



W.P.No.18549 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.18549 of 2022

and

W.M.P.Nos.17892 & 17894 of 2022

The Headmistress & Correspondent
St.Gabriel Aided Girls Primary School
A.N.Mangalam
Karipatti
Ayothiyapattinam Union
Salem – 636 106.

...Petitioner

-Vs-

- 1.The State of Tamil Nadu
rep. by its Secretary
Department of School Educational
Fort St.George, Chennai – 600 009.
- 2.The Director of Elementary Educational
College Road, Chennai – 600 009.
- 3.The District Educational Officer
Office of the DEO
Room No.306
Salem Urban
Salem Collectorate
Salem District – 636 001.



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4. Block Educational Officer

Office of the BEO

Ayothiyapattinam

Salem – 636 103.

...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 impugned order issued by the 3rd respondent District Educational Officer in Na.Ka.No.713/A2/2021 dated 07.06.2022, quash the same and further direct the 3rd respondent District Educational Officer to approve forthwith the appointment of Tmt.Jancy as a secondary grade teacher in the petitioner school, w.e.f. the date of her appointment on 08.06.2017 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Ms.S.Amala Irudhaya Mary

For Respondents : Dr.T.Seenivasan
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 3rd respondent dated 07.06.2022 thereby rejected the request made by the petitioner for approval of the appointment of Tmt.Jancy as Secondary Grade Teacher with effect from the date of her appointment on 08.06.2017.



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2. The petitioner school is a Government aided school. In the said school, there are totally 6 teachers viz., one Headmistress and 5 Secondary Grade teachers are working in the school. One post of Secondary Grade Teacher in the said school fell vacant on 08.06.2017 due to the transfer vacancy of G.Jeya Chithra. In the said place, one, Jancy was appointed on 08.06.2017. Immediately after her appointment, the petitioner had sent a proposal for the approval to the 3rd respondent. However, it was returned by its communication dated 08.08.2017. Once again, it was resubmitted on 10.01.2018. However, the 3rd respondent once again returned the same for want of some queries. With additional clarification and information, the 3rd respondent submitted the proposal by its communication dated 22.05.2018 for approval. However, it was not considered and once again, the 3rd respondent returned the proposals. Therefore, the petitioner was constrained to file the writ petition before this court in W.P.No.5429 of 2021, seeking direction to consider the proposal dated 01.02.2021 for approving the appointment of Tmt.Jancy as a Secondary Grade Teacher with effect from 08.06.2017. This Court by its order dated 08.03.2021, directed the 3rd respondent to consider the proposal sent by the petitioner. The 3rd



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respondent by its proceedings dated 29.05.2021 rejected the proposal sent by the petitioner. Therefore, it was challenged before this Court in W.P.No.18604 of 2021 and it was set aside and remitted back to 3rd respondent for fresh consideration. However, once again it was rejected on the ground that the two other schools under the same management in the District of Kanyakumari have surplus teachers.

3. The learned counsel for the petitioner submitted that there is no justification to deny the approval of the appointment as sought for by the petitioner school, since the appointment of Tmt.Jancy was appointed in a sanctioned vacancy. With regard to the surplus teacher in the aided private school, Government passed an order in G.O.Ms.No.165 dated 17.09.2019, thereby fresh appointments, approval of any teaching staff in the aided schools until the issue of surplus teachers get resolved. The same was challenged in the W.A.(MD).No.76 of 2019 and the Hon'ble Madurai Bench of this Court passed an order dated 31.03.2021 stating that G.O.Ms.No.165 can very well be declared to be inoperative. Therefore, the legal position is very clear that surplus in the management will no way hinder the



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appointment, approval of a teacher when the concerned school has no surplus teacher in its roll.

4. The learned counsel for the respondent submitted that on the strength of the Government order passed in G.O.Ms.No.165 dated 17.09.2019, the Hon'ble Division Bench of Madurai Bench in W.A.(MD).No.76 of 2019 issued guidelines. Accordingly, after making redeployment process, still excess staff are available, the Education Department shall take further effort, and those excess teachers still available at the hands of the Education Department to be redeployed to a needy school beyond the corporate management concerned, i.e., to any school located in the same Educational District or Revenue District and even beyond which if still excess staff are available, they can be redeployed to any school beyond the Revenue District of course getting the choice of such teacher concerned and that shall be completed by 10th October. He further submitted that the petitioner school is a corporate minority school under infant Jesus Province, Madurai. From the proceedings of the 3rd respondent in Na.Ka.no.713/B2/2021 dated 29.05.2021, revealed that there are 14



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surplus posts with teachers in the following schools under the same corporate management of Infant Jesus Province, Madurai :

- 1. Little Flower Primary School, Carmel Nagar, Ramanputhur, Nagarcoil - 12 surplus posts with teachers.*
- 2. St. Michael Primary School, Vedanagar, Edalakudy, Nagarcoil- 2 surplus posts with teachers.*

Therefore, the 3rd respondent rightly rejected the approval of appointment of Tmt.Jancy as Secondary Grade Teacher. In similar circumstances, this Court set aside the rejection of approval on the ground that there are surplus teaching staffs under the same management.

5. On perusal of the G.O.Ms.No.165 dated 17.09.2019 it is perspective in nature and as such those who were prior to the said Government order is not applicable. That apart, the same was declared by the Hon'ble Division Bench of this Court at Madurai Bench of this Court would inoperative. This Court held in W.P.No.17909 of 2023 etc., cases order dated 15.09.2023 as follows:



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"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 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



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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 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



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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."

6. In the case on hand the petitioner had appointed Tmt.Jancy as Secondary Grade Teacher with effect from 08.06.2017 in the sanctioned vacancy in the place of transfer of Sr.G.Jeya Chithra. Therefore, Tmt.Jancy appointed prior to the G.O.Ms.No.165 dated 17.09.2019 and the same would not be a bar to the petitioner to appoint Tmt.Jancy. Since the said G.O.Ms.No.165 is only perspective in nature and as such the 3rd respondent have rejected the approval on the ground that two other schools under the same management in the District of Kanyakumari have surplus teachers.

7. In the light of the above, the order passed by the 3rd respondent dated 07.06.2022 is liable to be quashed. Therefore, the order passed by the 3rd respondent in Na.Ka.No.713/A2/2021 dated 07.06.2022 is quashed.



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The 3rd respondent is directed to approve the proposal sent by the petitioner for the appointment of Tmt.Jancy as Secondary Grade Teacher in the petitioner school with effect from date of her appointment i.e., on 08.06.2017 forthwith with all attendant benefits including arrears of salary and allowances. Hence, this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

08.01.2024

Index : Yes/No
Internet: Yes/No
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