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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

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THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.15552 of 2021
and WMP.Nos.16469 and 16471 of 2021

CSI Corley Higher Secondary School,
Tambaram, Chennai – 600 059,
Rep. by its Correspondent,
A.E.Sachithanandan.

... Petitioner

Vs

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department,
Fort. St.George, Chennai – 600 009.

2.The Director of School Education,
College Road, Chennai – 600 006.

3.The Chief Educational Officer,
Kancheepuram District.

4.The District Educational Officer,
Chengalpattu, Kanchipuram District.

5.The District Educational Officer,
St.Thomas Mount, Chennai – 44.

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, calling for the entire records connected with the impugned proceedings of the 5th respondent in Na.Ka.No.2487/A2/2020, dated 05.03.2021 and quash the same and consequently direct the respondents to approve the appointment of the Mrs.Abisha Prasannakumarai as B.T.Assistant (English) in the petitioner school w.e.f 10.12.2018, with all consequential monetary benefits.

For Petitioner : Ms.S.Vinnarasi
For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

The petitioner herein is a minority school established and administered by the Church of South India, Chennai diocese. There is no dispute about the minority status of the petitioner's school. The petitioner school is also fully aided by the Government. While so, one of the sanctioned post of secondary grade teacher fell vacant consequent upon promotion of one Mrs.Grace Parimala, w.e.f 22.09.2016. There upon in terms of G.O.Ms.No.144, dated 04.07.2008, the said post is required to be filled up as B.T.Assistant of the relevant subject. In other words, the said Government Order provides for automatic upgradation of the post of B.T.Assistant on falling vacant. The said post of B.T.Assistant was filled up by the petitioner's



school by appointing of Mrs.Abisha Prasannakumari as B.T.Assistant for teaching English to 6th to 10th standard and thereafter the petitioner's school submitted a proposal on 01.04.2019 seeking approval of the said appointment to the 3rd respondent, through the 5th respondent with all necessary documents. However, on return of the said proposal, the same was again resubmitted by the petitioner by duly clarifying the legal position and thereafter, the said proposal was once again returned by the 3rd respondent by issuing the impugned proceedings bearing Na.Ka.No.2487/A2/2020, dated 05.03.2021 on the ground that the petitioner failed to obtain prior permission for filling up the post of B.T.Assistant and also on the ground that there is no posts of B.T.Assistant to appoint Ms.Abisha Prasannakumari. Aggrieved by the said proceedings, the petitioner approached this Court by filing the present writ petition.

2. On a perusal of the impugned proceedings, it is noticed that through the impugned proceedings, the proposal submitted by the petitioner was returned on the ground of failure to obtain prior permission for filling up the post of BT Assistant on upgradation of the post of secondary grade teacher in terms of G.O.Ms.No.144, dated 04.07.2008.



3. When the matter was taken up for consideration, it is brought to the notice of this Court that the very same issue as to whether the minority institution is required to obtain prior permission for filling up the post of B.T.Assistant on upgradation from the post of secondary grade teacher had fallen for consideration before the learned Single Judge of this Court in W.P.No.6340 of 2022 and batch reported in **2022 SCC online Mad 4513** and the said decision has direct application to the case on hand.

4. In view of the same, this Court carefully perused the said decision relied on by the learned counsel for the petitioner and it is convinced that the said decision squarely covered the issues involved in this writ petition. The learned Single Judge at Paragraph Nos.19 to 21 of the said order held as under:

“19. In the light of the aforesaid decisions, a minority school would be entitled to appoint a teacher by converting a sanctioned post and thus, the reasons for rejection in this regard in the present writ petitions, wherever applicable, are liable to be set aside.

***Minority school has a right to upgrade
the W.P.No.27004 of 2021 sanctioned post:***



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20. *In the case of the Chief Educational Officer, Tirunelveli Vs. S. Josephin Vijaya passed in W.A.(MD).No.1497 of 2017 dated 14.12.2017, the minority school had appointed a teacher as a B.T.Assistant in the sanctioned post of Secondary Grade Teacher. The Division Bench held that, when the Secondary Grade Teacher in a sanctioned post had retired on reaching the age of superannuation, the post automatically gets upgraded into that of a B.T.Assistant. Agreeing with the findings of the learned Single Judge, the Hon'ble Division Bench in S. Josephin Vijaya's case (supra) had held that, such conversion by upgradation, was permissible. Following the decision in S. Josephin Vijaya's case (supra), I had passed orders in the case of A. Franklin Raj Vs The Chief Educational Officer, Tirunelveli in W.P.(MD).No.10963 of 2020, dated 29.06.2022, by holding as follows:-*

“4. In so far as reference to G.O.Ms.No.144, School Education Department, dated 04.07.2008 is concerned, the Division Bench of this Court in the case of the Chief Educational Officer, Tirunelveli Vs S. Josephin Vijaya passed in W.A.(MD.No.1497 of 2017 6/10 W.P.No.27004 of 2021 dated 14.12.2017 has held that when a secondary grade teacher retires on superannuation, the post of secondary grade teacher



“automatically” stands upgraded into that of a Graduate Teacher as per G.O.Ms.No.79, Secondary Education (U-1) Department, dated 14.06.2002.

5. In view of such automatic upgradation, the authorities cannot insist for prior permission of their approval for upgradation of the sanctioned post. As a matter of fact, such a claim for permission would only be a futile exercise. Thus, both the reasons cited by the first respondent for rejection of the proposal, cannot be sustained” .

21.Thus, a minority school would have a right to upgrade the sanctioned post and hence, the reasons assigned in these writ petitions, wherever applicable, cannot be sustained”.

The said decision of the learned Single Judge was followed by this Court in W.P.No.27004 of 2021, dated 23.04.2024.

5. In the light of the above said decision, the minority school is having a right to upgrade a sanctioned post of secondary grade teacher BT Assistant and the authorities are not entitled to insist for prior permission or



approval for upgradation of the sanctioned post.

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6. In the light of the above, one of the ground for passing the impugned order viz., not obtaining prior permission for upgradation of the post of BT Assistant cannot be sustained. Yet another ground of non availability of the post of BT Assistant is concerned, this Court does not find any merit in the said ground for the simple reason that there is no dispute that the post of secondary grade teacher falling vacant get upgraded automatically in terms of the Government Order G.O.Ms.No.144, dated 04.07.2008. Therefore, the second ground on which impugned order came to be passed is also totally sustainable. In the light of the above, the impugned order is liable to be set aside and the same is accordingly.

7. The petitioner is granted liberty to submit the proposals afresh seeking approval of appointment of BT Assistant namely Ms.Abisha Prasannakumari in the petitioner's school by duly submitting all the relevant documents and in case such proposal is submitted by the petitioner, the same shall be considered by the respondents in accordance with law and appropriate



orders shall be passed thereon in accordance with law within a period of six weeks from the date of submission of such proposals by the petitioner.

8. Accordingly, this writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.06.2024

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation Case : Yes/No
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To

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