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W.P.No.20868 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.20868 of 2021 and
W.M.P.No.22135 of 2021

S.Jesudoss

... Petitioner

Vs.

1.The Director of School Education,
DPI Buildings, College Road,
Chennai - 6.

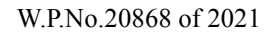
2.The Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.

3.The District Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.

4.The Correspondent,
Danish Mission Higher Secondary School,
Tiruvannamalai - 606 601.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent herein in proceedings vide O.Mu.No.772/A2/2021 dated 31.03.2021 and quash the same and consequently, direct the respondents 1 to 3 herein to re-



For Respondents : Mr.P.Gurunathan, AGP

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent herein in proceedings vide O.Mu.No.772/A2/2021 dated 31.03.2021 and quash the same and consequently, direct the respondents 1 to 3 herein to re-consider the proposal sent by the fourth respondent herein dated 05.02.2021 thereby approving the appointment of the petitioner as B.T.Assistant (Tamil) with effect from 03.01.2019 in the fourth respondent School with all consequential and monetary benefits.

2. Heard Ms.H.Lucia Priyadarshini, learned counsel for the petitioner and Mr.P.Gurunathan, learned Additional Government Pleader for the respondents.



W.P.No.20868 of 2021

3. The petitioner was appointed as BT Assistant (Tamil) in the place of one Mr. Joseph Rathnakumar, BT Assistant (Tamil), owing to his retirement. At the time of appointment with the fourth respondent school, the fourth respondent made it clear that the petitioner will get salary only from the Government provided the District Educational Officer and the Chief Educational Officer sanctioned the same. The appointment letter dated 03.01.2019 makes it very clear that the petitioner cannot claim any salary from the Management until his appointment is approved. The impugned order dated 31.03.2021 has been passed rejecting the application for approving the appointment of the petitioner on the ground that the post of B.T.Assistant (Tamil) was surplus. Challenging the same, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the fourth respondent is a minority educational institution; in the impugned order there is no reference about the Government Order under which approval has been rejected; in the impugned order it is stated that the order of appointment has been communicated to the third respondent in a belated



W.P.No.20868 of 2021

manner; reference has been made in the counter filed by the third respondent about the G.O.Ms.No.525, School Education Department, dated 29.12.1997. The learned counsel for the petitioner further submitted that G.O.Ms.No.525 dated 29.12.1997 is not applicable to the petitioner.

5. Attention of this Court was drawn to judgment of this Court made in W.A.(MD) No.76 of 2019 etc., batch dated 31.03.2021, wherein it is held as under:

“ 19. In this context, it is now the stand of the State Government that though G.O.Ms.No.525 was issued and an interpretative judgment has been given by the Full Bench in Vigila's case, in view of the enactment of RTE Act, 2009, and since the same has been implemented, the effect of the Full Bench Judgment in Vigila's case case become nullified.

...

20. ... Therefore the effect of the Full Bench Judgment is nullified by the subsequent enactment of RTE Act and the consequential G.O.Ms.No.231.”



W.P.No.20868 of 2021

6. Reliance was placed on the order of this Court made in

W.P.(MD) Nos.16505 of 2023 & batch wherein it is held as under:

“25. The learned Additional Advocate General vehemently contended that since G.O.Ms.No.525 dated 29.12.1997 has been superseded by the issuance of G.O.Ms.No.231 dated 11.08.2010, the petitioners arguments will not hold good. That apart in view of the change in circumstance, the judgment of the Hon'ble Full Bench of this Court in the case of Director of Elementary Education and others Vs. Vigila and others reported in 2006 5 CTC 385, will also be irrelevant to the facts and circumstances of this case and in view of the contra arguments made by the learned counsel appearing for the petitioner and the learned Additional Advocate General, a careful perusal of various judgments and materials available on records is essential and the same would reveal a different picture.

26. Though the Hon'ble Division Bench of this Court in W.A.(MD) No.969 of 2017 vide its order dated 03.06.2020 held that G.O.Ms.No.525 has no relevance in view of the subsequent G.O.Ms.No.231 and the issue relating to the staff strength will have to be determined only with reference to G.O.Ms.No.231 dated 11.08.2010 as amended from time to time, the same has been specifically dealt with further by the



W.P.No.20868 of 2021

Hon'ble Division Bench of this Court in W.P.(MD) No.76 of 2016 batch."

