



W.P.(MD).No.23108 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.08.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.23108 of 2022

and

W.M.P(MD)No.17208 of 2022

R.Bastin Sobitha Selvi

... Petitioner

Vs.

1.The District Educational Officer,
Vallioor,
Tirunelveli District.

2.The Block Educational Officer,
Nanguneri Union,
Tirunelveli District.

3.The Correspondent,
St. Antony's Middle School,
Karankadu,
Nanguneri Taluk,
Tirunelveli 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 proceedings issued by the first respondent in O.Mu.No.1688/A2/2021 dated 22.08.2022 and quash the same and further direct the first respondent herein to approve the



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appointment of the petitioner as BT Assistant (History) in the third respondent school w.e.f. 25.06.2018 and disburse grant-in-aid towards salary and other attendant benefits.

For Petitioner	: Mr.A.Ajith Geethan
For RR 1 & 2	: Mr.N.Ramesh Arumugam Government Advocate
For R – 3	: Mr.S.Savari Muthu for M/s.Father Xavier Associates

ORDER

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings issued by the first respondent, dated 22.08.2022 and further direct the first respondent to approve the appointment of the petitioner as B.T Assistant (History) in the third respondent School with effect from 25.06.2018 and disburse grant-in-aid towards salary and other attendant benefits.

2.The third respondent School is a recognised aided minority educational institution. The petitioner is working as a BT Assistant in the third respondent School. One post of BT Assistant in the third respondent School fell vacant due to the dismissal of the previous incumbent G.Princely on 21.05.2018. In the said sanctioned



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vacancy, the petitioner was appointed as BT Assistant History with effect from 25.06.2018. Thereafter, the third respondent School submitted a proposal to the first respondent through the second respondent on 01.09.2018 requesting to approve the petitioner's appointment as BT Assistant with effect from 25.06.2018.

3.The second respondent returned the proposal vide proceedings dated 23.01.2019 calling for certain particulars and documents. The third respondent School resubmitted the proposal along with necessary particulars and documents to the second respondent on 31.01.2019 requesting to approve the petitioner's appointment. Since the respondents did not pass any order, the petitioner filed a Writ Petition in W.P(MD)No.5828 of 2019 before this Court. This Court by its order, dated 13.03.2019 directed the respondents to consider the proposal of the petitioner, dated 31.01.2019 on merits and in accordance with law. Thereafter, the first respondent returned the proposal vide proceedings dated 27.01.2021 stating that the petitioner's previous incumbent namely Princely had filed W.P(MD)No.11938 of 2018 challenging his dismissal order and prior permission was not obtained from the competent authorities for converting the subject from Science to History.



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4.The petitioner challenged the said proceeding by filing a Writ Petition in W.P(MD)No.7971 of 2021. On 20.04.2021, this Court allowed the said Writ Petition setting aside the first respondent's proceedings dated 27.01.2021 on the grounds that no interim order has been granted by this Court in W.P(MD)No.11938 of 2018 which was filed by the petitioner's previous incumbent and subject roster system in BT Assistant post cannot be insisted to a minority aided educational institutions.

5.Following which, the third respondent school resubmitted the proposal on 25.8.2021 to the District Educational Officer. Once again, the District Educational Officer rejected the proposal insisting the third respondent School to accommodate the petitioner's place with the surplus Secondary Grade Teacher working in the primary school standards in the third respondent's School vide impugned proceedings dated 22.08.2022. Assailing the same, this Writ Petition came to be filed.

6.Heard Mr.A.Ajith Geethan, learned counsel appearing for the petitioner, Mr.N.Ramesh Arumugam, learned Government Advocate



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appearing for the respondents 1 and 2 and Mr.S.Savari Muthu, learned counsel appearing for the third respondent and perused the materials available on record. However, the respondents did not file any counter affidavit.

7.The third respondent School being a minority institution, no permission is required either before effecting the appointment or effecting the conversion of a subject. It is no more res integra that a minority institution cannot be insisted to get prior approval before making an appointment in a sanctioned vacancy. Likewise, it is not necessary for a minority institution to get prior permission to convert the subject as well. The Hon'ble Division Bench of this Court in the case of W.A(MD)No.716 of 2014 dated 04.04.2017 [The Secretary and others Vs. The Correspondent], has held as follows:-

"4..... The legal question involved in this matter is as to whether the Minority Institution can be compelled to follow a subject roster without there being appropriate amendment to the relevant Rules. This issue was considered by the Division Bench and it was held in favour of the institution. It was pointed out by the learned counsels on either side that the case of the appellants / respondents itself is based on G.O.



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(Ms).No.144, Education (D1) Department, dated 04.07.2008. This Government Order was subject matter of challenge in R.Emerson Udaisingh vs. The State of Tamil Nadu, Rep. by its Secretary, Department of School Education and others, W.P. (MD).No. 2750 of 2012 and this Court by order, dated 22.08.2013, allowed the said writ petition and quashed the said Government Order. The operative portion of the said order, dated 22.03.2013, reads as follows:

"3. Similar issue was considered by this Court in the decision reported in 2006(5) CTC 504 - The Corporate Management, CSI Corporate Schools, CSI Diocese of Kanyakumari, Nagarcoil vs. The State of Tamil Nadu, rep by its Secretary, Chennai and others and this Court quashed the Circular, dated 26.10.2004 issued, restricting the number of teachers having degrees in the same subject in a school.

4.The said decision was considered by a Division Bench 4 of the Principal Seat in the Judgment dated 20.09.2007 made in W.A.No. 1198 of 2007 wherein it is held thus:

"3. In fact the legal implication of the said proceedings dated 26.10.2004, was considered by this Court in the light of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (in short T.W. Act 29 of 1974) in the



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Correspondent, Britannia Higher Secondary School, Chennai vs. State of Tamil Nadu, rep. by its Secretary, Department of School Education, Chennai and others (2007 (2) MLJ 760) and held that the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate teachers. That was also the decision taken earlier by the Madurai Bench of Madras High Court in the corporate Manager, CSI Corporate Schools Vs. State of Tamil Nadu (2006 (5) CTC 504). It was also considered in the above said cases that the executive instruction cannot supersede the statutory provision, by relying upon the decision of the Supreme Court in B.N. Nagarajan Vs. State of Karnataka (1979 II LLJ 209 (SC), which was subsequently reiterated by the Supreme Court in V.Sreenivasa Reddy Vs. Government of A.P. (AIR 1995 SC 586). Therefore, by virtue of the above said judgments, it is the categorical decision of this Court that the proceedings of the second appellant dated 5 26.10.2004 by imposing subject roster in making appointment is not Valid and is in violation of the provisions of the Act 29/74. In view of the same, there is absolutely no reason to interfere with the order of the learned Single Judge. Consequently, the



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writ appeal fails and the same is dismissed with direction to the appellants to approve the appointment of V.J. Titus Prabhakar (Mathematics) with effect from the date of his appointment with salary and other benefits within a period of four weeks from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed".

5. We are informed by the learned Special Government Pleader that as against the said order, no writ appeal has been preferred by the Government.

6. In the light of the above, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

8. In the facts and circumstances of this case in hand, this court hereby quashes the impugned order of the first respondent dated 22.08.2022 and consequently direct the respondents 1 and 2 to forthwith approve the appointment of the petitioner as BT Assistant (History) with effect from 25.06.2018 and disburse grant-in-aid towards salary and other attendant benefits, within a period of 12 weeks from the date of receipt of a copy of this order.



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9. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

27.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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L.VICTORIA GOWRI, J.

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**Pre-Delivery Order made in
W.P.(MD)No.23108 of 2022**

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