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W.P.No.6595 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2024

CORAM:

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

W.P.No.6595 of 2024

J.Diwan Issac

... Petitioner

Vs.

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.
 2. The District Educational Officer (elementary),
Salem, Salem District.
 3. The Block Educational Officer,
Yercaud, Salem District – 636 602.
 4. The Correspondent,
Danish Mission Elementary School,
Yercaud, Salem District – 636 601.
- Respondents

...

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Ceriorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Na.Ka.No. 006583/A4/2023 dated 02.02.2024 and quash the same and consequently directing the respondents to approve the appointment of the petitioner in the post of Secondary Grade Teacher in fourth respondent school from the date of appointment on 16.11.2016 with payment of salary and other service benefits.



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For Petitioner : Mr.S.Nedunchezhiyan
For Mr.S.Sarath Chandran

For Respondents
For R1 to R3 : Mrs.S.Mythreye Chandru
Special Government Pleader
For R4 : No appearance

ORDER

This writ petition has been filed challenging the order dated 02.02.2024, passed by the second respondent thereby rejected the proposal sent by the fourth respondent for approval of the petitioner's appointment in the post of Secondary Grade Teacher.

2. The petitioner is qualified to be appointed as Secondary Grade Teacher. While being so, there was a vacancy in the fourth respondent school in the post of Secondary Grade Teacher, due to retirement of one Sasi Kala Lilly. In the said vacancy, the petitioner had joined on 16.11.2016 and after completion of probation period, a proposal was sent to the second respondent by the fourth respondent for approval of his appointment. However, it was rejected by the second respondent by an order dated 02.02.2024, on the ground that as per the staff fixation for the year 2016-2017, the appointment of the petitioner is surplus. Hence, the petitioner filed the present writ petition with the



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above prayer.

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

4. 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



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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 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



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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 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."



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5. In the light of the above judgment, the order passed by the second respondent cannot be sustained and liable to be quashed. Accordingly, the impugned order dated 02.02.2024 passed by the second respondent in Na.Ka.No.006583/A4/2023 is hereby quashed. The second respondent is directed to approve the appointment of the petitioner in the post of Secondary Grade Teacher in the fourth respondent school with effect from date of his appointment i.e., on 16.11.2016, with all attendant benefits including arrears of salary and other allowances and disburse the same within a period of eight weeks from the date of receipt of a copy of this Order.

8. With the above directions, this Writ Petition is allowed.
There shall be no order as to costs.

26.07.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts



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