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W.P.No.27004 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P No.27004 of 2021 and
W.M.P.No.28445 and 28446 of 2021

E.K.M.Abdul Gani Matharasa Islamia High School,
No.26, Cauvery Road,
Erode-638 001
Rep. By its Correspondent,
G.Muhammed Thaj Muhyideen,
S/o.E.K.M.Abdul Gani

...Petitioner

Vs.

- 1.The Chief Educational Officer,
Erode District,
Erode.
- 2.The District Educational Officer,
Erode District,
Erode.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd Respondent in O.Mu.No. 2927 / Aa3 / 2020 dated 22.10.2020 and to quash the same and consequently, directing the Respondents to approve the promotion granted in favour of Mr.S.Kadher



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Mohideen in the post of B.T.Assistant (Social Science) with effect from 01.06.2019 with all consequential and other attendant benefits including arrears of salary.

For Petitioner : Mr.S.Nedunchezhiyan
For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

The petitioner herein is a school which is a minority institution. Consequent upon arising of a vacancy in the post of Secondary Grade Teacher in the petitioner school, the petitioner school promoted one Mr.S.Kadher Mohideen as B.T.Assistant(Social Science) by issuing order dated 01.06.2019 and thereafter, submitted a proposal dated 01.06.2019 seeking approval of the promotion of said Mr.S.Kadher Mohideen to the post of B.T.Assistant (Social Science). The said proposal was rejected by the 2nd respondent through impugned proceedings dated 22.10.2020 on the ground that the petitioner school failed to obtain prior permission for filling up the post of B.T Assistant (Social Science) and also on the ground that there are surplus teachers available and the said vacant post is required to be filled up with the surplus teachers and only in case no surplus teachers are available, the said post can be filled up by recruitment.



Aggrieved by the said proceedings, the petitioner approached this Court by filing the present writ petition.

2. The learned counsel for the petitioner contended that one person by name K.Rasamani has reached the age of superannuation and retired from service on 30.04.2019 and as such, a vacancy in the post of Secondary Grade Teacher arose and in terms of G.O.Ms.No.100, School Education Department, dated 27.06.2003, the petitioner filled up the said vacancy of the Secondary Grade Teacher by promoting Mr.S.Kadher Mohideen as B.T Assistant (Social Science) and then, sent a proposal for approval of the said promotion. According to the learned counsel for the petitioner, the petitioner, being a religious minority institution, is at liberty to fill up the vacancies that arise without seeking any prior permission and further contended that petitioner, being a single unit, the question of appointing surplus teachers from other schools does not arise. In support of his contentions, he placed reliance on the order of Division Bench of this Court in W.A(MD).No.76 of 2019 and batch dated 09.04.2019.

3. On the other hand, the learned Government Advocate appearing for the



respondents contended that in terms of G.O.Ms.No.144, School Education Department dated 04.07.2008, the order issued in G.O.Ms.No.244, School Education Department dated 22.09.2008, in respect of the Government Schools is made applicable to the aided schools also and in terms of the same, aided schools are under obligation to obtain prior approval before converting the post of Secondary Grade Teacher to that of the B.T.Assistant. But, in the instant case, the petitioner failed to obtain such prior permission for conversion of the post of Secondary Grade Teacher to that of the B.T.Assistant. Thus, he contended that impugned order is perfectly valid.

4. This Court carefully considered the submissions made by counsel on either side and perused the material available on record.

5. A perusal of G.O.Ms.No.100 dated 27.06.2003 makes it clear that any vacancy of Secondary Grade Teacher that arise in a aided school is required to be filled up with the person possessing the qualification of B.Ed as B.T.Assistant of the concerned subject. Once it is mandated under the Government Order that any vacancy of Secondary Grade Teacher is required to be filled up B.T.Assistant, the



question of obtaining any prior approval for filling up or question of seeking prior approval for conversion of the post of Secondary Grade Teacher to that of the B.T.Assistant does not arise. The contention of learned Government Advocate, by placing reliance on G.O.Ms.No.144 dated 04.07.2008, in the considered view of the Court, is not applicable as the petitioner school which is a religious minority institution.

6. In the light of the above, the ground on which the impugned order came to be issued is wholly unsustainable. The very similar issue has been considered by the learned Single Judge of this Court in batch of writ petitions in W.P.No.6340 of 2022 and batch reported in **2022 SCC OnLine Mad 4513** wherein, the learned Single Judge at Paragraph Nos. 19 to 21 of the said order held as under:-

“19. In the light of the aforesaid decisions, a minority school would be entitled to appoint a teacher by converting a sanctioned post and thus, the reasons for rejection in this regard in the present writ petitions, wherever applicable, are liable to be set aside.

Minority school has a right to upgrade the



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sanctioned post:

20. *In the case of the Chief Educational Officer, Tirunelveli Vs. S. Josephin Vijaya passed in W.A.(MD).No.1497 of 2017 dated 14.12.2017, the minority school had appointed a teacher as a B.T. Assistant in the sanctioned post of Secondary Grade Teacher. The Division Bench held that, when the Secondary Grade Teacher in a sanctioned post had retired on reaching the age of superannuation, the post automatically gets upgraded into that of a B.T. Assistant. Agreeing with the findings of the learned Single Judge, the Hon'ble Division Bench in S. Josephin Vijaya's case (supra) had held that, such conversion by upgradation, was permissible. Following the decision in S. Josephin Vijaya's case (supra), I had passed orders in the case of A. Franklin Raj Vs The Chief Educational Officer, Tirunelveli in W.P.(MD).No.10963 of 2020, dated 29.06.2022, by holding as follows:-*

“4. In so far as reference to G.O.Ms.No.144, School Education Department, dated 04.07.2008 is concerned, the Division Bench of this Court in the case of the Chief Educational Officer, Tirunelveli Vs S. Josephin Vijaya passed in W.A.(MD).No.1497 of 2017



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dated 14.12.2017 has held that when a secondary grade teacher retires on superannuation, the post of secondary grade teacher “automatically” stands upgraded into that of a Graduate Teacher as per G.O.Ms.No.79, Secondary Education (U-1) Department, dated 14.06.2002.

5 In view of such automatic upgradation, the authorities cannot insist for prior permission of their approval for upgradation of the sanctioned post. As a matter of fact, such a claim for permission would only be a futile exercise. Thus, both the reasons cited by the first respondent for rejection of the proposal, cannot be sustained”

21.Thus, a minority school would have a right to upgrade the sanctioned post and hence, the reasons assigned in these writ petitions, wherever applicable, cannot be sustained”.

7. In the light of the above, this Court is of the considered view that the issue that arose for consideration in the present writ petition is squarely covered by the above order of the learned Single Judge. Further, the petitioner school, being a single unit, the question of filling up the vacancy from the surplus also



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does not arise. In the light of the above, the impugned order cannot be sustained and the same is accordingly set aside. The petitioner is granted liberty to submit the proposals afresh seeking approval of promotion of B.T.Assistant (Social Science) and the respondents 1 and 2 are directed to consider the said proposals without insisting for prior approval for filling up of the post and pass appropriate orders there on in accordance with law within a period of six weeks from the date of submission of such proposals by the petitioner.

8. With these directions, this writ petition stands allowed by setting aside the impugned proceedings issued by the 2nd Respondent in O.Mu.No.2927/Aa3/2020 dated 22.10.2020. No costs. Consequently, connected miscellaneous petitions are closed.

23.04.2024

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Index : Yes/No
Neutral Citation Case : Yes/No
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Erode District,
Erode.
- 2.The District Educational Officer,
Erode District,
Erode.



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MUMMINENI SUDHEER KUMAR, J.

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