



WA No.76 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WA No.76 of 2021

1.The State of Tamil Nadu
Represented by its Secretary,
Education Department,
Fort St.George,
Chennai 600 009.

2.The Director of Elementary Education,
DPI Campus, Chennai 600 006.

3.The District Educational Officer,
Kilpennathur, Thiruvannamalai.

4.Block Educational Officer,
Kilpennathur,
Thiruvannamalai.

... Appellants

versus

1.Y.Praveena



WA No.76 of 2021

2. The Central Manager/Education Board,
Arcot Luthern Church,
Danish Mission Elementary and Higher
Elementary Schools,
ALC Central Office,
9 ALC Campus, Cuddalore.

... Respondents

PRAYER: Writ Appeal filed against the order in WP No.2082 of 2020 dated 29.01.2020 of the learned Single Judge.

For the Appellants : Mr. U.M. Ravichandran
Special Government Pleader

For the Respondents : Mrs. Dakshayani Reddy
Senior Counsel
for Ms. S. Suneetha
for first respondent

JUDGMENT

(Judgment of the Court was delivered by *D. KRISHNAKUMAR, J.*)

The writ appeal is filed against the order in WP No.2082 of 2020 dated 29.01.2020 of the learned Single Judge.

2. Brief facts of the case:

2.1. In the second respondent school, due to the retirement of one Mrs. J. Gunaselvi, vacancy arose for the post of Secondary Grade



WA No.76 of 2021

Teacher. In the said vacancy, the first respondent herein was appointed on 13.12.2018. Thereafter, on 10.01.2019, a proposal was sent by the second respondent School to the third appellant, seeking approval for the appointment of the first respondent. The third appellant, vide proceedings in RC No.2144/A3/2019 dated 16.05.2019 had returned the said proposal by stating as follows:

"It is kindly informed that the approval cannot be accorded as there are teachers working in the surplus posts under the same management with reference to the students teachers ratio fixed as on 01.08.2018"

2.2. Aggrieved by the said order, the first respondent filed the writ petition in WP No.2082 of 2020. The Writ Court, by order dated 29.01.2020, has allowed the writ petition with the following observation:

"6. The petitioner has taken a very specific stand that the surplus teachers available in other schools cannot be a reason for rejecting the approval of the petitioner in the School, in which she has been engaged as a Secondary Grade Teacher. The reason given by the District Education Officer, lacks particulars and he has made a general statement as if there are surplus teachers available in the other schools, which come within the same management."



WA No.76 of 2021

7. In view of the above, the impugned proceedings of the 3rd respondent in Na.Ka.No.2411/R3/2019 dated 16.05.2019, is hereby quashed. The petitioner is directed to resubmit the proposal to the third respondent through the 5th respondent school and on receipt of the proposal, if the petitioner is otherwise qualified for being appointed as Secondary Grade Teacher. This process shall be complete within a period of four weeks from the date of receipt of a copy of this order."

2.3. Challenging the order passed by the writ court, the appellant Department has preferred the present intra court appeal.

3. Learned Special Government Pleader by relying upon the Government Order in G.O.Ms No.165, School Education Department dated 17.09.2019, has stated that the proposal of the second respondent cannot be accepted for appointment of the first respondent. He further submits that in the said Government Order, it is stated that the Government shall not approve any appointment made by the private aided schools, till the surplus teachers in the schools coming under the same Management are exhausted. Hence, he seeks for allowing the writ appeal.



WA No.76 of 2021

4. Learned Senior Counsel appearing for the first respondent submits that the aforesaid proposal has been submitted by the second respondent school to the third appellant on 10.01.2019, that is prior to the Government Order in G.O.Ms No.165, School Education Department dated 17.09.2019 and the rejection order was passed by the third appellant on 16.05.2019. She further submits that this court in several writ petitions has already passed orders on the same issue and held that in those cases where the proposal is submitted prior to G.O.Ms.165 dated 17.09.2019, the Department cannot rely upon the Government Order and reject the proposal by stating that the school is having surplus teachers. The ground raised in the appeal is also only on the basis of the aforesaid Government Order in G.O.Ms.165 dated 17.09.2019. Therefore, she seeks for dismissal of the writ appeal.

5. It is seen that the learned Special Government Pleader is not in a position to place all the relevant materials before this Court to establish that the second respondent school is having surplus teachers, on the other hand he is simply relying on the Government Order in G.O.Ms No.165, School Education Department dated 17.09.2019. Since the Learned Special



WA No.76 of 2021

Government Pleader has also not placed any other factual materials to explain before this Court that the said school is having surplus teachers, we are inclined to pass orders as follows, pursuant to the order passed by the learned Single Judge:

i) The third appellant is directed to consider the proposal dated 10.01.2019 submitted by the second respondent school afresh as per the prevailing Government Orders for considering the approval for appointment of the first respondent as Secondary Grade Teacher in the second respondent school.

ii) Further, the third-appellant shall decide the issue in accordance with law and without taking into consideration the Government Order in G.O.Ms No.165, School Education Department dated 17.09.2019 while considering the aforesaid proposal submitted by the second respondent school.

iii) We make it clear that such decision shall be taken by the third appellant, within a period of twelve weeks from the date of receipt of a copy of this judgment.



WA No.76 of 2021

6. With the above directions, the writ appeal is disposed of. There shall be no order as to costs. Consequently, 627 of 2021 is closed.

[D.K.K., J.] [K.B., J.]
18.04.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn



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WA No.76 of 2021

D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

(mrn)

WA No.76 of 2021

18.04.2024