



W.P.(MD).No.693 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.693 and 624 of 2024

and

W.M.P.(MD)No.635 of 2024

In both Writ Petitions:

The Correspondent,
Sourashtra Boys Higher Secondary School,
110, Kamarajar Salai,
Madurai 625 009
Madurai District.

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George,
Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 009.
3. The Chief Educational Officer,
Madurai, Madurai District.
4. The District Educational Officer,
(Secondary Education)
Melur 625 106, Madurai District.

... Respondents



W.P.(MD)No.693 of 2024

Prayer in W.P.(MD)No.693 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 3rd respondent Chief Educational Officer herein to approve forthwith the appointment of A.Kavitha Devi as BT Assistant Social Science in the petitioner's school w.e.f.18.06.2018 and to disburse the grant -in-aid towards her salary with other attendant benefits from the said date.

Prayer in W.P.(MD)No.624 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceeding issued by the 2nd respondent District Education Officer in O.Mu.No.1736/A1/2020 dated --. 10.2020 , quash the same and further direct the 1st respondent Chief Educational Officer herein to approve forthwith the appointment of J.A.Sharmila as BT Assistant Science in the petitioner's school, w.e.f. 01.08.2019 and disburse the grant-in-aid towards her salary and allowances w.e.f., the said date with all attendant benefits.

In both Writ Petitions:

For Petitioner : M/S.A.Amala

For Respondents : M/s.N.Ramesh Arumugam,
Government Advocate (CIVIL)

COMMON ORDER

W.P.(MD)No.693 of 2024 has been filed seeking direction to the 3rd respondent Chief Educational Officer herein to approve forthwith the appointment of A.Kavitha Devi as BT Assistant Social Science in the petitioner's school w.e.f.18.06.2018 and to disburse the grant -in-aid towards her salary with other attendant benefits from the said date.



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2. W.P.(MD)No.624 of 2024 has been filed seeking direction to quash the impugned proceeding dated --.10.2020, issued by the 2nd respondent District Education Officer and further direct the 1st respondent Chief Educational Officer herein to approve forthwith the appointment of J.A.Sharmila as BT Assistant Science in the petitioner's school, w.e.f. 01.08.2019 and disburse the grant-in-aid towards her salary and allowances w.e.f., the said date with all attendant benefits.

3. The Petitioner School is administered by the Saurashtra High School Council, which is a registered society. The Saurashtra High School Council has established three Government Aided schools, namely Saurashtra Boys Higher Secondary School, Saurashtra Co-Educational Higher Secondary School and Saurashtra Primary School. All the three institutions are recognized as Linguistic Minority Educational Institutions in terms of Article 30(1) of the Constitution of India. One post of BT Assistant Science in the petitioner's school fell vacant on 01.08.2019 due to the retirement of the previous incumbent namely Thiru.C.S.Chakravarthy on 31.07.2019. In that vacancy, the school appointed one Tmt.J. A. Sharmila as BT Assistant Science with effect from 01.08.2019 and she joined duty on the same day and continues to discharge her duty till date without any break.



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4. The petitioner School submitted a proposal to the 4th respondent DEO during October 2019 and a reminder was sent on 10.12.2019, requesting to approve the appointment of Mrs.J.A. Sharmila as BT Assistant Science and to disburse grant-in-aid towards her salary. On receipt of the proposal submitted by the petitioner School, the 4th respondent DEO vide proceedings dated --.01.2020 returned the proposal, directing the school to rectify certain defects. Immediately the school enclosing the particulars sought for by the 4th respondent resubmitted the proposal, vide letter dated 27.05.2020. But the 4th respondent DEO passed the impugned proceedings dated --.10.2020 returning the proposal stating that as per G.O.Ms. No. 165, School Education Department, dated 17.09.2019 no approval is given to any new appointments. On receipt of the same, the school submitted a detailed explanation to the 4th respondent DEO, vide letter dated 06.11.2020 stating that the incumbent came to be appointed prior to G.O.Ms.No. 165 dated 17.09.2019.

5. The 4th respondent DEO vide proceedings dated 27.11.2020 returned the proposal stating that the CEO while settling the staff fixation for the academic year 2019-2020 had rendered three posts of BT Assistant Science as surplus with teachers and one post of BT Assistant as surplus without teacher. Hence, the school immediately submitted a detailed explanation vide letter dated 06.09.2021 stating

that since the Director of School Education vide proceeding dated 28.12.2020 had



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permitted to start one additional English medium section from the academic year 2018-2019, there will not be any surplus BT Assistants. Based on the permission of the second respondent Director, the school had requested the CEO to revise the staff fixation for the academic years 2018- 2019 and 2019-2020.

