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W.P.No.19895 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE VIVEK KUMAR SINGH

W.P.No.19895 of 2021
and W.M.P.No.21142 of 2021

V.Beulah Diamond

...Petitioner

-Vs-

1.The Chief Educational Officer,
Thiruvannamalai District.

2.The District Educational Officer,
Thiruvannamalai District.

3.The Block Educational Officer II,
Kilpennathur Block,
Thiruvannamalai District.

4.The Central Manager/ Education Board,
Arcot Lutheran Church,
D.M.Elementary & Higher Elementary Schools,
D.M.Lebanon Bungalow,
1, Vettavalam Road,
Thiruvannamalai 606 601.

5.The Correspondent,
Danish Mission Elementary School,
Somasipadi 606 601,
Kilpennathur Range,
Thiruvannamalai District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the third respondent in Na.Ka.No.101/A1/2021 dated 08.02.2021 and to quash the same and consequently, direct the respondent to approve the appointment of the petitioner in the sanctioned post of Secondary Grade Teacher in the 5th respondent School from the date of appointment dated 01.02.2021 with all consequential and other attendant benefits, including the arrears of salary, within a time frame as fixed by this Court.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : M/s.P.Rajarajeswari, GA for R1 to R3

ORDER

This writ petition is filed for quashment of the impugned order issued by the third respondent in Na.Ka.No.101/A1/2021 dated 08.02.2021 and onsequently, to direct the respondent to approve the appointment of the petitioner in the sanctioned post of Secondary Grade Teacher in the 5th respondent School from the date of appointment i.e., on 01.02.2021, with all consequential and other attendant benefits, including the arrears of salary, within a time frame as fixed by this Court.



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2. Considering the limited issue involved in this writ petition and also the fact that it is covered by the earlier judgment of the Hon'ble Division Bench of this Court in W.A.(MD)No.76 etc., of 2019, dated 31.03.2021, the main writ petition itself is taken up for final hearing.

3. The case of the petitioner is that one post of Secondary Grade Teacher fell vacant due to transfer and promotion of the incumbent, one V.Emily Arunothoyam, on 03.11.2020 to the post of Headmistress. Thereafter, the petitioner was selected and appointed in the said vacant post. The 5th respondent has forwarded proposal to the 2nd respondent through 3rd respondent seeking for approval of the appointment of the petitioner in the post of Secondary Grade Teacher with effect from 01.02.2021. The 3rd respondent instead of forwarding the said proposal to the 2nd respondent, passed the impugned order returning the proposal by stating that there are surplus teachers working in other schools and therefore, the approval of the appointment of the petitioner in the said post cannot be granted. That apart, the 3rd respondent has also placed reliance upon G.O.Ms.No.165, dated 17.09.2019. Aggrieved by the same, the present petition has been filed before this Court.



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4. Heard the learned counsel on both sides and perused the materials available on record.

5. It is seen from the records that the transfer and promotion of the previous incumbent has already been approved on 03.11.2020. In view of the same, the post has fallen vacant. Insofar as the approval for the fresh appointment is concerned, the same cannot be denied by the respondents while placing reliance upon G.O.Ms.No.165, dated 17.09.2019.

6. This Court had an occasion to deal with the very similar issue in W.P.No.2115 of 2013 and the following order was passed by this Court.

8.It is not necessary for this Court to go into the merits of the case, since the entire issue is focused on the applicability of G.O.Ms.No.165, dated 17.09.2019. The Division Bench of this Court in W.A.(MD) Nos.76 etc., of 2019 has considered the issue in detail and final orders have been passed on 31.03.2021. A series of directions have been issued by the Division Bench. The Division Bench has declared that the G.O.Ms.No.165, dated 17.09.2019 is declared to be inoperative. In view of the same, the very basis on which the impugned order has been passed by the 4th respondent on 27.09.2022, becomes unsustainable.



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9. In the light of the above discussion, the impugned proceedings of the 4th respondent dated 27.09.2022, is hereby quashed. There shall be a direction to the 4th respondent to consider the request made by the petitioner School for approving the appointment of the B.T. Assistant. If any Special Leave Petition is pending in this regard, such approval can be granted subject to the result of the Special Leave Petitions before the Apex Court. This exercise shall be completed by the 4th respondent, within a period of four weeks from the date of receipt of copy of this order.

7. This writ petition can also be disposed of in the above terms. Hence, the impugned proceedings of the 3rd respondent dated 08.02.2021, is hereby quashed. There shall be a direction to the petitioner to make a fresh representation to the 2nd respondent through 3rd respondent along with all the relevant documents and also a copy of this order. The 2nd respondent is directed to grant approval for the appointment and it can be made subject to the result of the Special Leave Petitions, pending before the Hon'ble Apex Court. This process shall be completed by the 2nd respondent, within a period of two months from the date of receipt of the fresh representation from the petitioner.

8. In the result, this writ petition stands allowed with the above directions.



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No Costs. Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index : Yes/No

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To

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Thiruvannamalai District.
- 2.The District Educational Officer,
Thiruvannamalai District.
- 3.The Block Educational Officer II,
Kilpennathur Block,
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VIVEK KUMAR SINGH. J.

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