



W.P.(MD)No.15039 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 15039 of 2016

and

W.M.P(MD)Nos. 15201, 11080 of 2016

R.U.K.N.M.S.P.N.High School,
Represented by its Secretary,
Ramanaickenpatti,
Aruppukkottai Taluk,
Virudhunagar District.

... Petitioner

Vs.

1. The Director of School Education,
Chennai – 6.

2. The Joint Director of School Education (Secondary),
Chennai – 6.

3. The Chief Educational Officer,
Virudhunagar District.

4. The District Educational Officer,
Aruppukkottai,
Virudhunagar District.

5. Gurumurthy

.... Respondents

[5th respondent is added as per order of this Court, dated 14.02.2023]



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent by his proceedings in Na.Ka.No. 76060/D2/E1/15, dated ----.05.2016 and quash the same and direct the respondents to pay the salary to Mr. Gurumoorthy for the period from 01.02.2013 to 18.12.2013.

For Petitioner : Mr.V.Paneer Selvam

For R-1 to R-4 : Mr.D.Sadiq Raja
Additional Government Pleader

For R-5 : M/s.Jasima Yasmin, for
M/s.Ajmal Associates

ORDER

This writ petition has been filed by the petitioner School, challenging the impugned order passed by the 2nd respondent, dated ----.05.2016 in Na.Ka.No. 76060/D2/E1/15 and seeking consequential direction to pay the salary to the 5th respondent/Mr. Gurumoorthy, for a period from 01.02.2013 to 18.12.2013.

2. Heard Mr.V.Paneer Selvam, learned counsel appearing for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader



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appearing for the respondents 1 to 4 and M/s.Jasima Yasmin, for M/s.Ajmal Associates, learned counsel appearing for the 5th respondent. Perused the material documents available on record.

3. The candidate namely Gurumurthy had filed W.M.P.(MD)Nos. 14076 of 2016 to implead himself in this present writ petition, which is filed by the management school and the same was allowed on 14.02.2023.

4. The petitioner's school is a non-minority aided institution and the Tamil Nadu Recognized Private Schools (Regulations) Act and Rules, are applicable to the petitioner school. The management of the school is bound to follow the rules of reservation. The B.T. Assistant post, fell vacant due to the resignation of one Lakshmanaperumal on 03.01.2009. The management sought permission from the official respondents to fill up the said post and the same was granted in proceedings dated 15.06.2009. As per the rules of reservation the post ought to be filled up from the candidates belonging to Schedule Caste (Arundhathiyar). The management sought list from the Employment Exchange and also the issued paper publication. The Employment Exchange has issued "Not



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Available” certificate. Thereafter, the management has processed the applications received from the candidates applied through paper publication and selected and appointed one Gurumurthy on 10.08.2009 and he joined service on 12.08.2009.

5. Thereafter, the management had submitted the proposal to approve the appointment. The respondents had approved the appointment in its proceedings dated 24.12.2009 and also approved the S.R. Entries in his proceedings dated 21.11.2010.

6. Subsequently, the 4th respondent issued notice to the management on 19.12.2010 stating that the post was reserved for SC(A), but the post was filled up with SC, which is against the government order. Thereafter, the appointment was cancelled, vide order, dated 31.01.2013. Aggrieved over the same, the 5th respondent Gurumurthy had filed a writ petition in W.P.(MD)No.2785 of 2013 and this Court, vide order dated 09.10.2013 allowed the writ petition. However, the official respondents failed to pay salary for the non-employment period, hence the candidate submitted representation dated 28.09.2015 to pay salary for the period from 01.02.2013 to 18.12.2013. Since the same was not considered the



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said Gurumurthy had filed W.P.(MD)No.1102 of 2016 and this Court vide order dated 20.01.2016 has held that the Court is of the considered opinion that the said Gurumurthy is entitled to salary and directed the official respondents to consider his representation in the light of order dated 09.10.2013 passed in W.P.(MD)No. 2785 of 2013. Based on the Court's direction the official respondents had considered the case and passed the impugned order stating that the candidate Gurumurthy, the 5th respondent herein is not entitled to grant-in-aid for salary from the Government for the non-employment period from 01.02.2013 to 18.12.2013, but the management ought to pay the said salary to the teacher Gurumurthy. Aggrieved over the same, the management had filed the present writ petition.

7. The contention of the management school is that in the earlier round of litigation the appointment of SC candidate in the reserved post of SC(A) was held to be valid and relied on the judgment dated 09.10.2013 passed in W.P. (MD)No.2785 of 2013. Subsequently the official respondents had allowed the said Gurumurthy to rejoin the service, but declined to pay salary for the period from 01.02.2013 to 18.12.2013. Once the appointment is held to be valid, then the



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official respondents ought to pay the salary, hence declining to pay the salary is illegal. More so directing the management to pay is contemptuous. The management further submitted that the official respondents only cancelled the approval of appointment, when such cancellation is set aside through court order, then the Government ought to pay the salary. Moreover, the cancellation order was passed, after lapse of four years from the date of appointing the candidate. Hence the government is bound to release grant-in-aid for the said period.

8. On perusal of the impugned order it is seen that the reasons stated is that the management has violated the Rule 15 sub clause 7, 8, 9(i)(ii) of the Tamil Nadu Private Schools Regulation Rules while appointing SC candidate in the reserved place for SC(A) candidate. The said rules states to follow reservation rules and appoint candidates of such class and approval cannot be granted if there is any violation. This Court is of the considered opinion that the reasons cited by the official respondents is against the judgment rendered in W.P.(MD)No. 2785 of 2013. Again, the official respondents are raising the same issue which had been settled through the aforesaid judgment. The reasoning has traces of contempt of court also.



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9. On merits also the management is in advantageous position. Once the non-availability certificate of SC(A) candidate is issued by the Employment Exchange, then the management has every right to appoint SC candidate. In the earlier round of litigation in W.P.(MD)No.2785 of 2013, the candidate had produced a reply under Right to Information Act issued by the Public Information Officer, Directorate of Employment and Training, Chennai dated 06.06.2013, wherein it is informed that between 01.05.2009 to 31.12.2009 there was no candidate having B.Sc. B.Ed. qualifications belonging to SC(A) community on the rolls of the Employment Exchange throughout the State. Based on this categorical information, the above writ petition was allowed. Hence the condition that “non-availability certificate” ought to be obtained is satisfied. When the SC(A) is not available, then there is no impediment to appoint the SC candidate as per existing government orders and rules covering the issue. In such circumstances, the government alone is liable to pay the salary for the said period.

10. For the reasons stated supra the impugned order passed by the 2nd respondent in Na.Ka.No.76060/D2/E1/15, dated 00.05.2016 is liable to be quashed and the same is quashed. The respondents 1 to 4 are directed to pay the



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salary with all the consequential and attendant benefits including service benefits for the period from 01.02.2013 to 18.12.2013. The said exercise shall be completed, within a period of 12 weeks, from the date of receipt of a copy of the order.

II. For the reasons stated above the writ petition is allowed. No Costs. Consequently, W.M.P.(MD)Nos.14076 of 2016 is allowed and other connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

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**Order made in
W.P.(MD)No.15039 of 2016
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