



W.P.(MD)No.7401of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.7401 of 2016

and

W.M.P(MD)No.6227 of 2016

John Sobitha

... Petitioner

Vs.

1.The District Elementary Education Officer,
Tirunelveli District,
Tirunelveli.

2.The Assistant Elementary Education Officer,
Radhapuram,
Tirunelveli District.

3.The Correspondent,
Punitha Teeresa's Primary School,
Kuthenkuli,
Tirunelveli District.

... Respondents

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 impugned order, dated 05.05.2014 passed by the 2nd respondent in his proceedings O.Mu.127/A1/2014 and quash the same, consequently direct the 1st



W.P.(MD)No.7401of 2016

WEB COPY

and the 2nd respondent to approve the petitioner appointment and release of grant from the date of her appointment on 21.01.2008 including all other monitory benefits, within a time frame fixed by the Court.

For Petitioner : Mr.S.Gokul Raj

For Respondent : Mr.V.Om Prakash
Government Advocate for R-1 and R-2

Mr.V.John Kennedy
Father Xavier Associates for R-3

ORDER

This writ petition is filed challenging the impugned order, dated 05.05.2014 with consequential direction to the 1st and 2nd respondents to approve the petitioner's appointment and release of grant from the date of her appointment on 21.01.2008.

2. The petitioner was appointed in the 3rd respondent school as Secondary grade teacher on 25.01.2008 in the vacancy created due to the Voluntary Resignation of Ms.J.Cornelia on 21.01.2008 in the sanctioned post in Punitha Teeresa's Primary School. Kuthenkuli, which is a Minority Aided School. The 3rd respondent submitted all the particulars along with enclosures seeking



W.P.(MD)No.7401of 2016

WEB COPY

approval and the same was returned by the 2nd respondent seeking certain documents. The school again submitted the proposal to the 3rd respondent, after enclosing necessary certificates. Thereafter, the 2nd respondent, vide proceedings, dated 05.05.2014, rejecting the proposal stating that in R.C. Diocese Management School, Tuticorin there is surplus post in Secondary Grade Teacher posts and until the surplus are deployed to needy place and nil surplus is shown the proposal of appointment cannot be approved.

3. The petitioner is working in 3rd respondent school from 21.01.2008 without salary, even though, the petitioner's appointment was under the sanctioned strength. In spite of repeated proposal, the 3rd respondent has refused to grant approval of the petitioner's appointment. Again, the 3rd respondent resubmitted the proposal on 05.01.2016. But the respondents have relied on the earlier order, dated 05.05.2014 and rejected. Aggrieved over the same, the petitioner is before this Court.

4. The respondents 1 & 2 have filed counter stating that the school without waiting for the approval of the resignation of Tmt.J.Cornelia has



W.P.(MD)No.7401of 2016

WEB COPY

proceeded to appoint the petitioner. As far as the Minority Aided school is concerned, prior permission may not necessary. At the same time the minority school is also not having power to appoint new teacher when the corporate management is having surplus Secondary Grade Teachers. In the year 2008-2009, a number of secondary grade teachers working in different schools under the management of RC schools, Tuticorin, were rendered surplus and one of such surplus teacher ought to have been deployed to the vacancy caused by the resignation of Tmt.J.Cornelia in the 3rd respondent's school. The present direct recruitment has caused loss to the Government. Hence, the appointment of the petitioner was not approved. The petitioner has not raised any legally sustainable grounds. Therefore, the respondents pray to dismiss the writ petition.

5. Heard Mr.S.Gokul Raj, learned counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate appearing for 1st and 2nd respondents and Mr.V.John Kennedy, Father Xavier Associates, learned counsel appearing for 3rd respondent. Perused the material documents available on record.



W.P.(MD)No.7401of 2016

WEB COPY

6. The respondents 1 & 2 have filed counter stating that the vacancy arose due to the resignation of Tmt.J.Cornelia, the resignation proposal was not submitted to the authorities. Without processing the resignation, the school is not having power to appoint a 3rd person. If resignation has not been approved, then the post ought to be considered as if the teacher is still continuing in the service.

7. The next contention that was raised by the respondents 1 & 2 is that the 3rd respondent school is coming under the management of the RC schools, Tuticorin. It is seen there are several secondary grade teachers are working in the Corporation management rendered as surplus. The Corporation management without deploying the surplus teacher to the 3rd respondent school, had appointed the petitioner. In spite of several direction to deploy the surplus teachers, the 3rd respondent school proceeded to appoint the petitioner, thereby caused loss to the Government. The minority school may not seek permission for appointment, but if the corporate management is having surplus, then the minority school also is not empowered to appoint anybody in the resulted vacancy.



W.P.(MD)No.7401of 2016

WEB COPY

8. Therefore, this Court is of the considered opinion that the appointment of the writ petitioner is against the prescribed rules and norms. Therefore, approval cannot be granted. The impugned order is sustainable. Accordingly, this Writ Petition stands dismissed.

9. However, the petitioner is at liberty to claim salary for the service for the said period from the school and the Government is not liable to pay any salary for the same. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes
ksa

06.04.2023



W.P.(MD)No.7401of 2016

WEB COPY

To

- 1.The District Elementary Education Officer,
Tirunelveli District,
Tirunelveli.
- 2.The Assistant Elementary Education Officer,
Radhapuram,
Tirunelveli District.
- 3.The Correspondent,
Punitha Teeresa's Primary School,
Kuthenkuli,
Tirunelveli District.



WEB COPY



W.P.(MD)No.7401of 2016

S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 7401 of 2016**

06.04.2023