



WP.(MD).No.1729 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.1729 of 2024
and
W.M.P.(MD)No.1768 of 2024

The Correspondent,
A.V.S.High School,
Puliangudi – 627 855,
Kadayanallur Taluk, Tenkasi District. ... Petitioner

Vs.

1.The Chief Educational Officer,
Tenkasi, Tenkasi District.
2.The District Educational Officer (Secondary),
Tenkasi, Tenkasi District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in O.Mu.No. 2398/A5/2022 dated 19.01.2024 of the second respondent herein and quash the same and consequently direct the respondents 1 and 2 herein to approve the appointment of J.James as a BT Assistant (English) in the petitioner School w.e.f. 14.11.2022 with all other attended benefits.



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WP.(MD).No.1729 of 2024

For Petitioner : Mr.T.Pon Ram Kumar
For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, seeking to quash the impugned order in O.Mu.No. 2398/A5/2022 dated 19.01.2024 of the second respondent herein and to direct the respondents 1 and 2 herein to approve the appointment of J.James as a BT Assistant (English) in the petitioner School w.e.f. 14.11.2022 with all other attended benefits.

2.The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

The petitioner's School is the stand alone aided minority educational institution, which is sanctioned with 3 BT Assistant posts, six Secondary Teachers posts, one physical education Teacher post and one vocational instructor post. One Mr.K.Paranjothi who was working as a Secondary Grade Teacher in the petitioner School, submitted a voluntary retirement application and he was permitted to retire voluntarily from service on 31.10.2022 and the same was duly approved by the respondents. By virtue of the same, the Secondary Grade post fell vacant in the



WP.(MD).No.1729 of 2024

petitioner School from 31.10.2022. The said post is a regular sanctioned post receiving grant in aid from the Government. As per G.O.Ms.No.79, School Education Department dated 14.06.2002, if any vacancy of Secondary Grade post arose in higher secondary School/High School/Middle School, the said vacancy shall be upgraded as BT Assistant post. With the prior permission from the government, B.ed qualified Teachers alone can be appointed. By virtue of the same, the said Secondary Grade Teacher vacant post was upgraded as BT Assistant (English) post in the petitioner School. After upgrading the same, on 14.11.2022, one Mr.G.James was appointed as BT Assistant (English) in the petitioner School. On 14.11.2022, the petitioner school has sent a proposal to the first respondent through the second respondent for approval of appointment of the said James. However, the impugned order of returning the said proposal came to be passed by the second respondent vide proceedings dated 19.01.2024. Challenging the same, this Writ Petition came to be filed.

3.The learned counsel appearing for the petitioner Mr.T.Pon Ramkumar submitted that the reason stated in the impugned order of return of proposal of approval of appointment of the said James



WP.(MD).No.1729 of 2024

is something unheard of and no reason has been properly assigned by the second respondent for returning the same so as to facilitate the petitioner School to rectify the defect if any and return the proposal further for approval by the respondents and pressed for setting aside the impugned order.

4.The second respondent has filed a counter affidavit and the learned Government Advocate Mr.N.Ramesh Arumugam appearing for the respondents submitted that the conversion of a Secondary Grade Teacher vacancy into BT Assistant vacancy cannot be automatic in terms of G.O.Ms.No.79 dated 14.06.2002. Such a conversion could be effected only with the prior permission of the Government. Unless and until prior permission is obtained, on that ground alone, such conversion could be returned outrightly by the second respondent. In the instant case, without getting the prior permission of the respondents, the petitioner School has converted the Secondary Grade Teacher vacancy which had arisen due to the voluntarily retirement of K.Paranjothi into BT Assistant (English) post. He added to his arguments that, in view of the orders issued by the Director of School Education vide proceedings dated 29.03.2023, necessary instructions have been issued to fill up



WP.(MD).No.1729 of 2024

vacant posts of Headmasters and PG Assistants and instructions for filling up the other posts like Secondary Grade Teachers and BT Assistants are also awaited from the Government. In view of the same, unless and until appropriate instructions are received from the Government, the second respondent hands are tied and he cannot act upon any proposal whatever submitted before him and on that basis, pressed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents and carefully perused the entire materials available on record.

6. The arguments of the learned Government Advocate that unless and until prior permission is obtained from the first respondent for conversion of Secondary Grade Teacher vacancy into BT Assistant post is not sustainable. The Hon'ble Division Bench of this Court in the case of ***the Government of Tamil Nadu and others v. J. Remila in W.A.(MD)No.1350 of 2017*** has dealt with a similar issue and the portion of which is relevant to this case is extracted as follows:-

"26. Article 30 (1) of the Constitution of India gives linguistic and religious minorities a fundamental right to



establish and administer Educational Institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well settled that Article 30 (1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30 (1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.

