



W.A.(MD)No.2119 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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and

C.M.P.(MD)No.9878 of 2021

- 1.The Commissioner of School Education,
O/o. The Commissioner of School Education Department,
College Road, Chennai-6.
- 2.The Director of Elementary Education,
O/o.The Director of Elementary Education,
D.P.I.Complex, Chennai-6.
- 3.The District Educational Officer,
O/o. The District Educational Officer,
Cheranmahadevi, Ambasamudram Taluk,
Tirunelveli District.
- 4.The Block Educational Officer,
O/o. The Block Educational Officer,
Ambasamudram Taluk,
Tirunelveli District.

... Appellants / Respondents

Vs.

Aided Muslim Committee Primary School,
Rep. by its Correspondent,
S.Sheik Shajakhan Sithik

... Respondent / Writ Petitioner



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 08.07.2021 made in W.P.(MD)No.11363 of 2021 on the file of this Court.

For Appellants : Mr.A.Kannan,
Additional Government Pleader
For Respondent : Mr.H.Mohammed Imran,
For M/s.Ajmal Associates

JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

The respondent School is a minority run institution, where a Secondary Grade Teacher post became vacant, which is in fact a sanctioned post, where an eligible teacher has been appointed.

2.The said appointment was made on 03.07.2018 and thereafter, it was sent to the authorities concerned for approval.

3.However, the authorities had not approved the same on the ground that G.O.Ms.No.165, dated 17.09.2019 has been issued by the School Education Department, under which unless excess teachers are



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deployed properly, no new appointment could be made and if anything is made, that cannot be approved. Challenging the same, the respondent School approached the Writ Court and filed W.P.(MD)No.11363 of 2021, which was allowed by the learned Single Judge of the Writ Court vide order dated 08.07.2021, which is impugned herein.

4.Though the submissions were made by the learned Additional Government Pleader for the appellants that the issue with regard to the deployment of excess teacher is still lingering and in this context, even though judgments have been made by more than one Division Bench of this Court, the issue is ultimately pending before the Hon'ble Supreme Court of India. Therefore, at this juncture the order passed by the Writ Court through the impugned order whether can be implemented is a question.

5.However, the learned counsel for the respondent School has submitted that insofar as the issuance of G.O.Ms.No.165, is concerned, first of all, the said G.O., has already been declared by a Division Bench of this Court in W.A.(MD)No.76 of 2019, etc., batch vide order dated 31.03.2021 as inoperative. This has been taken note of by the learned Single Judge.



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6. Even though an appeal has been filed by way of S.L.P., against the said judgment dated 31.03.2021, only Clause (i) of paragraph 95, where a direction was given with regard to the grant alone, was stayed by the Hon'ble Supreme Court and in respect of other aspects, there has been no stay. This has been in fact accepted on behalf of the appellant Department in a similar issue when came up before the learned Single Judge in a batch of cases on 18.04.2022 in W.P.Nos.3194 of 2020 etc., batch, where the following stand was taken by the appellant Department and that has been recorded by the learned Single Judge:-

“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 17.09.2019 and therefore, it can be considered and an appropriate order may be



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passed.

9.On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.09.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.09.2019 and proposals for the said appointment were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.09.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.”

7.his position cannot be controverted by the learned Additional Government Pleader for the appellants and admittedly, there has been no appeal.

8.Moreover, the said G.O., was issued only on 17.09.2019, whereas the teacher was appointed well before the issuance of the said G.O., ie., 03.07.2018. Therefore, assuming if the said G.O., ultimately would be declared to be valid, that will have a prospective effect. Moreover, as on



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today, the said G.O., is no more available to the appellant department to say the reason that by virtue of G.O.Ms.No.165, the appointment made in respect of the teacher concerned at the 1st respondent school cannot be approved.

9.In that view of the matter, we have no hesitation to hold that the order impugned passed by the learned Single Judge is perfectly valid and therefore, it is to be sustained. In the result, this Writ Appeal fails, therefore, it is to be dismissed, accordingly, it is dismissed. As a sequel, there shall be a direction to the appellant Department to approve the appointment of the teacher concerned in the 1st respondent School and extend all service benefits from the date of such appointment to the teacher concerned within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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