



W.P.No.6425 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.6425 of 2024

N.Robert Divine

...Petitioner

-Vs-

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

2) The Chief Educational Officer,
Thiruvannamalai,
Thiruvannamalai District-606 601.

3) The District Educational Officer,
Thiruvannamalai,
Thiruvannamalai District-606 601

4) The Correspondent,
ALC Higher Secondary School,
Saron, Thiruvannamalai District-606 601.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings issued by the 3rd respondent by proceeding



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Na.Ka.No.4141/A2/2023 dated 18.01.2024 and to quash the same and consequently directing the Respondents to approve the appointment of the petitioner in the post of B.T.Assistant (English) in the 4th respondent school, from the date of appointment on 08.02.2023, with all consequential and attendant benefits including the payment of salary from the date of appointment along with interest.

For Petitioner : Mr.S.Sarath Chandran

For Respondents 1 to 3 : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 3rd respondent thereby the proposal sent by the 4th respondent school for approval of the appointment of the petitioners, appointment to the post of B.T.Assistant (English) in the 4th respondent school.

2. The 4th respondent school is a private aided school. A vacancy to the post of B.T. Assistant (Science) arose in the 4th respondent school due to the demise of one Mrs.T.Lydial. However, the 4th respondent school is in need of B.T.Assistant (English) to take class for standard 6 to 8. Therefore,



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the 4th respondent sent letter seeking proper permission for subject conversion from B.T.Assistant (Science) to B.T.Assistant (English) on 11.01.2019 to the 2nd respondent. However, it was not replied and as such after four years, the 4th respondent once again submitted representation to the respondents 2 and 3 herein seeking permission for conversion of B.T.Assistant (Science) to B.T.Assistant (English). Thereafter, the petitioner was appointed in the post of B.T.Assistant (English) due to welfare of the students. Thereafter, the appointment of the petitioner was forwarded for approval before the 2nd and 3rd respondents dated 05.07.2023.

3. Admittedly, the 4th respondent school is religious minority school and received teaching grants under Tamilnadu Minority School Recognized Rules. However, the said request was rejected by the 3rd respondent dated 18.01.2024 on the ground that the order of the first respondent from 20.12.2018 the post conversion of B.T.Assistant (Science) to B.T.Assistant (English) has not enclosed and the vacancies to the teaching post in aided school cannot be filled up till the surplus teacher working in other schools within the Union/Education District are deployed



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to the needy post. As there was no surplus teachers working in the 4th respondent school, which remains to be single management minority school.

Further, as per order passed by the W.A.(MD).No.76 of 2019 dated 31.03.2021 held that insofar as aided minority institutions are concerned, if it is a standalone institution, they have right to appoint a teacher in a vacancy within the sanctioned strength shall not be affected, because of identification of excess teachers working in other schools, as per G.O.Ms.No.165 dated 17.09.2019 has been declared as inoperative and unenforceable. Further, the Hon'ble Division Bench of this Court issued direction for the approval of the appointment of teachers made in the sanctioned post in a standalone minority institution. That apart, insofar as the requirement of Teachers Eligibility Test is concerned it is not required in the case of minority institutions.

4. Further, the learned counsel for the petitioner relied upon the judgement of the Hon'ble Division Bench of this Court with regards to conversion of B.T.Assistant. The Hon'ble Division Bench is held as follows:

"4. The learned Single Judge, while considering the



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matter referred to the decision of the Division Bench, in W.A.No.1198 of 2007 and allowed the writ petition. The legal question involved in this matter is as to whether the Minority Institution can be compelled to follow a subject roaster without there being appropriate amendment to the relevant Rules. This issue was considered by the Division Bench and it was held in favour of the institution. It was pointed out by the learned counsels on either side that the case of the appellants / respondents itself is based on G.O.(Ms). No.144, Education (D1) Department, dated 04.07.2008. This Government Order was subject matter of challenge in R.Emerson Udaisingh vs. The State of Tamil Nadu, Rep. by its Secretary, Department of School Education and others, W.P.(MD).No. 2750 of 2012 and this Court by order, dated 22.08.2013, allowed the said writ petition and quashed the said Government Order. The operative portion of the said order, dated 22.03.2013, reads as follows:

"3. Similar issue was considered by this Court in the decision reported in 2006(5) CTC 504 The Corporate Management, CSI Corporate Schools, CSI Diocese of Kanyakumari, Nagarcoil vs. The State of Tamil Nadu, rep by its Secretary, Chennai and others and this Court quashed the Circular, dated 26.10.2004 issued, restricting the number of teachers having degrees in the same subject in a school.

4. The said decision was considered by a Division Bench of the Principal Seat in the Judgment dated 20.09.2007 made in [W.A.No.1198 of 2007](#) wherein it is held thus:

"3. In fact the legal implication of the said proceedings dated 26.10.2004, was considered by this Court in the light of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (in short T.W. Act 29 of 1974) in the Correspondent, Britannia Higher Secondary School, Chennai vs. State of Tamil Nadu, rep. by its Secretary, Department of School Education, Chennai and others



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(2007 (2) MLJ 760) and held that the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate teachers. That was also the decision taken earlier by the Madurai Bench of Madras High Court in the corporate Manager, CSI Corporate Schools Vs. State of Tamil Nadu (2006 (5) CTC 504). It was also considered in the above said cases that the executive instruction cannot supersede the statutory provision, by relying upon the decision of the Supreme Court in B.N. Nagarajan Vs. State of Karnataka (1979 II LLJ 209 (SC), which was subsequently reiterated by the Supreme Court in V.Sreenivasa Reddy Vs. Government of A.P. (AIR 1995 SC 586). Therefore, by virtue of the above said judgments, it is the categoric decision of this Court that the proceedings of the second appellant dated 26.10.2004 by imposing subject roster in making appointment is not Valid and is in violation of the provisions of the Act 29/74. In view of the same. there is absolutely no reason to interfere with the order of the learned Single Judge. Consequently, the writ appeal fails and the same is dismissed with direction to the appellants to approve the appointment of V.J. Titus Prabhakar (Mathematics) with effect from the date of his appointment with salary and other benefits within a period of four weeks from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed",

In view of the above, it is clear that the Act 29/74 of Tamilnadu Recognized Private Schools (Regulation) Act 1973 the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate Teachers.



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5. In view of the above, the 4th respondent school is directed to submit fresh proposal for approval of the appointment of the petitioner to the post of B.T.Assistant (English) and on receipt of the same, the 3rd respondent is directed to consider the proposal to be sent by the 4th respondent in view of the observations made by this Court and on merits in accordance with law within a period of eight weeks from the date of receipt of copy of this order.

6. With the above direction, this writ petition is disposed of. No costs.

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Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
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G.K.ILANTHIRAIYAN,J.
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