



W.P.(MD).No.2184 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.2184 of 2021

and

W.M.P.(MD)No.1824 of 2021

P.Isabella

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
DPI Campus,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
The office of the Chief Educational
Officer,
Thiruchirappalli District.
- 4.The District Educational Officer,
The office of the District Educational
Officer,
District Collector Campus,
Thiruchirappalli District.



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5.The District Educational Officer,
The office of the District Educational
Officer,
Manaparai,
Thiruchirappalli District.

6.The Correspondent,
Little Flower Girls Higher Secondary
School,
Manaparai-621 306,
Thiruchirappalli District.

... Respondents

Prayer : 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 pertaining to the impugned proceedings, dated 10.12.2020, in Pa.Mu.No.4848/EE2/2020, on the file of the 3rd respondent and quash the same in respect of the rejection of approval to the appointment of the petitioner, directing the respondents to approve the appointment of the petitioner, directing the respondents to approve the appointment of the petitioner, P.Isabella, working as B.T.Asst. (Maths) in Little Flower Girls Higher Secondary School, Manaparai-621 306, Thiruchirappalli District, from the date of appointment, w.e.f. 14.06.2016, with all service benefits.

For Petitioner : M/s.Father Xavier Associates

For R-1 to R-5 : Mr.M.Sarangan,
Additional Government Pleader

For R-6 : No appearance



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ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed to call for the records pertaining to the impugned proceedings, dated 10.12.2020, in Pa.Mu.No.4848/EE2/2020, on the file of the 3rd respondent and quash the same in respect of the rejection of approval to the appointment of the petitioner, directing the respondents to approve the appointment of the petitioner, directing the respondents to approve the appointment of the petitioner, P.Isabella, working as B.T.Asst. (Maths) in Little Flower Girls Higher Secondary School, Manaparai-621 306, Thiruchirappalli District, from the date of appointment, w.e.f. 14.06.2016, with all service benefits.

2. The facts and circumstances which led to the filing of this writ petition is as follows:

2.1. The 6th respondent school is a Minority Educational institution. The petitioner was appointed as B.T.Assistant Maths with effect from 14.06.2016 in the 6th respondent school in the vacancy which had arisen due to the voluntary retirement of one secondary grade teacher, namely, A.Sheela Rajam. The 6th



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respondent school had submitted a proposal dated 13.04.2016, for the conversion of the said post from Secondary Grade Teacher to the B.T. Assistant to the 4th respondent. The said post was a regularly sanctioned post with grant-in-aid from the Government. The staff fixation for the 6th respondent School during the academic years 2016-2017 and 2019-2020 would reveal that there was no surplus at that point of time. Having appointed the petitioner in the said post, the 6th respondent School further submitted a proposal dated 20.06.2016 for the approval of appointment of the petitioner as B.T. Assistant Maths in the 6th respondent School with effect from 14.06.2016.

2.2. While so, the 3rd respondent, vide proceedings dated 29.06.2017, returned the proposal for conversion of the Secondary Grade Teacher to the B.T. Assistant without allowing the conversion of the post for the reason that the proposal was not submitted as early as in the year 2016 itself. In response to the same, the 6th respondent School resubmitted a proposal on 29.08.2017, clearly explaining that the proposal for conversion was submitted as early as 13.04.2016 itself. Thereafter, the 6th respondent School had sent a reminder dated 22.10.2019, for the approval of the appointment of the petitioner. On



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05.11.2019 again the 6th respondent School resubmitted the proposal for approval of the appointment of the petitioner. Thereafter, the said proposal was returned by the 5th respondent, vide proceedings dated 22.02.2020, without granting approval, stating that the proposal was submitted belatedly.

2.3. Assailing the same, the petitioner filed a writ petition in W.P. (MD)No.11454 of 2020 before this Court and this Court was pleased to dispose of the same, by an order dated 11.09.2020, directing the official respondents to consider the case of the petitioner afresh and the proposal for conversion of post dated 13.04.2016 along with the approval of the appointment. Pursuant to the same, the 3rd respondent had passed the impugned order dated 10.12.2020, approving the conversion of post from Secondary Grade Teacher to B.T. Assistant and rejecting the approval of the appointment of the petitioner, stating that the said post should have filled by deployment, out of the surplus posts of the management administering the concerned school / the concerned Education District / Revenue District.



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2.4. Further the reason stated in the impugned order dated 10.12.2020 are based on the interim order passed by this Court dated 09.04.2019 and made in W.A.(MD)Nos.76 & 225 of 2019 batch. The said interim order directed the private schools not to make any appointments until all the surplus teachers under the same management are deployed to the vacant posts. Subsequent to the same, G.O.Ms.No.165, School Education Department, dated 17.09.2019, issued by the Government was also suspended by yet another interim order by the Division Bench of this Court in the same writ appeal batch in W.A.(MD)No.76 of 2019. The petitioner was appointed with effect from 14.06.2016 prior to the interim order of this Court in the aforesaid W.A.(MD)No.76 of 2019, dated 09.04.2019. Hence, subsequent to the interim order passed in the Writ Appeal and the subsequent to the issuance of the G.O.Ms.No.165, School Education Department, dated 17.09.2019, which was later suspended by the Division Bench on 20.09.2019 has no effect on the appointment of the petitioner. Assailing the impugned order dated 10.12.2020 passed by the 3rd respondent, this writ petition came to be filed.



