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W.P.No.19358 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19358 of 2024

and

W.M.P Nos.21216 & 21217 of 2024

The Correspondent,
TELC B.J.M. Higher Secondary School,
Tranquebar,
Maiyladuthurai District
Rep. by its Correspondent
Dr.G.Jonas Gunasekaran Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St.George,
Secretariat, Chennai – 600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Mayiladuthurai District,
Mayiladuthurai.

4.The District Educational Officer (Secondary),
Mayiladuthurai Education District,
Mayiladuthurai 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 the impugned proceedings issued by the fourth respondent in O.Mu.No.1671/Aa2/2023 dated 09.12.2023 and to quash the same and consequently directing the respondents to pass orders for granting approval of appointment of Ms.M.Gomathi, in the sanction post of B.T.Assistant (History) in the petitioner School with effect from 16.12.2020 with all consequential and attendant benefits including the arrears of salary.

For Petitioner : G.Sankaran, Senior Counsel
for Mr.S.Nedunchezhiyan
For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order passed by the fourth respondent dated 09.12.2023, thereby rejected the proposal sent by the petitioner for approval of appointment of M.Gomathi to the post of B.T.Assistant (History) with effect from 16.12.2020.

2. Heard the learned counsel appearing on either side and perused the materials available on record.



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3. The petitioner School is a Government aided minority institution. A vacancy arose to the post of B.T.Assistant (History) due to retirement of incumbent K.Earnest Baskaran on 30.11.2020. In the said vacancy, the petitioner appointed one M.Gomathi to the post of B.T.Assistant (History) on 16.12.2020. It is a sanctioned post and she is also qualified to join as B.T.Assistant (History). While being so, there was a dispute arose over the Management of Church Council and as such, a retired Judge of this Court was appointed as Administrator for conducting election for the Church Council. The Administrator had appointed one G.Jeyachandran as Correspondent with effect from 01.10.2022. Based on the directions issued by the Administrator, the proposal was sent by the petitioner for approval of his appointment to the post of B.T.Assistant (History). However, it was rejected on three grounds viz., (i) the incumbent is not qualified with TET (ii) if anyone appointed with qualification without TET, they shall pass the TET examination within a period of five years from the date of her appointment and (iii) only after appointment of surplus teachers, the new appointments can be made. Therefore, there was a delay in sending the proposal for approval of the appointment of B.T.Assistant (History).



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4. The Hon'ble Division Bench of this Court in W.A.No.313 of 2022, by an order dated 02.06.2023, clarified that the requirement to pass TET will not apply to minority schools and approval of appointment of teachers in minority schools both aided and unaided cannot be refused or rejected on the ground that they do not possess TET qualification. As per the ratio laid down in ***Pramati Educational and Cultural Trust case*** reported in ***(2014) 8 SCC 1*** the qualification of TET will not apply to the minority schools. Further the Government cannot insist upon the minority institution, both aided and unaided, to abide by any regulations framed under the provisions of RTE Act and held that G.O.Ms.No.181, School Education Department, dated 15.11.2011 is not applicable to the minority institutions. There was a dispute over the Management of Church Council and as such, a Hon'ble retired Judge of this Court was appointed as Administrator. Therefore, there was a delay in sending the proposal for approval of appointment of the teachers.

5. On instructions, the learned Special Government Pleader appearing for the respondents submitted that the issue of required qualification of TET for minority school is now pending before the



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Hon'ble Supreme Court of India. Further, the proposal sent by the petitioner was returned and as such if the petitioner complied with other queries, it will be considered on merits.

6. In view of the above, the impugned order passed by the fourth respondent cannot be sustained and it is liable to be quashed. Accordingly, it is hereby quashed. The proposal sent by the petitioner is remanded to the fourth respondent. The fourth respondent is directed to pass orders on the proposal sent by the petitioner to approve the appointment of M.Gomathi in the post of B.T. Assistant (History) from the date of her appointment i.e., on 16.12.2020 with all benefits. In respect of the issue of surplus post is concerned, in view of the interim order passed by the Hon'ble Division Bench of this Court in W.A(MD) No.76 of 2019, the Government passed an order in G.O.Ms.No.165, School Education dated 17.09.2019, thereby ordered not to approve any new appointments without fulfilling the surplus post. In view of the final order passed in W.A (MD) No.76 of 2019, the Government order in G.O.Ms.No.165, School Education Department, dated 17.09.2019 became “in operation”. Therefore, the said issue is no longer res-integra.



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In fact, under the petitioner Management, there is only one school and there is no surplus teachers available to fill up the vacancies arose in the post of B.T.Assistant (History) in the petitioner School.

7. In the result, this writ petition stands allowed.

Consequently, connected miscellaneous petitions are closed. No costs.

18.07.2024
(2/3)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
Lpp

To

1. The Principal Secretary to Government,
School Education Department,
Fort St.George,
Secretariat, Chennai – 600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Mayiladuthurai District,
Mayiladuthurai.



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4.The District Educational Officer (Secondary),
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G.K.ILANTHIRAIYAN. J.

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