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W.P.No.32903 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

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

W.P.No.32903 of 2023
and W.M.P.Nos.32541 to 32543 of 2023

C.Sagaya Mary

...Petitioner

-Vs -

1. The State of Tamil Nadu
Rep. by its Secretary,
Education Department,
Fort St. George,
Chennai – 600 009.
2. The District Educational Officer,
Kallakurichi,
Kallakurichi District.
3. The Block Education Officer A2,
Chinna Salem,
Kallakurichi.
4. The Correspondent,
St. Mary's Primary School,
Karanoor, Kallakurichi Taluk,
Kallakurichi District.
5. The President,
St. Mary's Primary School,
Francies Sisters of St. Aloysus Gonzaga,
Door No.6, St. Ange Street,
Puducherry.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in proceedings Na.Ka.No.2399/AA1/2020 dated 02.12.2022 and proceedings Na.Ka.No.2399/A1/2020 dated 25.08.2023 and quash the same and consequently direct the respondents to approve the appointment of the petitioner in the post of Secondary Grade Teacher in fourth respondent school from the date of appointment on 12.06.2013 with payment of salary and other service benefits.

For Petitioner : Ms.T.Dharani

For Respondents

For R1 to R3 : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

This writ petition has been filed challenging the orders passed by the second respondent dated 02.12.2022 & 25.08.2023, thereby rejected the request made by the petitioner for approval of her appointment in the post of Secondary Grade Teacher with effect from the date of her appointment on 12.06.2013.

2. The petitioner was appointed as Secondary Grade Teacher in the fourth respondent school on 12.06.2013. The fourth respondent is a religious minority school and it was recognised by the government of



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Tamil Nadu and receives teaching grants under the Tamil Nadu Minority School recognised Rules. In the said school, one post of Secondary Grade teacher in the said school fell vacant on 12.06.2013 due to the transfer vacancy of one D.Jasmine. In the said place, the petitioner was appointed on 12.06.2013. Immediately after her appointment, the fourth respondent had sent a proposal for the approval to the third respondent. However, the appointment of the person who were appointed prior to the petitioner has been approved, but the petitioner's appointment was not approved.

3. Therefore, the petitioner was constrained to file the writ petition before this court in W.P.No.31548 of 2019, seeking direction to consider the claim of the petitioner. This Court by an order dated 07.11.2019, directed the respondents to consider the claim of the petitioner. Subsequent to the order passed by this Court, the second respondent by its proceedings dated 16.03.2020 rejected the claim of the petitioner. Therefore, it was challenged before this Court in W.P.No.15338 of 2020 and it was set aside and remitted back to the second respondent for fresh consideration and to pass an order of approval of the appointment. However, once again it was rejected on the ground that in the other schools under the same management in the



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District of Kallakurichi have surplus teachers. Hence, the petitioner filed the present writ petition.

4. 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, since the appointment of the petitioner was made 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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5. The learned Special Government Pleader appearing for the respondents 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.

5.1. She further submitted that the petitioner school is a religious minority school administered by the religious congregation. From the proceedings of the second respondent in Na.Ka.No.2399/A1/2020 dated 25.08.2023, revealed that there are 27 surplus posts of teachers in the schools under the same management of the fourth respondent school. Therefore, the second respondent rightly rejected the approval of



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appointment of the petitioner 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. Hence, she prays to dismiss the present writ petition.

6. Heard the learned counsel appearing on either side and perused the material placed before this Court.

7. 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 by an 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 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



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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 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



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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 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



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of receipt of copy of this order."

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8. In the case on hand the petitioner had appointed as Secondary Grade Teacher with effect from 12.06.2013 in the sanctioned vacancy in the place of transfer of D.Jasmine. Therefore, the petitioner 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. The said G.O.Ms.No.165 is only perspective in nature and as such the second respondent have rejected the approval on the ground that other schools under the same management in the District of Kallakurichi have surplus teachers.

9. In the light of the above, the order passed by the second respondent dated 02.12.2022 and 28.05.2023 are liable to be quashed. Accordingly, the orders passed by the second respondent in Na.Ka.No.2399/AA1/2020 dated 02.12.2022 & 12.09.2023, are quashed. The second respondent is directed to approve the proposal sent by the fourth respondent for the appointment of the petitioner as Secondary Grade Teacher in the fourth respondent school with effect from date of her appointment i.e., on 12.06.2013 forthwith, with all attendant benefits including arrears of salary and allowances.



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

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

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G.K.ILANTHIRAIYAN. J.

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W.M.P.Nos.31530 to 31532 of 2023

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