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W.P.No. 23804 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.23804 of 2022

and

W.M.P.Nos.22787 & 22789 of 2022

The Correspondent and Headmistress
Jayarani Girls Higher Secondary School,
Nethimedu,
Salem District – 636 002.

.... Petitioner

Vs

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

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

3. The Chief Educational Officer,
District Collectorate Compound,
Salem District – 636 001.

4. The District Educational Officer,
District Collectorate Compound
Salem District – 636 001.

.... Respondents



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Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the fourth respondent District Educational Officer in Na.Ka.No.8316/A2/2020 dated 20.06.2022, quash the same and further direct the third respondent Chief Educational Officer to approve forthwith the appointment of Sr. Uma Devi as a B.T.Assistant (Tamil) in the petitioner School, w.e.f. the date of her appointment on 24.07.2018 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : M/s.Amala Irudhaya Mary
For Respondents : Mrs.S.Mythereya Chandru
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the fourth respondent dated 20.06.2022, thereby rejected the request made by the petitioner for approval of the appointment of Sr. Uma Devi as B.T.Assistant (Tamil) with effect from the date of her appointment on 24.07.2018.

2. The petitioner school is a Government aided school. In the said school, there are 55 teachers and 7 non-teaching staffs are working. One post of B.T.Assistant (Tamil) in the said school fell vacant on 08.06.2016



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due to the transfer vacancy of Sr.Mary Stella. In the said place, one, Sr.Uma Devi was appointed on 24.07.2018. Immediately after her appointment, the petitioner had sent a proposal for the approval to the 4th respondent. However, it was returned by its communication dated 15.04.2019. Once again, it was resubmitted on 14.11.2019. However, the 4th respondent once again returned the same for want of some queries. With additional clarification and information, the petitioner submitted the proposal by its communication dated 15.11.2019 for approval. However, it was not considered and once again, the 4th respondent returned the proposals. Therefore, the petitioner was constrained to file the writ petition before this court in W.P.No.18523 of 2020, seeking direction to consider the proposal for approving the appointment of Sr.Uma Devi as B.T.Assistant (Tamil) with effect from 24.07.2018. This Court by an order dated 18.04.2022, directed the 3rd and 4th respondents to consider the proposal sent by the petitioner. The 4th respondent by its proceedings dated 20.06.2022 rejected the proposal sent by the petitioner. Therefore, it was challenged before this Court in W.P.No.3194 of 2020 etc, batch and it was set aside and remitted back to the 3rd and 4th respondents for fresh consideration.



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However, once again it was rejected on the ground that the two other schools under the same management in the District of Kanyakumari have surplus teachers.

3. The learned counsel for the petitioner submitted that there is no justification to deny the approval of the appointment as sought for by the petitioner school, since the appointment of Sr.Uma Devi was appointed in a sanctioned vacancy. With regard to the surplus teacher in the aided private school, Government passed an order in G.O.Ms.No.165 dated 17.09.2019, thereby fresh appointments, approval of any teaching staff in the aided schools until the issue of surplus teachers get resolved. The same was challenged in the W.A.(MD).No.76 of 2019 and the Hon'ble Madurai Bench of this Court passed an order dated 31.03.2021 stating that G.O.Ms.No.165 can very well be declared to be inoperative. Therefore, the legal position is very clear that surplus in the management will no way hinder the appointment, approval of a teacher when the concerned school has no surplus teacher in its roll.



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4. The learned counsel for the respondent submitted that on the strength of the Government order passed in G.O.Ms.No.165 dated 17.09.2019, the Hon'ble Division Bench of Madurai Bench in W.A.(MD).No.76 of 2019 issued guidelines. Accordingly, after making redeployment process, still excess staff are available, the Education Department shall take further effort, and those excess teachers still available at the hands of the Education Department to be redeployed to a needy school beyond the corporate management concerned, i.e., to any school located in the same Educational District or Revenue District and even beyond which if still excess staff are available, they can be redeployed to any school beyond the Revenue District of course getting the choice of such teacher concerned and that shall be completed by 10th October. He further submitted that the petitioner school is a corporate minority school under Immaculate Heart of Mary Provincialate. From the proceedings of the 4th respondent in Na.Ka.No.8316/A2/2020 dated 20.06.2022, revealed that there are 2 surplus posts with teachers in the subject of Tamil in the following schools under the same corporate management of Immaculate Heart of Mary Provincialate.



