



WEB COPY



W.P.No.8155 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.8155 of 2022
and W.M.P.Nos.8148 & 8149 of 2022

The Correspondent and Headmistress
Jayarani Girls Higher Secondary School,
Nethimedu,
Salem District – 636 002.

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St. George,
Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.
3. The Chief Educational Officer,
District Collectorate Compound,
Salem District – 636 001.
4. The District Educational Officer,
District Collectorate Compound,
Salem District – 636 001.

... 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 relating to the impugned issued by the fourth respondent District



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Educational Officer in O.Mu.No.3374/a2/2020, dated 13.07.2020, quash the same and further direct the third and fourth respondents to approve forthwith the appointment of Mrs.P.Maria as B.T. Assistant (Science) in the petitioner school w.e.f., the date of her appointment on 03.06.2019, with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Ms.S.Amala Irudhaya Mary
For Respondents : Mr.S.Silambanan
For R1 to R3 : Mr.S.Silambanan
Additional Advocate General
Assisted by Dr.T.Seenivasan
Special Government Pleader.

ORDER

The writ petition has been filed challenging the orders passed by the fourth respondent, thereby rejecting the proposal sent by the petitioner school for approval to the appointment of one P.Maria as B.T. Assistant (Science) in the petitioner school.

2. The petitioner school is administered by the congregation of Immaculate Heart of Mary, Pondicherry. It is a registered society under the TN Societies Registration Act and the petitioner school is a recognized Christian minority educational institution. There are 3052 students studying in the school and 55 teaching staff and 7 non-teaching



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staffs are working in the said school. Apart from that, five official staffs are working in the petitioner school.

3. One post of B.T. Assistants (Science) in the school fell vacant on 01.06.2019, due to the retirement of previous incumbent A.Elizabeth on 31.05.2019. In the said vacancy one P.Maria was appointed as B.T. Assistant (Science) with effect from 03.06.2019. It was duly intimated to the fourth respondent on 20.05.2020 and submitted proposal for getting approval for the appointment of one P.Maria. However, the fourth respondent by the proceedings dated 13.07.2020, returned the proposal in view of the government order in G.O.Ms.No.165, dated 17.09.2019. Hence, the petitioner school filed this present writ petition with the above said prayer.

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

5. On perusal of the counter affidavit revealed that when there is surplus posts available in the cadre of B.T. Assistant, no direct



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recruitment should be made. Further only teacher with “Teachers Eligibility Test (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 said P.Maria has not possessed TET qualification.

6. On perusal of records revealed that 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.

7. 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,



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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, 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. Therefore, the reasons stated by the fourth respondent while rejecting the proposal sent for approval to the appointment of the said P.Maria, cannot be sustained and it is liable to be set aside.

8. In view of the above discussions, the impugned order dated



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13.07.2020 passed by the fourth respondent District Educational Officer in O.Mu.No.3374/a2/2020, is hereby set aside and the third and fourth respondents are directed to approve the appointment of P.Maria, in the post of B.T. Assistant (Science) with effect from 03.06.2019, with all monetary and service benefits, within a period of eight weeks from the date of receipt of a copy of this Order.

9. 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



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State of Tamil Nadu,
Department of School Education,
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