6. Since there was no response from the respondents, the school once again had sent a reminder vide letter dated 01.12.2021 requesting to approve the appointment of J. A. Sharmila as BT Assistant Science. On receipt of the same, the 4th respondent DEO vide proceedings dated --.11.2022 had sought for the staff fixation as on 1.08.2022 statement, which was duly furnished by the school immediately. Despite submitting all the particulars by the school, there is no response from the respondents in approving the appointment of the incumbent appointed as BT Assistant in the petitioner school. Hence, the school had sent a reminder on 31.07.2023 and 30.08.2023. The same was also not responded. In view of the same, challenging the impugned proceedings of the 4th respondent DEO dated --.10.2020, this writ petition in W.P.(MD) No. 624 of 2024 came to be filed.

7. Another post of Secondary Grade Teacher fell vacant in the petitioner school on 01.06.2018 due to the promotion of the then incumbent one Mr.K. M. Solomon Raj as BT Assistant Tamil on 01.06.2018 . As the school was in need of BT Assistant Social Science, one Tmt.A.Kavithadevi who had passed Teacher Eligibility Test



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(TET) was found suitable. Hence, she was appointed as BT Assistant Social Science with effect from 18.06.2018 and she joined duty on the same day and is continuing to discharge her duty till date without any break. The petitioner school submitted a proposal to the 4th respondent DEO vide letter dated 25.07.2018 requesting to approve the appointment of Tmt.A. Kavithadevi as BT Assistant Social Science and sought to disburse grant-in-aid towards her salary. Since there was no response from the 4th respondent DEO, a reminder was sent on 18.03.2019.

8. On receipt of the same, the 4th respondent vide proceedings dated 25.04.2019 had forwarded the same to the competent authority CEO. The 4th respondent DEO vide proceedings dated 30.09.2019 returned the proposal citing certain defects to be complied. The school rectified the same vide letter dated 21.04.2021. In the meanwhile the third respondent CEO upgraded the post of Secondary Grade into BT Assistant Social Science vide proceedings dated --.07.2021. Even after that the 3rd and 4th respondents are shunning from passing any order of approval with respect to the appointment of Tmt.A. Kavithadevi. Despite the school having sent reminders several times and the last of which was made on 06.09.2021, 01.12.2021 and 13.09.2022 respectively, there was no response from the respondents. Hence the petitioner has filed this writ petition in W.P(MD)No. 693 of 2024 seeking to direct



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the third respondent to approve forthwith the appointment of A. Kavithadevi as BT Assistant Social Science in the petitioner school with effect from 18.06.2018 .

9. The learned Counsel for the petitioner submitted that the incumbent with respect to W.P.(MD)No. 624 of 2024 was appointed on 01.08.2019, that is much prior to the issuance of G.O.Ms.No. 165, School Education Department, dated 17.09.2019. That apart, the said GO is even suspended by this court in W.A.(MD)No. 76 of 2019 on 20.09.2019 and later vide final order dated 31.03.2021 had declared the said GO as inoperative. Despite the petitioner school rectifying all the defects as sought for by the respondents, the respondents have not approved the petitioner school's appointment of J. A. Sharmila in the post of BT Assistant Science. She further added that when any appointment is made in a minority educational institution, it is the duty of the department to verify whether such appointment is made against the sanctioned vacancy and whether the appointee possesses the required qualification prescribed under the Tamil Nadu Recognized Private Schools Regulation Act and Rules.

10. The incumbent with respect to W.P.(MD)No. 693 of 2024 has been appointed in a regular sanctioned vacancy which arose on account of the promotion of the previous incumbent. The present incumbent possesses all the requisite qualifications including passing of TET. The incumbent is discharging her duty



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without any break from the date of her appointment. However, the request of the petitioner school to approve the appointment of the incumbent is kept pending endlessly without consideration by the respondents. In view of the same, she pressed for allowing both the writ petitions.

11. Per contra, the 4th respondent has filed counter affidavits in both the writ petitions and the learned Government Advocate Mr. Ramesh Arumugam submitted that claiming to be minority institution without prior permission the petitioner school has appointed teachers as per their own will without deploying the surplus teachers . However, Rule 6 of the Tamil Nadu Minority Schools Recognition and Payment of Grants, 1977 contemplates approval for appointment of teachers is mandatory before receiving any grant and therefore, minority institutions cannot demand release of grant even before the approval is granted for appointment of teachers by the competent authorities . The staff fixation for the year 2019-2020 has been settled by the Chief Educational Officer and accordingly four posts of BT Assistants were rendered as surplus.

12. The petitioner school has submitted that if the teachers are granted to English Medium, then there will not be any surplus. The grant-in-aid was granted to promote Tamil and Tamil Medium alone. After the enactment of Section 14A, the Government will not pay any grant to any new schools, new section, new course etc.



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The school management had requested grant-in-aid to be extended to English Medium. After the enactment of Section 14A, there is no possibility to grant any grant-in-aid . Hence, the request of the petitioner school for revising the staff fixation cannot be entertained. That apart, the impugned order passed by the 4th respondent on 14.10.2020 itself, the petitioner having not challenged the same for more than four years is not eligible for seeking approval for the appointment of BT Assistant Science which was effected on 01.08.2019.

