



W.A.(MD).No.1098 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.08.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

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and

C.M.P.(MD).No.8727 of 2022

- 1.The Secretary to the Government,
Department of School Education,
St.George Fort,
Chennai.
- 2.The Director of School Education,
D.P.I. Compound,
College Road,
Chennai.
- 3.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.
- 4.The District Educational Officer,
Valliyoor,
Tirunelveli District.

.. Appellants/Respondents 1 to 4

Vs.



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1.R.Jeya Suhi,
B.T.Assistant (Science),
Walker Higher Secondary School,
Dohnavur,
Tirunelveli District.

.. 1st Respondent/Writ Petitioner

2.The Secretary/Correspondent,
Walker Higher Secondary School,
Dohnavur,
Tirunelveli District.

.. 2nd Respondent/5th Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 21.04.2021 made in W.P.(MD).No.8018 of 2021 and allow the Writ Appeal.

For Appellants : Mr.D.Sadiq Raja,
Additional Government Pleader

For R-1 : Mr.S.Chellapandian

JUDGMENT

(Judgment of the Court was delivered by M.S.RAMESH,J.)

The facts of the present case are as follows:

(i) The second respondent School is a minority aided educational institution. When a vacancy in the School for the sanctioned post of B.T.



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Assistant (Science) arose on 31.05.2018, owing to the transfer of a teacher, the first respondent herein was appointed by the School to the said sanctioned post. Consequently, the School had sent a proposal to the District Educational Officer (DEO), Valliyoor, Tirunelveli District/fourth appellant on 27.08.2018, seeking for approval of the appointment. The District Educational Officer, in turn, had recommended the proposal to the Chief Educational Officer (CEO), Tirunelveli District/third appellant. However, the Chief Educational Officer had returned the proposal by seeking for a certificate of “no surplus post”.

(ii) The School had once again re-submitted the proposal along with the relevant certificate to the District Educational Officer, which was in turn forwarded to the Chief Educational Officer on 25.07.2019. Once again, the Chief Educational Officer had returned the proposal to the School by directing the District Educational Officer to re-verify the entire status. This was challenged by the first respondent herein before this Court in W.P. (MD).No.23686 of 2019 and by an order dated 11.11.2019, the order of the Chief Educational Officer was set aside and the Chief Educational Officer



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was directed to consider the proposal on merits and pass orders within a period of twelve weeks. Since the Chief Educational Officer did not consider the proposal within the stipulated time, the first respondent had filed a Contempt Petition in Cont.P.(MD).No.884 of 2020.

(iii) Pending the Contempt Petition, the Chief Educational Officer had passed an order dated 23.11.2020 by stating that the Government in G.O.Ms.No.165, School Education Department dated 17.09.2019, had issued instructions to all the Chief Educational Officers and District Educational Officers to deploy the surplus teachers in Government/aided schools to the needy schools and pending such deployment, no fresh recruitment/appointment should be made and therefore, in view of G.O.Ms.No.165, the School's proposal was rejected.

(iv) The said rejection order dated 23.11.2020 was challenged before a learned Single Judge of this Court in W.P.(MD).No.8018 of 2021. The learned Single Judge, through the order dated 21.04.2021, had recorded that a co-ordinate Bench of this Court in a batch of Writ Appeals in the case of



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the Secretary to Government, Government of Tamil Nadu, School

Education Department, Chennai and others Vs. Iruthaya Amali and

another, passed in *W.A.(MD).Nos.76 of 2019 etc., dated 31.03.2021*, had held G.O.Ms.No.165 as inoperative and therefore, the rejection order that places reliance on G.O.Ms.No.165 was set aside with the consequential direction to the authorities to approve the appointment of the first respondent herein, if she is otherwise eligible and pass orders in the light of the guidelines issued by the co-ordinate Bench of this Court in *Iruthaya Amali's* case dated 31.03.2021, within a period of twelve weeks. The Government has now challenged the order of the learned Single Judge in W.P.(MD).No.8018 of 2021 dated 21.04.2021, in this Writ Appeal.

2. The short point involved in the present Writ Appeal is as to whether the Chief Educational Officer was justified in placing reliance on G.O.Ms.No.165 and rejecting the proposal of the School seeking for approval of the appointment of the first respondent, when the Government Order itself was not in operation at that relevant point of time?



