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W.P.No.5884 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.5884 of 2024
and W.M.P.Nos.6513 and 6514 of 2024

The Correspondent
St.Aloysius Girls Higher Secondary School,
Dharapuram – 638 656
Tiruppur District.

...Petitioner

-Vs-

1. The State of Tamil Nadu
represented by its Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.
2. The Commissioner of School Education,
College Road, Chennai-600 006.
3. The Chief Educational Officer,
The Chief Educational Office
No.513, Collectorate Campus,
5th Floor, Palladam Road,
Tiruppur District – 641 604.
4. The District Educational Officer,
District Educational Office,
Collectorate Campus,
Tiruppur District – 641 604.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India



W.P.No.5884 of 2024

praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the impugned proceedings issued by the 4th respondent DEO vide proceedings in O.Mu.No. 6972 / Aa3 / 2023 dated 09.01.2024 (as signed) quash the same and further direct the 3rd and 4th respondents to approve forthwith the appointments of Sr.A.Jenifer Rani as BT Assistant (History) in the petitioner school with effect from the date of her appointment viz. 01.08.2019 and release salary and all attendant benefits with effect from the said date.

For Petitioner : M/s.H.Mary Sowmi Rexi

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

ORDER

This writ petition has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent DEO vide proceedings in O.Mu.No 6972 / Aa3 / 2023 dated 09.01.2024 (as signed) to quash the same and further to direct the 3rd and 4th respondents to approve forthwith the appointments of Sr.A.Jenifer Rani as BT Assistant (History) in the petitioner school with effect from the date of her appointment viz. 01.08.2019 and release salary and all attendant benefits with effect from the said date.



W.P.No.5884 of 2024

WEB COPY

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner School is one among the recognized aided Christian Minority Educational Institution established and administered by the Congregation of “the Franciscans Sisters of presentation of the Blessed Virgin Mary, Coimbatore. After upgradation, the petitioner School is offering education from standards VI to XII. The medium of instruction is Tamil and English. It has strength of 47 teachers viz., 1 Headmistress, 12 PG Assistant, 1 Physical Education Director, 1 Vocational Instructor, 19 BT Assistants, 8 Secondary Grade Teacher, 2 Physical Education Teachers, 1 Sewing Mistress, 1 Drawing Mistress and 1 Music Teacher as per their students strength. Apart from that, there are 9 Non-teaching staffs working in the School. There are 2372 students studying in the School.

4. While being so, the petitioner School fell vacant in the post of BT Assistant History, in lieu of transfer of the then incumbent Sr.Jayaceli



W.P.No.5884 of 2024

Madhu, on 31.07.2019 to another school in the same management. In the resultant vacancy, the petitioner had appointed one Sr.A.Jenifer Rani with effect from 01.08.2019 and her appointment was duly informed to the fourth respondent. Her appointment is in a sanctioned post of BT Assistant History as determined by the third respondent. Accordingly, she had joined in the said post and her appointment was sent for approval by the proposals dated 05.08.2019 and 13.01.2020 to the fourth respondent. The fourth respondent by its proceedings dated 22.05.2020 forwarded the same to the third respondent. However, the third respondent by its proceedings dated 10.10.2020 returned the proposal in relation to the appointment of surplus teachers and others, on the ground that WA (MD) No.76 of 2019 and etc., batch are pending before this Court. Therefore, the fourth respondent by its proceedings dated 31.10.2020 returned the proposal to the petitioner.

5. Once again, the proposal was re-presented on 11.09.2023 with necessary enclosures along with the judgments rendered by this Court. Without considering the same, the fourth respondent by the order impugned in this writ petition rejected the proposal stating that it will be



W.P.No.5884 of 2024

considered subject to the result of W.A.No.76 of 2019 and etc., batch.

WEB COPY

Pursuant to the interim order passed by the Hon'ble Division Bench of this Court in W.A.(MD).No.76 of 2019 etc., batch, G.O.Ms.No.165 was passed on 17.09.2019. However, the Division Bench of this Court finally declared that the said G.O.Ms.No.165 is 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. As per the guidelines issued by this Court, 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.

6. Further, this Court in W.P.No.17909 of 2023 etc, batch dated



W.P.No.5884 of 2024

15.09.2023 held as follows:-

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"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 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



W.P.No.5884 of 2024

WEB COPY

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 of receipt of copy of this order."

7. In view of the above, the order impugned in this writ petition cannot be sustained and it is liable to be quashed. Accordingly, the impugned proceedings issued by the 4th respondent DEO vide proceedings in O.Mu.No. 6972 / Aa3 / 2023 dated 09.01.2024, is hereby quashed. The petitioner is directed to resubmit the proposal for approval



W.P.No.5884 of 2024

of appointment of Sr.A.Jenifer Rani as BT Assistant (History) with effect from 01.08.2019. On receipt of the same, the third respondent is directed to approve her appointment if it is otherwise in order, within a period of eight weeks from the date of receipt of a copy of this order.

8. Accordingly, this writ petition is allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

07.03.2024
(2/2)

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

1. The Secretary,
The State of Tamil Nadu
Department of School Education,
Fort St.George,
Chennai – 600 009.
2. The Commissioner of School Education,
College Road, Chennai-600 006.



W.P.No.5884 of 2024

WEB COPY

3. The Chief Educational Officer,
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G.K.ILANTHIRAIYAN. J,

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WEB COPY



W.P.No.5884 of 2024

W.P.No.5884 of 2024

07.03.2024