



W.P(MD)Nos.23985, 23998, 24005 & 24006 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.23985, 23998, 24005 & 24006 of 2019

and

W.M.P.(MD)Nos.20594, 20604, 20607 & 20608 of 2019

In W.P.(MD)No.23985 of 2019

K.Balamurali

... Petitioner

Vs

1.The State represented by
The Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.

2.The Director of School Education,
College Road, Chennai – 600 006.

3.The Chief Educational Officer,
Pudukottai District.

4.The District Educational Officer,
Iluppur, Pudukottai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the fourth respondent herein in Na.Ka.No.133/A2/2019 dated 03.07.2019, quash the same and further direct the third respondent herein to approve forthwith the appointment of petitioner as



W.P.(MD)Nos.23985, 23998, 24005 & 24006 of 2019

Junior Assistant from 05.12.2017 onwards with salary and other attendant benefits.

In W.P.(MD)No.23998 of 2019

C.Sarathkumar

... Petitioner

Vs

- 1.The State represented by
The Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Chief Educational Officer,
Pudukottai District.
- 4.The District Educational Officer,
Iluppur, Pudukottai District.
- 5.V.V.Higher Secondary School,
Represented by its Secretary,
Ponnamaravathy – 622 407,
Pudukottai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the fourth respondent herein in Na.Ka.No.131/A2/2019 dated 03.07.2019, quash the same and further direct the third respondent herein to approve forthwith the appointment of petitioner as Lab Assistant from 05.12.2017 onwards with salary and other attendant benefits.



W.P(MD)Nos.23985, 23998, 24005 & 24006 of 2019

In W.P.(MD)No.24005 of 2019

P.Thillaichandran

... Petitioner

Vs

- 1.The State represented by
The Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Chief Educational Officer,
Pudukottai District.
- 4.The District Educational Officer,
Iluppur, Pudukottai District.
- 5.V.V.Higher Secondary School,
Represented by its Secretary,
Ponnamavarathy – 622 407,
Pudukottai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the fourth respondent herein in Na.Ka.No.132/A2/2019 dated 03.07.2019, quash the same and further direct the third respondent herein to approve forthwith the appointment of petitioner as Office Assistant from 05.12.2017 onwards with salary and other attendant benefits.



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In W.P.(MD)No.24006 of 2019

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A.Adaikkappan

... Petitioner

Vs

- 1.The State represented by
The Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Chief Educational Officer,
Pudukottai District.
- 4.The District Educational Officer,
Iluppur, Pudukottai District.
- 5.V.V.Higher Secondary School,
Represented by its Secretary,
Ponnamavarathy – 622 407,
Pudukottai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the fourth respondent herein in Na.Ka.No.1285/A2/2019 dated 03.07.2019, quash the same and further direct the third respondent herein to approve forthwith the appointment of petitioner as Watchman from 05.12.2017 onwards with salary and other attendant benefits.



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For Petitioner : Mr.E.V.N.Siva
For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.S.Shaji Bino
(in all Writ Petitions) Special Government Pleader

COMMON ORDER

Heard the learned counsel appearing for the writ petitioners and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the department.

2. The writ petitioners were appointed to various non-teaching posts in the 5th respondent school. It is an aided non-minority institution. After the petitioners were appointed, the proposals were sent by the management to the competent authority for approval of the appointments. By the impugned orders, the competent authority declined to grant approval. They are put to challenge in these writ petitions.

3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavits filed in support of the respective writ petitions and called upon this Court to grant relief as prayed for.



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4. The contesting respondents have filed the counter affidavits and the learned Additional Advocate General took me through its contents. In the counter affidavit, heavy reliance has been placed on G.O.(Ms).No.238 (School Education (Pa.Ka.6(1) Department), dated 13.11.2018 for sustaining the impugned orders. The learned Additional Advocate General pressed for dismissal of the writ petitions.

6. I carefully considered the rival contentions and went through the materials on record. It is true that I had already sustained the validity of G.O. (Ms).No.238 (School Education Department), dated 13.11.2018. But then, the present writ petitions cannot be thrown out on that ground. This is primarily because the petitioners were appointed prior to the issuance of the aforesaid G.O. That apart, in the impugned orders, there is no reference to G.O.(Ms).No. 238 (School Education Department), dated 13.11.2018. Only two reasons have been put forth in the impugned orders. First is that the school management did not obtain prior permission for appointing the petitioners. The other reason is that the management failed to follow the communal roster. Though few other reasons have been assigned, they are in essence referable to the first ground.



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7. The learned counsel appearing for the petitioner drew my attention to the order dated 17.03.2017 made in W.P.(MD)Nos.29998 of 2017 etc., batch.

A learned Judge of this Court had held that it is well settled that any school either minority / private / aided / unaided is entitled to fill up the vacancy arising on account of promotion, retirement, removal, dismissal etc against a sanctioned post already approved by the school authorities even without obtaining prior permission from the Government. Therefore, the basic ground on which the impugned order rests will have to go. The learned counsel appearing for the petitioner also draws my attention to the materials enclosed in the typed set of papers which indicates that the communal roster register appears to have been submitted along with the proposal form. The communal roster register maintained by the management has been enclosed. I am however not in a position to give any definite finding because the said material placed by the school management was not considered by the department.

8. In this view of the matter, the order impugned in the writ petition is set aside. The matter is remitted to the jurisdictional competent authority. It appears that the District Educational Officer, Pudukkottai is the competent authority. Since the Management is now under the direct payment system, the petitioners are directed to appear before the competent authority on 29.03.2023



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at 4.00 p.m along with the school headmaster. They can place all the relevant materials. Once the competent authority is satisfied that the communal rotation was followed, then, approval will have to be necessarily granted and the salary grant will be disbursed to all the petitioners. The exercise will be completed within a period of three weeks from the date of receipt of a copy of this order.

9. These Writ Petitions are allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

15.03.2023

Index : Yes / No

Internet : Yes/ No

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NOTE:Issue Order Copy on 28.03.2023

To

- 1.The Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Chief Educational Officer,
Pudukottai District.
- 4.The District Educational Officer,
Iluppur, Pudukottai District.



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G.R.SWAMINATHAN, J.

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15.03.2023