



W.P.(MD).No.24672 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.24672 of 2023

and

W.M.P(MD)Nos.20858 & 20859 of 2023

J.Johnson Samuel Rajakumar

... Petitioner

Vs.

1.The Chief Educational Officer,
Office of the Chief Educational Office,
Thanjavur,
Thanjavur District.

2.The District Educational Officer,
Office of the District Educational Office,
Thanjavur,
Thanjavur District.

3.The Correspondent,
St. Peter's Higher Secondary School,
Thanjavur-613 009,
Thanjavur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent vide his proceedings in ந.க.எண்.761/அ2/அ3/2022, dated 08.09.2023 and quash the



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same as illegal and consequentially to direct the first respondent to approve the petitioner's appointment as Junior Assistant with effect from 29.08.2007 and pay arrears of salary with all consequential monetary benefits and retirement benefits arising thereon and by considering the proposal, dated Nil.01.2022 sent by the third respondent to the second respondent.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For R-1 & R-2 : Mr.N.GA.Natraj
Government Advocate

ORDER

The present writ petition has been filed by a Junior Assistant seeking to set aside the order passed by the first respondent herein, wherein the request of the Management for approval of his appointment has been rejected.

2. The petitioner was appointed as a Junior Assistant in the third respondent School on 29.08.2007. The Management has sent the proposal for his approval to the second respondent herein on 20.10.2008 and the same has been acknowledged by their Office. Thereafter, neither the petitioner nor the School Management have followed up the said proposal for getting approval.



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3. Due to some dispute between the new Management and the petitioner, the petitioner was not attending duty for the period between 04.06.2015 till 10.09.2018. The said period has been marked in the attendance as 'leave on loss of pay'. Thereafter, due to change in Management, the petitioner seems to have again joined duty and the new Management has sent the proposal on 04.10.2018 to the authorities for being considered for approval. The said request has been rejected under the impugned order by the first respondent herein citing G.O(Ms)No.238 of the School Education [Paka6(1)] Department, dated 13.11.2018. This order is under challenge in the present writ petition.

4. According to the learned Counsel appearing for the writ petitioner, G.O(Ms)No.238 is dated 13.11.2018 and he was appointed on 29.08.2007 and therefore, the said Government order is not applicable to him. He further contended that the non-employment period may be excluded for considering the grant-in-aid. Apart from the said reason, no other reason has been assigned in the order impugned in the writ petition.



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5. Per contra, the learned Government Advocate appearing for the respondents 1 and 2 had contended that the petitioner was out of employment between 04.06.2015 and 10.09.2018. The proposal was considered only in the light of the staff fixation order for the academic year 2018-2019. As per the said staff fixation order, only one post of Junior Assistant was available to the School, which was already occupied by another incumbent. The approval of the petitioner would only result in surplus Junior Assistant. Therefore, his request was not considered and the same was rejected rightly under the impugned order.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. The petitioner has been appointed as a Junior Assistant on 29.08.2007. In order to find out whether the appointment is surplus in nature or not, the staff fixation order for the academic year 2007-2008 alone has to be taken into consideration. A perusal of the staff fixation order for the relevant academic year indicates that the School has been sanctioned 2 posts of Junior Assistant, in which the petitioner was appointed as the second Junior



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Assistant. Therefore, as on the date of appointment and as per the staff fixation order relevant for the said academic year, the appointment of the petitioner cannot be considered to be surplus.

8. As far as the applicability of G.O(Ms)No.238, dated 13.11.2018 is concerned, the appointment of the petitioner being 29.08.2007 and the proposal having been forwarded by the School on 20.10.2008, the said G.O(Ms)No.238 cannot be placed against the writ petitioner.

9. The learned Government Advocate appearing for the respondents 1 and 2 had further pointed out that after the School Management has forwarded the proposal on 20.10.2008, there was a change in Management and hence, the petitioner was directed to get further approval from the new Management. This Court is not able to understand the said stand taken by the State. Once a School has appointed a candidate and has forwarded the name to the educational authorities, it is for the educational authorities to consider the same on merits and pass orders. It is not the case of the Government that the new Management has either recalled or cancelled the order of appointment of the writ petitioner.



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Therefore, the authorities ought not to have waited for a fresh approval or forwarding letter from the new Management.

10. It should also be born in mind that the petitioner had admitted that he was out of service between 04.06.2015 and 10.09.2018, which period has already been recorded as 'leave on loss of pay'. Therefore, in view of the above said facts, the writ petition is allowed. The respondents are directed to approve the appointment of the writ petitioner with effect from 29.08.2007 and allow the grant-in-aid excluding the period between 04.06.2015 and 10.09.2018 conferring all other consequential benefits. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

11. This writ petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

20.11.2023



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

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R.VIJAYAKUMAR, J.

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