



W.P.No.1142 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.1142 of 2021 and
W.M.P.Nos.1274 & 1275 of 2021

P.Paul Andrews

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
Thiruvallur District,
Thiruvallur.

3.The District Educational Officer,
Tiruttani Educational District,
Thiruvallur District.

4.The Correspondent,
CSI High School,
Tiruttani, Thiruvallur District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.12466/Aa5/2019 dated 28.12.2020 and to quash the same and



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consequently, direct the respondents 1 to 3 to approve the appointment of the petitioner in the sanctioned post of Physical Education Teacher in the 4th respondent school based on the proposal forwarded by the fourth respondent school dated 06.05.2020 with all consequential and other attendant benefits including arrears of salary.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.M.Rajendran, AGP for R1 to R3
Ms.A.Arul Mary for
M/s.Father Xavier Associates for R4

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.12466/Aa5/2019 dated 28.12.2020 and to quash the same and consequently, direct the respondents 1 to 3 to approve the appointment of the petitioner in the sanctioned post of Physical Education Teacher in the 4th respondent school based on the proposal forwarded by the fourth respondent school dated 06.05.2020 with all consequential and other attendant benefits including arrears of salary.



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2. Heard Mr.S.Nedunchezhiyan, learned counsel for the petitioner and Mr.M.Rajendran, learned Additional Government Pleader for the respondents 1 to 3 and Ms.A.Arul Mary, learned counsel for the fourth respondent.

3. The learned counsel for the petitioner submitted that the petitioner has been appointed as Physical Education Teacher in the fourth respondent School against the sanctioned post on 19.03.2020. The proposal was sent to the Government for approval on 06.05.2020. But the same was rejected on 28.12.2020 by virtue of the impugned order. The petitioner is eligible to be appointed to the post of Physical Education Teacher. Hence the petitioner has filed this Writ Petition with the above prayer.

4. The learned Additional Government Pleader for the respondents 1 to 3 submitted that the fourth respondent school was an aided school. Later it was upgraded to high school in which 9th & 10th STD were not sanctioned with any financial aid. He further submitted that one Physical Education Teacher in the fourth respondent School was found to be surplus and hence it ought to have been surrendered to the Government.



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The fourth respondent School on its own discretion has appointed the petitioner in the surplus post of Physical Education Teacher without surrendering it to the Government.

5. The learned counsel for the petitioner further submitted that the staff fixation chart pertaining to the year 2017-18 would show that there is one post of Physical Education Teacher is still available and the petitioner could have been accommodated in the said post which has been already sanctioned. The second respondent without considering the material facts and the spirit of the autonomy of the fourth respondent, has passed the impugned order. It is also submitted that prior permission has been obtained from the second respondent and the appointment has been made only subsequent to that.

6. However, the learned Additional Government Pleader submitted that the permission already given has been withdrawn and hence, the fourth respondent School ought not to have appointed the petitioner in the said post.



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7. Since the fourth respondent school is a minority institution, the question of prior permission would not arise in their case. So far as the applicability of the excess or deployment, G.O.Ms.No.165, School Education Department dated 17.09.2019 can be applicable only to the appointments made subsequent to the said Government Order. Even with regard to the subsequent appointment, the Government Order has held to be inoperative in view of the reasons stated in W.A.(MD) No.76 of 2019 etc., batch dated 31.03.2019 and the same has been followed in the subsequent case of ***B.Kurinjimalaron Vs. State of Tamil Nadu, Represented by tis Secretary, Education Department, Fort St. George, Chennai 600 009***, and in the said order, the following observations has been made:

"5. The learned counsel appearing for the petitioners would submit that the G.O.Ms.No.165 dated 17.9.2019 as well as the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019 are prospective in nature. In the present cases, the appointment was made prior to the Government order passed in G.O.Ms.No.165 issued by School Education Department, dated 17.9.2019.



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Therefore, there is no legal impediment for approving the appointment made by the School Management to the aforesaid posts in the light of the existing Rules thereunder.

6. The learned Additional Advocate General submitted that as against the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021. It is further submitted that the Hon'ble Supreme Court stayed the judgment only in respect of Clause (i) of paragraph 95 of the said judgment. Further, it is also brought to the notice of this Court that the Division Bench in paragraph 6 of the said judgment, has observed that, "no fresh appointment even in the sanctioned vacancy shall be made by any school which are managed by the Corporate Management.

7. The learned counsel appearing for the petitioners would submit that in the instant case, no appointment was made by the School Management pursuant to the judgment passed by the Division Bench



of this Court. All the appointments were made prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and the proposals were also sent to the educational authorities prior to the said G.O.Ms.No.165 dated 17.9.2019. Thus, G.O.Ms.No.165 dated 17.9.2019 and the Division Bench judgment will not bind over the appointment made by the School Management in the instant writ petitions. Therefore, the learned counsel appearing for the petitioners seeks to quash the impugned orders and consequently, direct the educational authorities to accord approval to the appointment to the post of B.T. Assistant and Secondary Grade Teacher, made by the School Management in the instant writ petitions.

8. According to the learned Additional Advocate General, the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021 as against the judgment passed by the Division Bench of this Court in the Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc. and obtained stay insofar as Clause (i) of paragraph 95 of the said judgment. Except the aforesaid clause (i) of paragraph 95, there was no stay in respect of remaining portion of the judgment. It is agreed by the learned



Additional Advocate General that the writ petitioners were appointed prior to the G.O.Ms.No.165 dated 17.9.2019 and therefore, it can be considered and an appropriate order may be passed.

9. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.9.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and proposals for the said appointment were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.

10. Having regard to the rival submissions of the parties, taking note of the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., G.O.Ms.No.165 issued



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by the School Education department, dated 17.9.2019 will not prohibit the educational authorities to approve the appointment made by the School Management in the instant writ petitions since the proposals for approval of appointment made by the School Management were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.9.2019 in proper perspective and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the impugned orders passed by the respondent department are liable to be quashed."

8. Since the matter in issue has already been covered by the above judgment, this Writ Petition is allowed and the proceedings issued by the second respondent in Na.Ka.No.12466/Aa5/2019 dated 28.12.2020 is set aside and the respondents 1 to 3 are directed to approve the appointment of the petitioner in the sanctioned post of Physical Education Teacher in the 4th respondent school based on the proposal forwarded by the fourth respondent school dated 06.05.2020 with all consequential and other



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attendant benefits. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes /No
Internet : Yes/No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

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DPI Campus, College Road,
Chennai 600 006.
2. The Chief Educational Officer,
Thiruvallur District,
Thiruvallur.
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