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W.P.No.2251 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.2251 of 2024

S.Jebaselvi

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Petitioner

Vs

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Education Department,
Chennai – 9.

2. The Director of School Education,
D.P.I.Buildings, College Road,
Chennai – 6.

3. The Chief Educational Officer,
Vellore.

4. The District Educational Officer,
Vellore.

5. The Correspondent,
Honnagar Ashram Girls High School,
Vellore.

....

Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the third respondent vide



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Na.Ka.No.4502/Aa3/2020 dated 05.12.2023 and quash the same and direct the respondents to approve the appointment of the petitioner as B.T.Assistant (History) in the fifth respondent School from initial date of appointment w.e.f. 12.09.2008 as B.T.Assistant with all consequential and monetary benefits from 12.09.2008 to 02.07.2010, in the light of the order passed in W.P.(MD) No.1853 of 2016, dated 22.06.2017, in the case o *J.Remila V. The Government of Tamil Nadu & Ors.*

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.S.Arumugam
Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned order dated 05.12.2023 in Na.Ka.No.4502/Aa3/2020 passed by the third respondent and direct the respondents to approve the appointment of the petitioner as BT Assistant (History) in the fifth respondent School from the initial date of appointment with effect from 12.09.2008 as BT Assistant with all consequential and monetary benefits from 12.09.2008 to 02.07.2017, in the light of the order passed in W.P.(MD) No.1853 of 2016, dated 22.06.2017.

2. Heard the learned counsel appearing on either side and perused the materials available on record.



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3. A vacancy arose for the post of Secondary Grade Teacher on 12.09.2008 in the fifth respondent School, due to promotion of one Elizapath, Secondary Grade Teacher as BT Assistant (Tamil). The vacancy of the Secondary Grade post had arisen in the High School, as per G.O.Ms.No.79, dated 14.06.2002. The vacancy has been upgraded as BT Assistant and in the upgraded post a B.Ed qualified teacher was directed to be appointed to teach the subjects, viz., Maths, Science, Social Science to VI to VIII Standards. Accordingly, by an order dated 12.09.2008, the petitioner was appointed as BT Assistant (History). It was communicated to the fourth respondent. The fourth respondent had visited the School on 12.10.2009 and recommended for conversion of the post of Secondary Grade as BT Assistant (History) instead of BT Assistant (English) caused due to promotion of the said Elizapath, Secondary Grade Teacher as BT Assistant (Tamil) for the reason about 30% girl student failed in History subject at that point of time. Accordingly, the fifth respondent School submitted a proposal dated 06.02.2010, requesting for conversion of post BT Assistant (English) as BT Assistant (History), as per G.O.Ms.No.144, dated 04.07.2008. Therefore, the fifth respondent School issued re-appointment order dated 03.07.2010 to the petitioner and her



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appointment was approved by the fourth respondent by its proceedings dated 03.08.2010 only with effect from 03.07.2010 instead of 12.09.2008. Therefore, the petitioner made a representation and the same was rejected.

4. A similar issue was already dealt with by this Court in W.P.No.34238 of 2017. By an order dated 27.06.2023, this Court held as follows :

6. After considering the entire gamut of facts and law, the Hon'ble Division Bench of this Court concluded that the institutions being recognised as minority institutions were protected under Article 30(1) of the Constitution of India. Though the State may have power to regulate the minority educational institutions in the interest of 'Efficiency', 'Discipline', 'Health', 'Sanitation', 'Morality' and 'Public order', the same cannot extend over entire administrative control of the minority institutions over its staff and its right to establish unregistered educational institutions. The Hon'ble Division Bench of this Court agreed with the order of the learned Single Judge and held that no prior permission was required before converting the Secondary Grade post to B.T.Assistant post.

7. One another Hon'ble Division Bench of this Court in W.A.(MD).No.201 of 2020 dated 14.08.2020 had followed the consistent view taken by this Court and held that it is settled position of law that once the appointment is made to a sanctioned post, then, prior approval is not necessary. The said writ appeal was also at the instance of the State and it came to be dismissed.



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8. *Per contra*, the learned Additional Government Pleader appearing for the respondents 1 to 4 would place reliance on the judgment in Rev.Aplc(MD).No.136 of 2022 in W.A.(MD).No.1115 of 2019 dated 06.6.2023 and submit that the recent view taken by the Hon'ble Division Bench of this Court should prevail and the review application was disposed of directing the management to fill up the vacancies in the teaching post only after getting prior permission from the Department and the petitioner's case cannot be accepted.

9. Considering the entire facts and circumstances, including the various pronouncements of this Court upto the recent pronouncement in Rev.Aplc(MD).No.136 of 2022 in W.A.(MD).No.1115 of 2019 dated 06.6.2023, the issue certainly is no longer *res integra*.

10. In view of the judgments relied on by the learned counsel for the petitioner, two of which are the Hon'ble Division Bench of this Court. However, the decision relied on by the learned Additional Government Pleader, appears to be taking a contrary view. However, at the same time, from the reading of the judgment of Hon'ble Division Bench rendered in Rev.Aplc(MD).No.136 of 2022 in W.A.(MD).No. 1115 of 2019 dated 06.6.2023, it is clear that a direction was given to the management to fill up the vacancies in teaching post only after getting prior permission from the Department and the right of the minority institution has also been discussed. However, at the same time, none of the earlier judgments of this Court had been placed before the Hon'ble Division Bench and moreover a direction was given by the Hon'ble Division Bench in the review application, which appears to be only prospective while filling up the vacancies in teaching post. However, in the instant case the petitioner's appointment was made on 10.09.2012 and she has already attained the age of superannuation and she is before this Court only for getting her service benefits that she would be entitled.



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5. Therefore, the impugned order suffers from blatant infirmities

and it cannot be sustained in the eye of law.

6. In view of the above, the impugned order dated 05.12.2023 in Na.Ka.No.4502/Aa3/2020 passed by the third respondent, is hereby quashed. Accordingly, this Writ Petition stands allowed. The third respondent is directed to approve the appointment of the petitioner as BT Assistant (History) in the fifth respondent School from initial date of appointment with effect from 12.09.2008 with all consequential and monetary benefits, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

02.02.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Secretary to Government,
Education Department,
Chennai – 9.

2. The Director of School Education,
D.P.I.Buildings, College Road,
Chennai – 6.



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3. The Chief Educational Officer,
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G.K.ILANTHIRAIYAN. J,

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