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W.P.No.5960 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2024

CORAM:

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

W.P.No.5960 of 2022

R.Tamilarasi

... Petitioner

Vs.

1. The Commissioner of School Education,
DPI Campus, College Road,
Chennai – 600 006.
2. The Chief Educational Officer,
Chennai District,
Presidency Girls Higher
Secondary School Campus,
Egmore, Chennai – 600 008.
3. The District Educational Officer,
West Chennai Education District,
DPI Campus, College Road,
Chennai – 600 006.
4. The Diocesan Education Officer & Convener,
CSI Diocese of Madras,
The Diocesan Office,
P.B.No.4914, Chennai – 600 086.
5. The Correspondent,
CSI St. Ebba's Girls' Higher Secondary School,
109, Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to pass orders for granting approval of appointment of the petitioner in the sanctioned post of B.T. Assistant (English) in the fifth respondent School with effect from 22.10.2018 based on the proposal submitted by the fifth respondent school dated 08.07.2019, with all consequential and other attendant benefits, including the arrears of salary from the date of initial appointment on 22.10.2018, within a time frame to be fixed by this Court.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents

For R1 to R3 : Mrs.S.Mythreye Chandru
Special Government Pleader

For R4 : No appearance

For R5 : Ms.Arulmary
For M/s.Father Xavier Associates

ORDER

This writ petition has been filed for direction to direct the third respondent to approve of appointment of the petitioner in the sanctioned post of B.T. Assistant (English) in the fifth respondent School with effect from 22.10.2018.

2. The petitioner is qualified with B.A.(English) and B.Ed., and she is eligible for appointment to the post of B.T. Assistant in the school



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education department. The fifth respondent respondent school is a Christian Minority Educational Institution under the management of Church of South India – Diocese of Madras and it is an aided school governed under provisions of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and Rules 1974.

3. While being so, there was a vacancy in the fifth respondent school to the post of B.T. Assistant (English) due to the retirement of incumbent one Vimala Hentry Paulraj on 31.05.2018. In the said vacancy, the petitioner was selected and appointed in the post of B.T. Assistant (English). Thereafter, the fifth respondent forwarded a proposal to the third respondent for approval of her appointment. However it was returned by raising certain queries and for want of documents. Once again, it was represented before the third respondent and it is pending without approval. Hence, the petitioner filed the present writ petition with the above prayer.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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5. The issue involved in this writ petition has already been dealt with by this Court in several writ petitions and in W.P.No.17909 of 2023 etc., cases by an order dated 15.09.2023, this Court held as follows:

"6. It is relevant to note that while setting aside the order dated 07.01.2020 passed by the 3rd respondent rejecting the proposal seeking approval of appointment of the petitioner, this Court in W.P.No.3439 of 2020 dated 18.04.2022, in Para 10 has held as under:-

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 by the School Education Department, dated 17.09.2019 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 17.09.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.09.2019 in proper perspective and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the impugned orders passed by



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the respondent department are liable to be quashed."

7. In the earlier round of litigation, proposal was rejecting citing that G.O.Ms.No.165 dated 17.09.2019 was operating in the field. It is to be noted that this Court in its order has clearly held that G.O.Ms.No.165 dated 17.09.2019 would not be a bar to the case of the petitioner and it would not be applicable to the teachers who were appointed prior to the Government Order in G.O.Ms.No.165 dated 17.09.2019. Still the impugned order came to be passed on the ground that surplus teachers.

8. It is relevant to note that the very issue was whether G.O.Ms.No.165 dated 17.09.2019 was applicable to the petitioner case or not? This court has categorically stated that G.O.Ms.No.165 dated 17.09.2019 was only prospective in nature and approval have to be given in the cases where appointment of teachers were made prior to the said Government Order. Having non-suited the petitioner in the earlier round of litigation citing G.O.Ms.No.165, now the impugned order has been passed on a different ground. The authorities cannot take different stand at different points of time to stick on their stand so as to negate the claim of the petitioner. Be that as it may, the impugned order came to be passed not on merits but the proposal was rejected merely on the



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ground that there are surplus teachers.

9. *In the light of the above discussion and the factual matrix of the case, the impugned order is set aside and the matter is remitted back to the 3rd respondent for considering the proposal afresh and passing orders granting approval as sought by the school management, provided it satisfies all the norms prescribed for such appointment and the rules. While passing orders of the proposal, the 3rd respondent shall keep in mind the directions given by this Court in W.P.No.3439 of 2020 dated 18.04.2022. If the authority concerned wants to raise any further query or make clarification, the same may be had from the school management. The said exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order."*

6. In the light of the above judgment, the third respondent is directed to approve the appointment of the petitioner in the sanctioned post of B.T. Assistant (English) in the fifth respondent school with effect from date of her appointment i.e., on 22.10.2018, and disburse the arrears of salary from the date of her initial appointment along with other benefits, within a period of eight weeks from the date of receipt of a copy



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of this Order.

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7. With the above directions, this Writ Petition is allowed.

There shall be no order as to costs.

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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

rts

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