



W.P.No.17624 of 2022 etc., cases

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.17624 of 2022 and 23395, 25187 & 25662 of 2023

W.M.P.No.16895 of 2022 & 24608, 25076 of 2023

W.P.No.17624 of 2022

D.Rupan Arputharaj

...Petitioner

-Vs-

1. The Director of School Education,
D.P.I.Buidings, College Road,
Chennai.6
2. The Chief Educational Officer,
Tiruvannamalai District,
Tiruvannamalai.
3. The District Educational Officer,
Tiruvannamalai District,
Tiruvannamalai.
4. The Correspondent,
Danish Mission Higher Secondary School,
Thiruvnnamalai-606 601.

...Respondents



W.P.No.17624 of 2022 etc., cases

Prayer in W.P.No.17624 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the 3rd respondent in Na.Ka.No.7755/E1/2021, dated 09.11.2011 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as B.T.Assistant (Science) with effect from 10.02.2016, in the 4th respondent school with all consequential and monetary benefits.

W.P.No.25187 of 2023

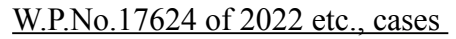
J.Prema Anitha

...Petitioner

-Vs-

1. The Director of Elementary Education,
College Road, Chennai-6.
2. The District Educational Officer,
Virdhachalam,
Cuddalore District.
3. The Block Educational Officer,
Nallur, Cuddalore District.
4. The Correspondent,
Danish Mission Elementary School,
Pe.Ponnerai, Pennadam,
Cuddalore District.

...Respondents



W.P.No.23395 of 2023

...Petitioner

1. The Director of Elementary Education,
College Road, Chennai-6.
2. The Chief Education Officer,
Thirupattur District.
3. The District Educational Officer,
Vaniyambadi, Thirupattur District.
4. The Secretary & Correspondent,
Islamiah Boys Higher Secondary School,
Vaniyambadi,
Thirupattur District.

...Respondents



W.P.No.17624 of 2022 etc., cases

Prayer in W.P.No.23395 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.2341/Aa2/2023, dated 26.06.2023 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as B.T.Assistant (Science) in the 4th respondent school with effect from 10.06.2019 with all consequential and monetary benefits.

W.P.No.25662 of 2023

D.Christy

...Petitioner

-Vs-

1. The Director of Elementary Education,
College Road, Chennai-6.
2. The Chief Educational Officer,
Virudhachalam.
3. The Block Educational Officer,
Block Educational Office, Virudachalam.
4. The Correspondent,
Danish Mission Elementary School,
Pudhukuppam, Virudachalam.

...Respondents



W.P.No.17624 of 2022 etc., cases

Prayer in W.P.No.25662 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.2178/Aa4/2023, dated 08.08.2023 and quash the same and consequently direct the 2nd respondent to approve the appointment of the petitioner as Secondary Grade Teacher in the 4th respondent, with effect from 09.02.2018 with all consequential and monetary benefits.

(In all W.P.s')

For petitioners : Mr.S.N.Ravichandran

For respondents : Mr.K.H.Ravikumar
Government Advocate

COMMON ORDER

These writ petitions have been filed challenging the order passed by the respondents dated 09.11.2021, 08.08.2023, 26.06.2023 and 08.08.2023 respectively thereby rejecting the proposal sent for approval of the appointment of the petitioners with effect from 10.02.2016, 21.01.2019, 10.06.2019 & 09.02.2018 respectively.



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2. The 4th respondent's schools are aided religious minority institution, around 1600 students are studying from VI to XII Standards with 54 Teaching Staffs and 12 Non-Teaching staffs. While being so, vacancy arose for the post of B.T.Assistant (Science) due to promotion of earlier incumbent as P.G.Assistant (Botany). It is a sanctioned post and the petitioners were selected and appointed as B.T. Assistant (Science) and Secondary Grade Teacher by 4th respondent school. Accordingly, they had joined in the said posts on 01.02.2016, 09.02.2018, 21.01.2019 and 10.06.2019 respectively. The appointment of the petitioners were sent for approval before the respondents. The respondents rejected the proposal sent by the 4th respondent's schools by an order dated 26.10.2018, 26.06.2023, 08.12.2019 and 27.12.2021. The proposal for the appointment of D.Rupan Arputharaj as B.T.Assistant (Science) was rejected on the ground that four B.T.Assistant teacher posts are found surplus in the school for the academic year 2017-18. The proposal for the appointment of K.Shafeequr Rahman as B.T.Assistant (Science) was rejected on the ground that as per the fixation of the staff strength determined on 01.08.2022 (during the subsequent Academic year) the post to which the petitioner was appointed was declared



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as surplus. The proposal for the appointment of J.Prema Anitha as Secondary Grade Teacher was rejected on the ground that the school is entitled to only three posts as per student strength and there was no vacancy for Secondary Grade Teacher Post during Academic Year 2018-19. The proposal for the appointment of D.Christy as Secondary Grade Teacher was rejected on the ground that on the date of her appointment in the school on 09.02.2018, 3 Secondary Grade Teachers who working in the School were found surplus and the Management did not furnish the details regarding the existence of surplus staffs in the 'Arcot Lutheran Church' Corporate Body. Though the teaching posts are sanctioned to the said school, the same cannot be continued to be a sanctioned post after enactment of RTE Act, 2009 and the vacancy caused due to transfer of earlier teacher to another school, cannot be treated as vacant. Therefore, their appointments were not approved.



