



W.P.No.18895 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.18895 of 2022 and
W.M.P.Nos.18250 & 18251 of 2022

A.Dhayabary

...Petitioner

-Vs-

1. The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai-600 006.
2. The Chief Educational officer,
Thiruvarur District,
Thiruvarur.
3. The District Educational Officer,
Mannarkudi Education District,
Thiruvarur District.
4. The Correspondent,
St., John De Britto High School,
Pallankoil,
Thiruvarur District.

..Respondents



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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 Proceedings issued by the 3rd respondent in O.Mu.No.6929/A3/2020 dated 28.04.2022 and to quash the same and consequently directing the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (Tamil) in the 4th respondent school with effect from 23.10.2018 with all consequential and other attendant benefits including arrears of salary, within a time frame to be fixed by this Hon'ble Court.

For Petitioner	: Mr.G.Sankaran Senior Counsel for Mr.S.Nedunchezhiyan
For Respondents 1 to 3	: Mrs.S.Mythreye Chandru Special Government Pleader
For Respondents 4	: Mrs.A.Arul Mary for M/s.Father Xavier Associates

ORDER

This Writ Petition is filed challenging the order passed by the third respondent dated 28.04.2022 thereby rejected the proposal sent by the 4th respondent for the approval of the petitioner's appointment to the post B.T.Assistant with effect from 23.10.2018.



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2. The 4th respondent school is a religious minority institution and

it is a aided school, assessed with teaching grant by Government of Tamilnadu and governed by the provisions of Tamilnadu Recognized Private Schools (Regulation) Act, 1973 and the Rules made thereunder. There was a vacancy to the post of B.T.Assistant (Tamil) arose in the 4th respondent school due to demise of Mr.S.Arulrajan on 30.06.2018. In the said vacancy, the petitioner was appointed as B.T.Assistant (Tamil) and the 4th respondent had sent proposal for approval of her appointment as B.T.Assistant (Tamil). Further, the post of B.T.Assistant (Tamil) is a sanctioned post as per the staff fixation order passed by the 3rd respondent by its communication dated 18.03.2019. It was rejected by citing G.O.Ms.No.165, School Education Department dated 17.09.2019 and in view of the order passed in W.P.(MD).No.76 of 2019 etc., dated 31.03.2021 and further stated that no teacher can be appointed, till the surplus teachers working in other schools in the same District are deployed to needy schools.

On perusal of the G.O.Ms.No.165 dated 17.09.2019 it is prospective 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



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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:

"6. It is relevant to note that while setting aside the order dated 07.11.2020 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."

3. The Hon'ble Division Bench of this Court in W.A.(MD).No.76 of 2019 dated 31.03.2021 passed interim order followed by the Government order in G.O.Ms.No.165 dated 17.09.2019 no teacher can be appointed till the surplus teacher working in other schools deployed to needy schools. However, in the final order passed in W.A.(MD).No.76 of 2019 dated



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31.03.2021 Division Bench of this Court directed to Government to frame rules with regard to the procedure for deployment of surplus teachers and pending framing of rules, compendium guidelines was issued to be implemented with effect from the academic year 2021-2022. Further, declared that the G.O.Ms.No.165 dated 17.09.2019 as inoperative and unenforceable.

4. In view of the above, the order passed by the 3rd respondent dated 28.04.2022 is liable to be quashed. Accordingly, the order passed by the 3rd respondent dated 28.04.2022 is quashed. Further, the 3rd respondent is directed to pass orders to approve the appointment of the petitioner to the post of B.T.Assistant (Tamil) in the 4th respondent school with effect from 23.10.2018 with all consequential and other attendant benefits within a period of eight weeks from the date of receipt of copy of this order.



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5. With the above direction, this writ petition is allowed.

Consequently, connected miscellaneous petitions are closed. No costs.

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Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
gyn

To

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2. The Chief Educational officer,
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G.K.ILANTHIRAIYAN,J.
gvn

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