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W.P.No.5881 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.5881 of 2024
and W.M.P.No.6722 of 2024

The Correspondent
Carmel Girls Higher Secondary School,
Karur Road,
Kangayam – 638 701
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 Director/Commissioner of School Education,
College Road, Chennai-600 006.
3. The Chief Educational Officer,
The Chief Educational Office
5th Floor, District Collectorate Campus,
Tirupur District – 641 604.
4. The District Educational Officer,



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District Educational Office,
6th Floor, District Collectorate Campus,
Tirupur District – 641 604.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to approve forthwith the appointment of Sr.Antony Devadasammal as BT Assistant (History) in the petitioner-school with effect from the date of her appointment viz.,07.06.2017 and release salary and all attendant benefits with effect from the said date by considering the petitioner's proposal dated 02.05.2023.

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 direction directing the respondents to approve forthwith the appointment of Sr.Antony Devadasammal as BT Assistant (History) in the petitioner-school with effect from the date of her appointment viz.,07.06.2017 and release salary and all attendant benefits with effect from the said date by considering the petitioner's proposal dated 02.05.2023.

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



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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 18 teachers viz., 1 Headmistress, 12 BT Assistants, 3 Secondary Grade Teachers, 1 Physical Education Teacher and 1 Music Teacher as per their students strength. Apart from that, there are 3 Non-teaching staffs working in the School. There are 1040 students studying in the School.

4. While being so, the petitioner School fell vacant in the post of BT Assistant History, due to the retirement of then incumbent Sr.Backia Philomina on 31.05.2017. In the resultant vacancy, the petitioner had appointed one Sr.Antony Devadasammal with effect from 07.06.2017 vide order dated 06.06.2017. Her appointment is in a sanctioned post of BT Assistant History as determined by the fourth respondent. Thereafter, her appointment was duly informed to the fourth respondent. The



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petitioner had sent a proposal for approval of her appointment for the purpose of disbursement of grant-in-aid towards her salary. However, it was returned by the fourth respondent by its proceedings dated 29.12.2020 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.

5. Further, this Court in W.P.No.17909 of 2023 etc, batch dated 15.09.2023 held 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 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



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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 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



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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."

6. Now, the petitioner had sent a proposal, dated 02.05.2023 and it is pending on the file of the third and fourth respondents.

7. In view of the above, the third respondent is directed to consider the proposal sent by the petitioner dated 02.05.2023 and pass order of approval of appointment of Sr.Antony Devadasammal as BT Assistant (History), if it is otherwise in order, within a period of eight weeks from the date of receipt of a copy of this order.

8. With the above directions, this writ petition is disposed of. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

07.03.2024
(½)

Internet: Yes



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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 Director/Commissioner of School Education,
College Road, Chennai-600 006.
3. The Chief Educational Officer,
The Chief Educational Office
5th Floor, District Collectorate Campus,
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G.K.ILANTHIRAIYAN. J,

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