



W.P.No.27605 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.27605 of 2022 and
W.M.P.Nos.26868 & 26869 of 2022

M.Nalini

...Petitioner

-Vs-

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.
2. The District Educational officer,
(presently District Elementary Educational Officer),
Tiruvallur District,
Tiruvallur.
3. The Block Educational Officer,
Poony Union,
Tiruvallur District.
4. The Manager & Correspondent,
TELC Primary School,
Karani Nizampet- 631 210,
Poondi Range,
Tiruvallur District.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 2nd respondent in Na.Ka.No.2991/Aa2/2022 dated 27.06.2022 and to quash the same and consequently direct the respondents to approve the appointment of the petitioner in the post of Secondary Grade Teacher in 4th Respondent School from the date of the appointment on 01.03.2016 with all consequential benefits including payment of salary and other service benefits.

For Petitioner	: Mr.G.Sankaran Senior Counsel for Mr.S.Nedunchezhiyan
For Respondents 1 to 3	: Mrs.S.Mythreye Chandru Special Government Pleader

ORDER

This Writ Petition is filed challenging the order passed by the second respondent dated 27.06.2022 thereby rejected the proposal sent by the 4th respondent for the approval of the petitioner's appointment in the post of Secondary Grade Teacher with effect from 01.03.2016.



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2. The 4th respondent school is a Government Aided Minority Institution. In the 4th respondent's school vacancy arose to the post of Secondary Grade Teacher due to transfer of incumbent Tmt.Nisha in the month of February 2016. In the said sanctioned vacancy the petitioner was appointed as Secondary Grade Teacher in the 4th respondent's school. Thereafter, the 4th respondent had sent its proposal for the approval of the petitioner's appointment to the post of Secondary Grade Teacher. However, the same was returned. Thereafter, the 4th respondent once again resubmitted the proposal and the same was not considered. Therefore, the petitioner filed writ petition in W.P.No.14751 of 2017 for seeking approval of the petitioner's appointment in the post of Secondary Grade Teacher. This Court directed the respondents to consider and pass orders on the representation of the petitioner dated 12.04.2017. However, the 2nd respondent rejected the proposal by order dated 27.06.2022.



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3. The learned counsel for the 2nd respondent filed counter and submitted that the 4th respondent school is a Corporate Management and there are more number of surplus teachers available. Therefore, as per G.O.Ms.No.532 (SE) Department dated 29.12.1997 deployment of teachers with reference to vacancy position instead of making fresh appointment. Without deployment of teachers from the surplus teachers, the 4th respondent cannot appoint any new teachers. Therefore, the 4th respondent has no authority to fill up such vacancy arising out of transfer of individual from one place to another place by making new appointment. Therefore, the vacancy has to filled up either by transfer or deployment of surplus teachers alone by the 4th respondent School Management.

4. On perusal of the records revealed that the incumbent Tmt.Nisha was transfered in the vacancy arose by retirement. In fact transfer of the said teacher was also duly proved by the authority concerned and permitted to fill up the said post. Accordingly, the petitioner was appointed to the post of Secondary Grade Teacher by the 4th respondent School. On perusal of the G.O.Ms.No.165 dated 17.09.2019 it is prospective



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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 07.11.2020 passed by the 3rd respondent rejecting the 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."



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5. In view of the above, the impugned order passed by the second respondent dated 27.06.2022 is liable to be quashed. Accordingly, the impugned order passed by the second respondent dated 27.06.2022 is quashed. Further, the second respondent is directed to pass orders for the approval of the appointment of the petitioner in the post of Secondary Grade Teacher in 4th respondent school from the date of her appointment i.e., on 01.03.2016 with all consequential benefits within a period of eight weeks from the date of receipt of copy of this order.

6. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

21.03.2024

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
gvn



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To
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