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1. *St.Joseph High School, Thakkalai Saral, Kanniyakumari District-1 surplus post of B.T.Assistant (Tamil) with teacher.*

2. *Scared Heart High School, Kadiyapattinam, Thakkalai, Kanniyakumari District – 1 surplus post of B.T.Assistant (Tamil) with teacher.*

Therefore, the 4th respondent rightly rejected the approval of appointment of Sr.Uma Devi as Secondary Grade Teacher. In similar circumstances, this Court set aside the rejection of approval on the ground that there are surplus teaching staffs under the same management.

5. On perusal of the G.O.Ms.No.165 dated 17.09.2019 it is perspective 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 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 07.01.2020 passed by the 3rd respondent rejecting the



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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."

7. In the earlier round of litigation, proposal was rejecting citing that G.O.Ms.No.165 dated 17.09.2019 was operating in the field. It is to be noted that this Court in its order



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has clearly held that G.O.Ms.No.165 dated 17.09.2019 would not be a bar to the case of the petitioner and it would not be applicable to the teachers who were appointed prior to the Government Order in G.O.Ms.No.165 dated 17.09.2019. Still the impugned order came to be passed on the ground that surplus teachers.

8. It is relevant to note that the very issue was whether G.O.Ms.No.165 dated 17.09.2019 was applicable to the petitioner case or not? This court has categorically stated that G.O.Ms.No.165 dated 17.09.2019 was only prospective in nature and approval have to be given in the cases where appointment of teachers were made prior to the said Government Order. Having non-suited the petitioner in the earlier round of litigation citing G.O.Ms.No.165, now the impugned order has been passed on a different ground. The authorities cannot take different stand at different points of time to stick on their stand so as to negate the claim of the petitioner. Be that as it may, the impugned order came to be passed not on merits but the proposal was rejected merely on the ground that there are surplus teachers.

9. In the light of the above discussion and the factual matrix of the case, the impugned order is set aside and the matter is remitted back to the 3rd respondent for considering the proposal



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afresh and passing orders granting approval as sought by the school management, provided it satisfies all the norms prescribed for such appointment and the rules. While passing orders of the proposal, the 3rd respondent shall keep in mind the directions given by this Court in W.P.No.3439 of 2020 dated 18.04.2022. If the authority concerned wants to raise any further query or make clarification, the same may be had from the school management. The said exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order."

6. In the case on hand, the petitioner had appointed Sr.Uma Devi as B.T.Assistant (Tamil) with effect from 24.07.2018 in the sanctioned vacancy in the place of transfer of Sr.Mary Stella. Therefore, Sr.Uma Devi was appointed prior to the G.O.Ms.No.165 dated 17.09.2019 and the same would not be a bar to the petitioner to appoint Sr.Uma Devi. Since the said G.O.Ms.No.165 is only perspective in nature and as such the 4th respondent have rejected the approval on the ground that two other schools under the same management in the District of Kanyakumari have surplus teachers.

7. In the light of the above, the order passed by the 4th respondent dated 20.06.2022 is liable to be quashed. Therefore, the order passed by the



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4th respondent in Na.Ka.No.8316/A2/2020 dated 20.06.2022 is hereby quashed. The 3rd respondent is directed to approve the proposal sent by the petitioner for the appointment of Sr.Uma Devi as B.T.Assistant (Tamil) in the petitioner school with effect from date of her appointment i.e., on 24.07.2018 forthwith with all attendant benefits including arrears of salary and allowances.

8. In the result, this writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

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Internet : Yes/No
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No

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To

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G.K.ILANTHIRAIYAN, J.

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