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W.P.No.7548 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2024

CORAM:

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

W.P.No.7548 of 2022
and W.M.P.Nos.7549, 7550 & 7551 of 2022

S. Ruby
St. Joseph Girls Higher Secondary School,
No.18, (124) Kalathiyappa Street,
Choolai, Chennai – 600 112.

...Petitioner

-Vs-

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Commissioner of School Education,
Directorate of School Education,
DPI Campus,
College Road,
Chennai – 600 006.
3. The Chief Educational Officer,
Office of the Chief Educational Officer,
Egmore, Chennai – 600 008.
4. The District Educational Officer,
The Office of the District Educational Officer,
Villivakkam, Sidco Nagar,
Chennai – 600 049



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5. The Correspondent,
St. Joseph Girls Higher Secondary School,
No.18, (124) Kalathiyappa Street,
Choolai, Chennai – 600 112.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 28.06.2021 in O.Mu.No.1156/AA1/2021, on the file of the fourth respondent and quash the same, directing the respondents 1 to 4, to accord approval to the appointment of the petitioner S.Ruby, working as B.T. Assistant (Tamil) in the fifth respondent School, St. Joseph Girls Higher Secondary School, No.18 (124), Kalathiyappa Street, Choolai, Chennai – 600 112, w.e.f. 09.07.2019, with all monetary and service benefits.

For Petitioner : Dr.Father Xavier Arul Raj,
Senior Counsel
For M/s.Father Xavier Associates

For Respondents
For R1 to R4 : Mr.S.Silambanan
Additional Advocate General
Assisted by Dr.T.Seenivasan
Special Government Pleader.

ORDER

The writ petition has been filed challenging the order dated 28.06.2021 passed by the fourth respondent, thereby rejecting the proposal sent by the fifth respondent school for approval to the appointment of the petitioner as B.T. Assistant (Tamil) in the fifth respondent school.



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2. The fifth respondent school is run by the “Franciscan Sisters of St. Joseph”. The said congregation is registered as a society under the Society Registration Act, 1860. It is a Catholic religious congregation and the said society is administering a number of educational institutions. All the educational institutions run by the society are minority educational institutions under Article 30(1) of the Constitution of India.

3. The petitioner was appointed as B.T. Assistant (Tamil) by the fifth respondent school with effect from 09.07.2019 in the vacancy arising out of promotion of one R.Arockia Mary on 08.07.2019. She was relieved from the fifth respondent school and her relieving order had been approved by the fourth respondent. As it is a higher secondary school, the vacancy can be filled only with B.T. Assistant post. It is a sanctioned post and as such the petitioner was appointed as B.T. Assistant (Tamil) in the fifth respondent school with effect from 09.07.2019.

4. Thereafter, a proposal of the appointment of the petitioner was submitted by the fifth respondent school for approval by the



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proceeding dated 18.03.2020. However, the fourth respondent returned the said proposal on 28.06.2021 by raising various quarries. That apart, in view of the stay granted by this Court to the new appointments by an order dated 09.04.2019, no appointment was approved by the third respondent. Thereafter, the fourth respondent by his communication dated 28.06.2021 rejected the proposal sent for approval to the appointment of the petitioner.

5. Heard the learned counsel appearing on either side and perused the material placed before this Court.

6. On perusal of the counter affidavit revealed that when there is surplus posts available in the cadre of B.T. Assistant (Tamil), no direct recruitment should be made. Further only teacher with TET qualification alone has to be appointed as Secondary Grade or B.T. Assistants and any exemption from TET is not applicable to them. Further, the petitioner has not possessed TET qualification.



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7. On perusal of records revealed that the fifth respondent school categorically submitted that there is no surplus teacher post in the educational agency of the fifth respondent school. Further, in pursuant to the interim order dated 09.04.2019, passed by the Division Bench of this Court in W.A.(MD).No.76 of 2018 etc., batch, the government passed order in G.O.Ms.No.165, School Education Department dated 17.09.2019, with regard to staff fixation. However, it was challenged and the said government order was suspended by the Hon'ble Division Bench of this Court by an order dated 20.09.2019 and the G.O.Ms.No.165, was declared to be inoperative and the authorities have to approve the appointment of the petitioner.

8. That apart, the Hon'ble Division Bench of the Court by an order dated 31.03.2021 in the batch of writ appeals in W.A.(MD).No.76 of 2018 etc., held that, insofar as the minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution,



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however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength.

9. Therefore, the reasons stated by the fourth respondent while rejecting the proposal sent for approval to the appointment of the petitioner cannot be sustained and it is liable to be set aside. Though the fifth respondent school has total strength of above 2000 students, the sanction strength of teachers is very less. That apart, in the fifth respondent school management, no surplus teachers are available.

10. In view of the above discussion, the impugned order dated



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28.06.2021 in O.Mu.No.1156/AA1/2021, on the file of the fourth respondent is hereby set aside and the fourth respondent is directed to approve the appointment of the petitioner in the post of B.T. Assistant (Tamil) with effect from 09.07.2019 with all monetary and service benefits, within a period of eight weeks from the date of receipt of a copy of this Order.

11. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

12.01.2024
(2/2)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

rts

To

1. The Principal Secretary,
Government of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Commissioner of School Education,
Directorate of School Education,
DPI Campus,



College Road,
Chennai – 600 006.

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