



W.P.(MD).No.22110 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.22110 of 2022

N.Rabika

... Petitioner

Vs.

1.The District Educational Officer,
O/o.Valliyoor District Educational Officer,
Valliyoor,
Tirunelveli District.

2.The Block Educational Officer,
Radhapuram – 627 111,
Tirunelveli District.

3.The Correspondent,
Muslim Middle School,
Thiruvembalapuram Village,
Radhapuram Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent issued with the impugned order of return of approval passed in his proceedings Na.Ka.No. 157/82/2021 dated 13.07.2021 and quash the same and consequently direct the first respondent to grant approval of the



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petitioner's appointment in the post of Secondary Grade Teacher and pay the salary from the date of the petitioner's initial appointment i.e., 10.06.2019 within the time limit stipulated by this Court.

For Petitioner	: Mr.K.Sankar
For RR 1 & 2	: Mr.N.Ramesh Arumugam Government Advocate
For R – 3	: No appearance

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of return of approval passed by the second respondent, dated 13.07.2021 and consequently to direct the first respondent to grant approval of the petitioner's appointment in the post of Secondary Grade Teacher and pay the salary from the date of the petitioner's initial appointment i.e., 10.06.2019 within the time limit stipulated by this Court.

2.The third respondent School is a recognized Minority Aided Middle School, which is a Single Management School. The School is sanctioned with 9 Teachers, namely one Headmaster, two B.T



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Assistants, five Secondary Grade Teachers and one Tailoring Instructor.

The petitioner was appointed as a Secondary Grade Teacher on 10.06.2019 in a sanctioned post due to the vacancy arising due to the attaining of the superannuation of the Secondary Grade Teacher E.Thangamuthulakshmi on 31.05.2019. After her superannuation, the said post was declared vacant and sanctioned and in the said sanctioned post, the petitioner was accommodated on 10.06.2019, for which, the petitioner has the required qualification as well. Thereafter, the third respondent has sent a proposal to the respondents 1 and 2 to approve the appointment of the petitioner in the post of Secondary Grade Teacher. However, the second respondent rejected the proposal for approval of the petitioner's appointment, vide proceedings, dated 13.07.2021, for the reason that the petitioner's appointment could not be approved, till the deployment of the Teachers in the entire District is completed and till then nobody could be recruited or appointed in an approved sanctioned vacancy, which has arrived due to the superannuation. Challenging the said impugned order, the present Writ Petition came to be filed.

3.Heard Mr.K.Sankar, learned counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate

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appearing for the respondents 1 and 2 and perused the materials available on record.

4.The learned counsel appearing for the petitioner, relying upon the order passed by this Court in ***W.P(MD)No.12040 of 2021, dated 30.06.2022 (L.Princeton Fernando Vs. The Secretary, Department of Higher Education)***, contended that the impugned order is bad in the light of the said order, wherein this Court has categorically held that the competent authorities cannot keep the proposal of approving the appointment of those Teachers, who were appointed in sanctioned vacancies well before the Judgment in the case of ***Secretary to Government and others Vs. Iruthaya Amali and another*** reported in ***2021 SCC Online Mad 1285*** and the relevant portion of which is extracted as follows:-

"2. The letter of the Government, dated 04.12.2019, referred to in the impugned order was the outcome of the decision of this Court passed in a batch of Writ Petitions in the case of Secretary to Government and others Vs. Iruthaya Amali and another reported in 2021 SCC OnLine Mad 1285. In the said decision, what was ordered is that the excess teaching staffs are



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required to be identified in all category schools and till such time, the "Government" shall not appoint Teachers under any category. The order does not speak about appointments that have already been made and which are awaiting approval of the authorities. This decision has been ratified in several judgments passed by this Court in identical circumstances. As such, placing reliance on the Government Letter, dated 04.12.2019 and rejecting the petitioner's claim on the ground that until surplus teachers are filled, no approval can be granted, is misplaced and liable to be set aside."

5.The learned counsel appearing for the petitioner also relied upon another order passed by this Court in ***W.P.No.1959 of 2020, dated 29.01.2020 (S.Sakthivel Vs. The Secretary to Government and others)***, wherein this Court has held as follows:-

"6. It is clear from the above order that the approval that was sought for, for the appointment of the petitioner in the year 2018 was kept pending by the District Educational Officer. Now, it is sought to be rejected by relying upon the order passed by the Division Bench. This Court held that the order passed by the Division Bench cannot be given a retrospective effect for a sanctioned vacancy, which arose much prior to the passing of the order. This Court also took into



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consideration the fact that G.O.Ms. No.165 dated 17.09.2019, has already been suspended. Therefore, the District Educational Officer must independently consider the approval that has been sought for, for the appointment of the petitioner in the 5th respondent school and he cannot reject the same by relying upon the Division Bench order of this Court.”

6.In the light of the above two orders, the learned counsel appearing for the petitioner pressed for allowing the Writ Petition.

7.Per contra, the learned Government Advocate appearing for the respondents 1 and 2 vehemently contended that the Writ Petition is liable to be dismissed for the reason that unless and until the deployment of the existing surplus Teachers to a tune of 61 numbers is completely over, the question of approving the appointment of any Teacher will not arise.

8.However, in the light of the above two orders passed by this Court, such an argument which has been put forth by the learned Government Advocate appearing for the respondents 1 and 2 is not sustainable. It is clear from the facts of this case that the approval



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which was sought for, for the appointment of the petitioner in the year 2019 has been kept pending by the District Educational Officer till now and thereafter, the District Educational Officer has rejected the same citing the reason of deployment of surplus teachers. Though it is not explicitly stated in the impugned order that the case of ***Iruthaya Amali's case (cited supra)*** is relied upon, in substance, only on that basis the impugned order came to be passed.

9. In view of the same, such order is not sustainable because the order passed by the Division Bench in ***Iruthaya Amali's case (cited supra)*** cannot be given retrospective effect for appointment of Teachers in sanctioned vacancies which arose much prior to the passing of the order. It is pertinent to mention here that the first respondent should consider the proposal for approval without relying upon the Division Bench Judgment and independently, considering the fact that the petitioner was appointed as early as on 10.06.2019.



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10. Accordingly, the impugned order, dated 13.07.2021 passed by the second respondent is quashed and the third respondent School is called upon to re-submit the earlier proposal to the second respondent and on receipt of the said proposal, the second respondent shall forward the same to the first respondent and the first respondent shall forthwith pass orders approving the appointment of the petitioner to the post of Secondary Grade Teacher in the third respondent School with effect from the date of appointment. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

11. With the above direction, this Writ Petition is allowed.
There shall be no order as to costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes
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L.VICTORIA GOWRI, J.

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