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3. The learned counsel appearing for the writ petitioner submitted that, the 6th respondent School being a minority educational institution, whenever a Secondary Grade Teacher post falls vacant in case of necessity, the conversion of post could be automatically made and obtaining prior permission is not necessary. That apart, he insisted that in case of vacancy which had arisen in a minority school, the management is entitled to make a fresh appointment and the respondent authorities cannot insist that filling of the said vacancy by deployment of surplus teachers from other schools if the particular school do not suffer surplus issue. Further relying upon the judgment of the Division Bench of this Court in W.A.(MD)No.866 of 2018 dated 28.06.2018, the learned counsel for the petitioner submitted that if there are teachers in any one school in excess of the sanctioned quota, the Government might refuse to bear the salary burden of excess teachers appointed beyond the sanctioned strength of that school. However, approval of appointment of a teacher within the sanctioned strength of the school cannot be withheld on the ground of existence of excess teachers in some other school run by the same management. When a teacher is transferred from one school to another school run by the same management and the teacher accepts the transfer and joins that school, her post



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in the school from which she is transferred would obviously fall vacant and that vacancy might be filled up in accordance with law either by a fresh appointment or by a transfer. However, in the instant case, the vacancy had arisen not due to transfer, but due to the voluntary retirement of the Secondary Grade Teacher, which vacancy was upgraded as B.T.Assistant, in which, the petitioner came to be appointed and the upgradation is automatic and it is not necessary for the 6th respondent school to seek prior permission for upgradation of B.T. Assistant post and pressed for allowing the writ petition.

4. Per contra, the 3rd respondent has filed a counter affidavit and the learned Additional Government Pleader, Mr.M.Sarangan submitted that by upgrading the post of Secondary Grade Teacher to that of B.T.Assistant without prior permission, the 6th respondent minority school discriminated the qualified candidates who are suitable for being appointed to the post of Secondary Grade Teacher. Insisting that, the contention of the learned counsel for the petitioner that, the upgradation of the post of Secondary Grade Teacher to that of B.T. Assistant is automatic as a mistaken understanding of law, he pressed for dismissal of the writ petition.



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5. Heard the learned counsels on either sides. Carefully perused the materials available on record.

6. However, the matter in hand is no more *res-integra* and this Court in ***W.P.(MD)No.17955 of 2023 dated 01.11.2023*** has dealt with a similar case and the relevant portion which is applicable to the facts and circumstance of this case is extracted as follows:

“25.Though the legal position with regard to the applicability of the subject roster and conversion of Secondary Grade Post to B.T.Post have been settled long back in various decisions of the Hon'ble Division Bench, the educational authorities continue to reject the proposal of the School managements on the same ground and the State is also in the habit of vehemently defending the said orders, wasting the precious judicial time. If at all the State wants to introduce subject roster, the State should have made earnest efforts to bring in amendment in the Act and the connected rules. The authorities of the State are continuously attempting to defend this kind of orders without any statutory backing.

26.The order of the learned Single Judge in the judgments reported in 2006 (5) CTC 504 (The corporate Manager, CSI Corporate Schools Vs. The State of Tamil Nadu), 2007 (2) MLJ 760 (Correspondent, Britannia Higher Secondary School, Chennai Vs.



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State of Tamil Nadu), 2012 SCC Online Mad 1112 (R.C.Susai Higher Secondary School, Rep. by its Correspondent, Kazhugumalai, Tuticorin District Vs. The Government of Tamil Nadu Represented by its Secretary to Government and others) and the judgment in WP. (MD).No.2750 of 2012 (R.Emersan Udaisingh Vs. The State of Tamil Nadu and others), dated 22.08.2013 have been accepted by the State and no appeals have been filed. It is also brought to the notice of the Court that in all these concerned cases, orders have been issued to the teachers concerned in compliance with the orders of the Court. The judgments of the various Division Benches has also not been challenged by the State before the Hon'ble Supreme Court and they have been complied with. In such circumstances, the State is duty bound to direct its authorities not to disapprove the appointment of the teachers citing the subject roster or non obtaining of prior approval for upgradation.”

7. Fully fortified by the mandates of the aforesaid order extracted supra in the similar lines, I hereby observe that the respondent authorities have unnecessarily disapproved the appointment of the petitioner in the post of B.T. Assistant Maths, despite approving the upgradation of the post of Secondary Grade Teacher to that of B.T.Assistant. The said issue has already been settled



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by the various judgments of the Division Bench of this Court and also by the Hon'ble Apex Court.

8. In view of the same, as far as the disapproval of the appointment of the writ petitioner is hereby quashed and thereby the respondents are directed to approve the appointment of the petitioner with effect from the date of his appointment within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



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L.VICTORIA GOWRI, J.

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