.

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 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



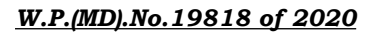
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College of Engineering and College of Education and Polytechnic etc., one cannot say that all these institutions are run by the same Management and therefore, wherever the Teachers recruitment is made, the same can be adjusted among themselves of the 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 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. On receipt of the same, the first respondent is directed to approve forthwith the appointment of the



13. With the above directions, this Writ Petition is allowed. There be no order as to costs.

10.07.2023

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To

- 1.The District Educational Officer,
Devakottai,
Sivagangai District.
- 2.The Block Educational Officer,
Devakottai,
Sivagangai District.
- 3.The Correspondent,
St. John's Primary School,
Devakottai,
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L.VICTORIA GOWRI, J.

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Pre-Delivery Order made in
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