27.Furthermore, it is not the contention of the Appellants that the First Respondent is not qualified and eligible to hold the B.T. Assistant (Social Science) post. It is also not the contention of the Appellants that there is no vacancy in the Second Respondent Institution for a B.T. Assistant (Social Science) post. In fact, Rule 6 (2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, does not stipulate that appointments can be made only after getting prior approval from the concerned authorities. It only says that for the eligibility of grant to a Minority Institution, all appointments made by the Minority Institution will have to be approved by the concerned authorities. In the case on hand, the appointment of the First Respondent was made by the Second Respondent Institution and after the appointment, the Second Respondent Institution sought for approval from the concerned authorities, which is in agreement with Rule 6 (2). Further, it is not the case of the Appellants that they have stopped giving grant to the Second Respondent Institution due to the breach of Rule 6 (2) of the Tamil Nadu Minority Schools



WEB COPY



WP.(MD).No.1729 of 2024

(Recognition and Payment of Grant) Rules, 1977. Therefore, the submission of the Learned Special Government Pleader that the Second Respondent Institution has not followed Rule 6 (2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, cannot be accepted by this Court.”

7.In terms of the said judgment, in case of minority institutions, whenever a Secondary Grade Teacher post fell vacant, the Management at its discretion could convert the same into BT Assistant post. As rightly submitted by the learned counsel for the petitioner, vide impugned proceedings dated 19.01.2024, the second respondent returned the proposal of approval of appointment of the said James in the upgraded BT Assistant (English) post without assigning appropriate reasons except that certain clarifications from the Government for the appointment of Secondary Grade Teachers are awaited. That apart expected time limit for receipt of such instructions are also not specified.

8.The Hon'ble Division Bench of this Court in the case of ***the District Educational Officer and another v. A.V.S.Elementary School in W.A.(MD)No.1230 of 2023*** dated 20.11.2023, has passed an order in a similar case with respect to stand alone



WP.(MD).No.1729 of 2024

institution and the relevant portion of which is extracted as follows:-

“4. A reading of paragraph No.95(v) would show that insofar as the aided minority institutions, which are stand alone institutions, are concerned, right to fill up vacancy was held not to be affected for the academic year 2021~2022. In this particular case, the appointment was made in the academic year 2019~2020. Therefore, the observations made by this Court in Iruthaya Amali-s case would not give any assistance to the appellants in this case. Being a stand alone institution with no surplus, the respondent ~ School cannot be faulted in exercising their right and appointing a Secondary Grade Teacher. As the appointment has been made as against the sanctioned post and without surplus, we do not find any reason to interfere with the order of the learned Single Judge.”

9. When a pertinent question was put forth by this Court to the learned Government Advocate as to whether any surplus posts exist in the stand alone petitioner institution, he was not able to answer. That apart even his counter did not reflect anything on that aspect. Had there been any surplus certainly that aspect would have been incorporated in the impugned proceedings dated 19.01.2024 by the first respondent. In the absence of information regarding the surplus in the petitioner School in the impugned proceedings of the first respondent and considering the fact that



WP.(MD).No.1729 of 2024

the petitioner School is a standalone institution, the right to fill up the vacancy which had arisen in the Secondary Grade after upgrading the same as BT Assistant (English) is held not to be affected. To be specific such an upgradation is automatic.

10.The learned counsel for the petitioner submitted that as on date, there is no surplus in the standalone institution. Hence, being a stand alone institution with no surplus, the petitioner School cannot be faulted in exercising the right in upgrading the said vacancy into BT Assistant (English) post and appointing a BT Assistant Teacher. As the appointment was made against the sanctioned post without surplus, I hereby set aside the impugned order proceedings of the second respondent dated 19.01.2024 and remand the proposal back to the second respondent with a direction to forthwith grant approval to the appointment of the said James, if otherwise qualified within a period of 12 weeks from the date of receipt of copy of this order.



WP.(MD).No.1729 of 2024

11. Accordingly, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

28.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The Chief Educational Officer,
Tenkasi, Tenkasi District.
2. The District Educational Officer (Secondary),
Tenkasi, Tenkasi District.

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WEB COPY



WP.(MD).No.1729 of 2024

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)No.1729 of 2024

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