



WEB COPY



WP.No.638 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM:

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

W.P.No.638 of 2022 and
WMP.Nos.683 & 684 of 2022

The Headmistress and Correspondent
St.Anne's Girls Higher Secondary School,
Cuddalore 607 001

... Petitioner

Vs.

1.The Government of Tamilnadu,
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,
Chief Educational Office,
Cuddalore 607 001

4.The District Educational Officer,
District Educational Office,
Cuddalore 607 001

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records



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relating to the impugned order passed by the fourth respondent District Educational Officer in O.Mu.No.5387/Aa2/2019 dated .11.2019 and O.Mu.No.7856/Aa2/2019 dated .03.2020, quash the same and further direct the third and fourth respondents to approve forthwith the appointment of Mrs.F.Antony Vinolia as BT Assistant(Science) in the petitioner school with effect from the date of her appointment viz., 03.06.2019 and release salary and all attendant benefits with effect from the said date.

For Petitioner : Mr.H.Mary Sowmi Rexi

For Respondents : Mrs.S.Mythreye Chandru,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the fourth respondent thereby rejected the proposal sent by the petitioner for approval of the appointment of Mrs.F.Antony Vinolia to the post of BT Assistant (Science).



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2. The petitioner school is a recognised minority educational institution. The petitioner is offering education from standard 1 to 12 and the medium of instruction is Tamil and English. The Government extends grant-in-aid upto higher secondary school sections. There are 93 teachers i.e. 1 Headmistress, 17 PG Assistants, 3 Tamil Pandits, 1 Physical Director, 5 Vocational Instructors, 41 BT Assistants, 18 Secondary Grade Teachers, 3 Physical Education Teachers, 1 Drawing Mistress and 1 Music Teacher and 2 Sewing Mistress. Apart from that, there are 13 aided non teaching staff. Out of 41 BT Assistants, 12 posts are for Science subject. Due to retirement of the then incumbent, Mrs.T.Mary Stella on 31.05.2019 in the BT Assistant (Science) post, one, Mrs.F.Antony Vinolia was appointed as BT Assistant(Science) with effect from 03.06.2019. The said appointment is in a sanctioned post of BT Assistant (Science) as determined by the third respondent in the staff fixation for the year 2019-2020 by its proceedings dated 08.01.2020. After her appointment, the petitioner had sent proposal for approval of her appointment. However, the fourth respondent returned the said proposal on the ground that only after fixation of staff strength based on



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the position of the students strength, the proposal will be considered for approval. Once again, the petitioner had sent proposal for approval and the same was also returned on the very same ground.

3. The fourth respondent filed counter stating that the deployment of excess staff of the academic year 2019-20 has not yet completed and orders of the Director of School Education are awaited. Further, the petitioner was appointed in the BT Assistant (Science) post without even any staff fixation order. Therefore, the fourth respondent rightly returned the proposal sent by the petitioner for approval.

4. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

5. The Hon'ble Division Bench of this Court dealt with the issue 'that schools cannot make an appointment until the district surplus is exhausted, has to be applied to the appointments made prior to the decision in Iruthaya Amali's case reported in (2021) SCC Online Mad



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1285, and held that the school will be taken as an unit and not the corporate management for the purpose of determining whether teaching post is in surplus. Secondly, so long as there is surplus in the district, unless and until such surplus teachers are deployed or exhausted, no appointment can be made by the schools. Finally held that the excess staff have to be identified after keeping the institutions intimated. A Compendium of Schedule prescribed as 'to fix the staff strength by 31st of July of the academic year, updating of the staff strength by 10th of August of the academic year, intimation to the school by 15th August, submission of objections if any by 25th August, consideration of objections and identification of the staff for redeployment to be made by 5th September, to obtain the consent for redeployment by 15th September, to make the order of redeployment by 25th September, and that the teacher should report before the redeployed school by 30th September. Thus, it is impossible to be carried out retrospectively for the year 2019.

5.1 Further, in view of the interim order passed in WP(MD).No.76 of 2019, the Government passed order in



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GO.Ms.No.165 dated 17.09.2019 thereby ordered no teachers to be appointed without fulfilling the surplus teachers. Finally, in the writ appeal, the said Government order was declared 'inoperative'. Even then, the said Government Order is not applicable to the case on hand since the petitioner had appointed Mrs.F.Antony Vinolia on 03.06.2019 i.e. prior to the Government order. Further on perusal of the staff fixation order dated 08.01.2020, 12 posts of BT Assistant in Science are applicable in which one became vacant. In that vacant place, the petitioner had appointed Mrs.F.Antony Vinolia as BT Assistant (Science) with effect from 03.06.2019.

6. In view of the above, the impugned order cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order passed by the fourth respondent is quashed. The fourth respondent is directed to proceed with the proposal sent by the petitioner for appointment of Mrs.F.Antony Vinolia to the post of BT Assistant (Science) with effect from 03.06.2019. It is made clear that after approval, if the fourth respondent finds any surplus in the present



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academic year, the fourth respondent is at liberty to declare surplus teachers and deploy them to other school.

7. With the above directions, this writ petition stands allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1. Secretary,
The Government of Tamilnadu,
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,
Chief Educational Office,
Cuddalore 607 001
4. The District Educational Officer,
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