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7. The learned Additional Government Pleader for the respondents relied on G.O.Ms.No.165 dated 17.09.2019 and submitted that until the deployment of excess teachers was made in the fourth respondent school, no fresh appointments can be made even against the sanctioned vacancy. But there is no reference about G.O.Ms.No.165 dated 17.09.2019 in the impugned order dated 31.03.2021. In fact, petitioner was appointed on 03.01.2019 which is prior to coming into force of the G.O.Ms.No.165 dated 17.09.2019. Further the fourth respondent School is a minority institution. In fact the G.O.Ms.No.165 dated 17.09.2019 itself has become inoperational in view of the orders passed by the learned Division Bench of this Court in a batch of petitions in W.A.(MD)No.76 of 2019 etc. The relevant portion of the order dated 31.03.2021 is extracted as under:

"93.7. In this regard, we like to point out that, already the import of the interim order passed by a Division Bench of this court in this batch of



WEB COPY



W.P.No.20868 of 2021

cases on 09.04.2019 has been quoted fully. Only pursuant to the said interim order, dated 09.04.2019, this G.O.Ms.No.165 was issued, however, subsequently, when the same batch of cases came up before yet another Division Bench of this Court on 20.09.2019, the import of G.O.Ms.No.165 was considered and the Division Bench, on that date, had passed an order, whereby, it expressed prima facie view that, the directions issued by earlier order, date 09.04.2019 was beyond the scope of the writ appeals. Therefore the Division Bench was of the opinion that, the operation of the G.O.Ms.No. 165, dated 17.09.2019 shall be suspended, accordingly, the operation was suspended until further orders.

93.8. After having gone through the two interim orders passed by two Co-ordinate Division Benches in this batch of cases, one is dated 09.04.2019 and another is dated 20.09.2019, in between G.O.Ms.No.165 was issued on 17.09.2019, we are of the considered view that, the said G.O.Ms.No.165 ought not to have been issued as a fall out of the interim order passed by this Court. Therefore we are in agreement with the view expressed by a Co-ordinate Bench of this Court by order, dated 20.09.2019, that the said G.O is a fall out of the interim direction issued in the batch of writ appeals, therefore the operation of the said



WEB COPY



W.P.No.20868 of 2021

G.O shall be suspended until further orders.

93.9. In that view of the matter and the comprehensive decision since having been arrived at by us in this batch of cases, the said G.O.Ms.No.165, in our considered view, can very well be declared to be inoperative."

8. In the said judgment, the learned Full Bench has dealt about the special provisions for minority private schools. In fact, G.O.Ms.No.165 itself was challenged in few of the Writ Petitions involved in W.A.(MD) No.76 of 2019 batch. Consequent to the above judgment, orders have been passed in various Writ Petitions by relying on the above judgment. In fact, the denial of approval for the appointment made by the very same school has also been challenged in W.P.No.1417 of 2020 and that has been allowed in favour of the petitioner therein *vide* order dated 12.02.2020. In the said order, this Court has observed that the District Educational Officer cannot rely upon G.O.Ms.No.165 dated 17.09.2019 which has already been suspended by this Court.



W.P.No.20868 of 2021

9. As stated already, the appointment of the petitioner was made prior to the issuance of G.O.Ms.No.165 which came into force on 17.09.2019. In whatever way the appointment is looked into, the respondents ought not to have rejected to grant approval. Since the impugned order has been made without any substance and reference to any Government Orders and the arguments based upon G.O.Ms.No.165 is also not maintainable, the impugned order is liable to be quashed.

10. In view of the above stated reasons, this Writ Petition is allowed and the impugned order passed by the third respondent in proceedings vide O.Mu.No.772/A2/2021 dated 31.03.2021 is quashed. The matter is remanded back to the third respondent for fresh consideration and the third respondent is directed to re-consider the claim of the petitioner and pass fresh orders within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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06.03.2024



WEB COPY



W.P.No.20868 of 2021

R.N.MANJULA, J.

gsk

To

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DPI Buildings, College Road,
Chennai - 6.

2.The Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.

3.The District Educational Officer,
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