13. He further submitted that the department cannot take responsibility to approve the erroneous appointment of the petitioner school for the only reason that the teachers were appointed long time before. It is the duty of the petitioner school management to get the approval of the competent department upgrading the post from Secondary Grade Teacher to BT Assistant as per rules before making appointment. The petitioner school cannot blame the department for the mistake committed by them. In the absence of orders from the competent authority, the petitioner school's act in converting the Secondary Grade Post to BT Assistant Teacher post without prior approval and appointing the said teacher in the converted post as BT Assistant Social Science is against government orders. Hence, the same cannot be approved by the Department that too when there are surplus



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teachers as per the staff fixation during the relevant year of staff fixation 2018-2019 .

On that basis, he pressed for dismissal of both the writ petitions.

14. However, the fulcrum of the issue in both the writ petitions are no more res integra and the same has been settled by this court in W.P.(MD)No.17955 of 2023 dated 01.11.2023 . The relevant portion of the said order applicable to the facts and circumstances of this case is extracted as follows:

*“18.The judgment in **WA(MD).No.1115 of 2019 (The State of Tamil Nadu & others Vs. I.Jesu Praba & another)** dated 12.11.2019 was sought to be reviewed by the State in Rev.Apl.No.136 of 2022. The Hon'ble Division Bench of this Court by its order dated 06.06.2023 has proceeded to dismiss the review application. The Hon'ble Division Bench in Paragraph No.10 of the said order has directed the management of the minority institutions to fill up the vacancies in the teaching post only after getting prior permission from the department. In Paragraph No.11, the Hon'ble Division Bench has pointed out that the future vacancies in teaching post can be filled up by the management only after getting prior permission from the department. Therefore, it is clear that even with regard to a minority institution, the teaching post can be filled up by the School management only after getting prior permission from the educational*



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authorities. However, the said order would be applicable only for appointments made after 06.06.2023."

15. In view of the elaborate discussions in the order of this court extracted supra, the proposition which has evolved is that in terms of the judgment in WA(MD)No.1115 of 2019 dated 12.11.2019 which was reviewed in Rev.Aplc.No. 136 of 2022 dated 06.06.2023 even with respect to a minority institution teaching post can be filled up by the school management only after getting prior permission from the educational authorities. However, the said proposition would be applicable only for the appointments made after 06.06.2023.

16. However, in the present case in W.P.(MD)No. 624 of 2024 the incumbent Thirumathi J.A. Sharmila was appointed with effect from 01.08.2019 as BT Assistant Science and another teacher namely Thirumathi A. Kavitha Devi was appointed in a secondary grade post which was upgraded as BT assistant social science on 01.06.2018 and the same is the subject matter of W.P.(MD)No. 693 of 2024. In view of the same, prior permission for appointing the incumbents in the said post is necessarily unwarranted .

17. That apart, in terms of G.O.Ms.No. 79, School Education Department dated 14.06.2002, the post of Secondary Grade Teacher stands automatically upgraded into that of graduate teacher with effect from 01.06.2002 . Hence, prior permission for the



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upgradation of a secondary grade teacher post into a graduate teacher post is also not necessary .

18. In view of the same, the impugned order issued by the 2nd respondent in proceedings bearing O.MU.No.1736/A1/2020 dated --.10.2020 is hereby quashed. Consequently, the Chief Educational Officer, Madurai district is directed to approve the appointment of both the teachers namely Thirumathi A.Kavitha Devi who was appointed as BT Assistant Social Science with effect from 18.06.2018 and the appointment of Thirumathi J.A.Sharmila as BT Assistant Science with effect from (*)01.08.2019 forthwith and pass appropriate orders, if they are otherwise eligible.

19. Accordingly, these Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

(*)Corrected as per the order of this Court dated 19/06/2024 made in WP(MD)No. 693 and 624 of 2024

Sd/-

Assistant Registrar(P & A)

// True Copy //

/07/2024

Sub Assistant Registrar
(CS - I/ II / III /IV)

Sml

<https://www.mhc.tn.gov.in/judis>



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To

(*) To be substituted to the order already despatched on 12.06.2024.

1. The Secretary,
State of Tamil Nadu,
Department of School Education, Fort St.George, Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 009.
3. The Chief Educational Officer,
Madurai, Madurai District.
4. The District Educational Officer,
(Secondary Education)
Melur 625 106, Madurai District.

+2 CC to M/s.A.AMALA, Advocate (SR-11547 & 11548[F]
dated 12/03/2024)

+1 CC to M/s.SPL.GP (SR-12501 & 12290[F] dated
14/03/2024)

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MK/27.05.2024 13P 8C

RD(18/07/2024) 13P 8C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023