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3. Therefore, petitioner in W.P.No.17624 of 2022 challenged the order in W.P.No.21164 of 2019. While pending the said writ petition, the 4th respondent once again resubmitted the proposal for approval of the appointment of the petitioner. Therefore, this court by an order dated 22.07.2021, directed the 3rd respondent to consider the proposal submitted by the fourth respondent without reference to the earlier impugned rejection order dated 26.10.2018 and pass appropriate orders in accordance with law within a period of 12 weeks. Once again the 2nd respondent rejected the approval of the appointment of the petitioner by an order dated 09.11.2021 on the ground that exists surplus teaching posts in the School and that as per the Letter of the Government in Letter No.32601/EE2(1)/2019 dated 04.12.2019 and also as per the order of the Hon'ble Division Bench of this Court in W.A.No.76 of 2016 dated 31.03.2021, approval cannot be granted to new appointments.

4. The learned counsel for the petitioners would submit that the petitioners were appointed even before issuance of G.O.Ms.No.165, School Education Department dated 17.09.2019. Therefore, the appointment of the petitioner cannot be rejected on quoting existence of surplus staffs.



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5. The 2nd respondent in W.P.No.17624 of 2022 filed counter and stated that the petitioner therein was appointed in the vacant post created due to the promotion of S.Amudha. But the 3rd respondent approved the promotion of the said S.Amudha as early as on 19.11.2015. As per the staff fixation report for the academic year 2015-16, there were 7 surplus posts of B.T.Assistant with teachers and further five B.T.Assistant teachers were working who were eligible for grant in aid as per the staff fixation report. Without following the same, the 4th respondent appointed the petitioner as B.T.Assistant (Science). As per staff fixation report for the academic year 2015-2016, there was more than sufficient B.T. Assistants working in the 4th respondent school. But the 4th respondent without considering the staff fixation report, appointed the petitioner. On perusal of the staff fixation report for the academic year 2015-16, the petitioner's school was having strength of 12 Secondary Grade Teachers, which includes 11 B.T. Assistants and one Secondary Grade Teacher. That apart, the petitioner was appointed due to promotion of earlier incumbent Mrs.Amudha as P.G.Assistant (Botany) in which the petitioner was appointed as B.T.Assistant (Science). In fact, the promotion of the said Mrs.Amudha as P.G.Assistant (Botany)



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was approved by the 2nd respondent dated 19.11.2015. However, the appointment of the petitioner on 10.02.2016 was rejected for the reason of "no vacancy". The petitioner's appointment is made in the sanctioned vacancies and the proposal for approval of their appointment was submitted by the 4th respondent before 17.09.2019. Therefore, the G.O.Ms.No.165, School Education Department dated 17.09.2019 is not applicable in the case on hand. Further, the Hon'ble Division Bench of this Court rightly held that the approval cannot be rejected on the ground that if there is fall in strength and the post becomes surplus, after granting approval of the post, the said teacher along with the post could be transferred/deployed to the needy school. Further more, in the Right to Education Act, 2009 until the age of 14 years is a fundamental right guaranteed under Article 21A of Constitution of India.

6. The 2nd respondent in W.P.No.23395 of 2023 filed counter and stated that grant will be eligible if the management of the school follows the rules, Government Orders and notifications issued by the Government from time to time. The management of the school has not followed the rules,



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Government Orders and notifications issued by the Government. Hence, the appointment of the petitioner could not be approved. It is also stated that if a vacancy arises due to retirement, death etc., if the post is found to be eligible for filling up, all the available surplus teachers in the management of the school (corporate body) or other aided minority and non-minority schools may be deployed to the school concerned. No teacher should be appointed in the vacant places.

7. The 2nd respondent in W.P.No.25187 of 2023 filed counter and stated that the petitioner has no locus standi to make such a claim and justify her own appointment, since the appointment was made only by the 4th respondent as an irregular one. The 4th respondent has to abide by the rules and regulations of the Tamilnadu Private Schools Act 1973 and rules 1974 and now amended as TNPSR Act 2018 and rules 2023, but the 4th respondent is behind back of the writ petitioner and also could not justify the appointment of the petitioner. In fact, the petitioner herein has filed various writ petitions in W.P.No.28275 of 2019, W.P.No.1251 of 2020 and W.P.No.727 of 2023, even though there are violations of rules and



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regulations in the matter of appointment of the petitioner. This had resulted heavy work load, besides travel, expenditure etc., for a particular individual and this attitude of the petitioner amount of abuse of judicial process.

8. The 2nd respondent in W.P.No.25662 of 2023 filed counter and stated that admittedly there are three surplus teachers already working in the 4th respondent school and hence fresh appointment of the petitioner is illegal and against the statutory provisions of Right of Children to Free and Compulsory Education Act 2009. Moreover, the appointment made in the vacancy caused due to transfer of a Teacher from 4th respondent school to another school within the same management cannot be considered as a permanent vacancy. Hence, the appointment of the petitioner as Secondary Grade Teacher in 4th respondent school cannot be approved.

9. In view of the above, the impugned orders passed by the respondents are liable to be quashed. Accordingly, the impugned orders passed by the respondents dated 09.11.2021, 08.08.2023, 26.06.2023 and 08.08.2023 are quashed. The respondents are directed to approve the



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appointment of the petitioners as B.T.Assistant and Secondary Grade Teacher with effect from 10.02.2016, 21.01.2019, 10.06.2019 & 09.02.2018 respectively in the 4th respondent's schools with all consequential monetary benefits within a period of four weeks from the date of receipt of copy of this order.

10. With the above direction, these writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. No costs.

02.02.2024

Index : Yes/No
Internet: Yes/No
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G.K.ILANTHIRAIYAN,J.
gvn

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