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3. Some of the crucial dates that would be relevant for deciding the present Writ Appeal are as follows:

S.No.	Date	Event
1.	31.05.2018	A vacancy to the sanctioned post of B.T.Assistant (Science) arose in the School due to the transfer of the erstwhile teacher.
2.	02.06.2018	The first respondent was appointed as a B.T.Assistant (Science) in the vacant sanctioned post.
3.	09.04.2019	A co-ordinate Division Bench of this Court had passed an interim order in a batch of Writ Appeals in W.A.(MD).Nos.76 of 2019, etc., by forbearing fresh appointments in private aided schools, till surplus teachers in other schools, coming under the same management, are exhausted.
4.	17.09.2019	In accordance with the interim orders passed in W.A.(MD).Nos.76 of 2019 etc., G.O.Ms.No.165, School Education Department, was passed by reiterating the interim directions given therein, including ban on fresh appointments in private aided schools until the surplus teachers in other schools coming under the same Management are redeployed.
5.	20.09.2019	Within 3 days, another co-ordinate Bench of this Court, had suspended the operation of G.O.Ms.No.165.



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6.	23.11.2020	The Chief Educational Officer had rejected the School's proposal, seeking for approval of the appointment of the first respondent by placing reliance on G.O.Ms.No.165.
7.	31.03.2021	Final orders came to be passed in W.A. (MD).Nos.76 of 2019 etc., (<i>Iruthaya Amali's</i> case), whereby, G.O.Ms.No.165 was declared to be inoperative and a series of directions were given including prohibiting the filling up of sanctioned vacancies until the surplus teachers under the same corporate or joint management of the School are redeployed.
8.	21.04.2021	The learned Single Judge had set aside the rejection order of the Chief Educational Officer dated 23.11.2020 and directed for grant of approval of appointment by following the guidelines of the co-ordinate Bench of this Court in <i>Iruthaya Amali's</i> case dated 31.03.2021.

4. From the aforesaid tabular column, it can be seen that on 20.09.2019, G.O.Ms.No.165 was suspended and therefore, it is deemed that the order was not in existence therefrom. However, the Chief Educational Officer had chosen to place reliance on G.O.Ms.No.165 in his order dated 23.11.2020 for the purpose of rejecting the School's proposal seeking for approval of the appointment of the first respondent. Apart from placing



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such reliance on the Government Order, no other reason was assigned for such a rejection. In this background, the learned Single Judge in the order dated 21.04.2021 passed in W.P.(MD).No.8018 of 2021, had taken note of this fact of the Government Order being suspended and made inoperative through the final orders passed in *Iruthaya Amali's* case dated 31.03.2021 and had set aside the rejection order of the Chief Educational Officer.

5. Even otherwise, when the rejection order dated 23.11.2020 was passed, the Government Order was not in existence at all and therefore, the Chief Educational Officer ought not to have placed reliance on such an order and rejected the School's proposal. Thus, the findings of the learned Single Judge, in this regard, cannot be found fault with.

6. The learned Additional Government Pleader appearing for the appellants made a submission that even though G.O.Ms.No.165 was made inoperative, there were earlier interim orders passed in *Iruthaya Amali's* case on 09.04.2019, whereby, the content of G.O.Ms.No.165 was in existence and therefore, the appointments made in private aided educational



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institutions cannot be approved until the surplus teachers in their Management schools are redeployed.

7. The said submission is liable to be rejected on two grounds.

(i) Firstly, in the interim order dated 09.04.2019 in Iruthaya Amali's case, reference was made forbearing only “fresh appointments” in the private aided schools until the redeployment exercise of the surplus teachers was made. The relevant portion of the interim order dated 09.04.2019 reads as follows:

“ ...*(ii) There shall not be any fresh appointment from today in Private Aided Schools, till surplus teachers in other schools coming under the same Management are exhausted;*

(iii) The Government shall not approve any appointment made by the Private Aided Schools, till the surplus teachers in the schools coming under the same Management are exhausted';

(iv) Insofar as the matters in which the issues have been decided finally either by the learned Single Judge or the Division Bench, the appellants are not at liberty to reopen the issue;

(v) There is no prohibition for approval of teachers,



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where concerned teachers or management obtained orders from this Court which reached finality for grant of approval;

(vi) In case, an appeal or review has been preferred as on date, it is open to the appellants to contest the cases on merits;

(vii) Wherever, there is no dispute with regard to existence of surplus teachers, it is open to the appellants to deploy those teachers, wherever, it is required viz., in other aided schools.

(viii) In cases, where the minority school is a Single School and there is no question of getting surplus teachers from other schools in the same Management, it is open to the school authorities to approach the Educational Authority well in advance, so that, the Educational Authority will be able to deploy the eligible teachers. Such deployment of eligible teachers from any other school should satisfy the eligibility criteria as prescribed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.”

The aforesaid extract is self-explanatory and the private aided schools were prohibited to make only fresh appointments when their group of schools had surplus teachers. In the instant case, the appointment of the first respondent



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herein was made on 02.06.2018 itself, in the sanctioned vacancy that arose on 31.05.2018. Apparently, the appointment was made even prior to the interim order dated 09.04.2019 and therefore, the consequential proposal seeking for approval of such an appointment cannot be deemed to be a fresh appointment that was made after the interim order.

(ii) Secondly, when the first respondent was appointed to the sanctioned post on 02.06.2018, there was no Government Order or any other regulation that imposed a pre-condition for redeployment of surplus teachers in the private aided schools run by the corporate management. The approval that the School seeks for is for the appointment that was made at the relevant date. Thus, in the absence of a prohibition to make appointments when the surplus teachers are in existence in the corporate management, there is no impediment for granting such an approval.

8. This apart, there is yet another infirmity in the impugned rejection order of the Chief Educational Officer. The School had originally sent the proposal seeking for approval of the appointment to the District Educational Officer on 27.08.2018. The District Educational Officer in turn had verified



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the proposal and had forwarded the same to the Chief Educational Officer together with the relevant documents in the month of November 2018. The Chief Educational Officer had however chosen to return the proposal seeking for a “no surplus teachers” certificate. The School had once again re-submitted the proposal together with the relevant certificate which was again returned without assigning any reasons. In other words, the Chief Educational Officer seems to have mechanically returned the proposal without exercising the procedure for verification of the existence of surplus teachers for the corporate schools. The rejection order also does not make any reference as to whether the surplus teachers were working in the corporate management school or how many such surplus teachers were in existence. Thus, the rejection order of the Chief Educational Officer, in the absence of such details, is deemed to be a non-speaking order. The counter affidavit filed by the educational authorities before the learned Single Judge also is bereft of such details.

9. In view of the above discussion, the order of the learned Single Judge, insofar as it sets aside the impugned order of rejection and the



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direction to the educational authorities to grant approval for the appointment of the first respondent herein, cannot be found fault with.

10. This apart, the learned Single Judge, while passing such consequential orders, had directed the educational authorities to grant the required approval in the light of the guidelines issued by the co-ordinate Bench of this Court in its final order in *Iruthaya Amali's* case dated 31.03.2021. This portion of the order may not be correct in view of our discussion in the foregoing portion of this order. What the authorities ought to have considered is the regulations governing the grant of approval as on the date on which the appointment of the first respondent was made. In other words, the guidelines in the final orders of *Iruthaya Amali's* case dated 31.03.2021 may not be applicable to an appointment that was made way back on 02.06.2018 itself. To this extent, the order of the learned Single Judge requires a modification.

11. Accordingly, the order passed in W.P.(MD).No.8018 of 2021 dated 21.04.2021, insofar as it sets aside the rejection order of the third



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appellant herein dated 23.11.2020, is hereby confirmed. Consequently, there shall be a direction to the appellants herein to forthwith approve the appointment of Mrs.R.Jeya Suhi/first respondent dated 02.06.2018 in the post of B.T. Assistant (Science), with effect from the date of her appointment and sanction the required grant for the said post as expeditiously as possible, in any event, within a period of four (4) weeks from the date of receipt of a copy of this order.

12. The Writ Appeal stands disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(M.S.R.,J.) (M.N.K.,J.)
16.08.2023

NCC : Yes / No
Index : Yes / No
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