



WP.(MD).No.2198 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.2198 of 2024

Aided Primary School Kongarayakurichi,
Through its Manager,
S.M.B.Shahul Hameed,
S/o. Bahrudeen,
Kongarayakurichi, Karungulam Union,
Thoothukudi District.

... Petitioner

Vs.

1.The District Educational Officer,
Primary Education, Office at Pudukottai,
Thoothukudi District.
Thoothukudi.

2.The Block Educational Officer,
Karungulam Union,
Thoothukudi District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to grant approval for appointment of Mohideen Ashifa Begum in sanctioned post of Secondary Grade Teacher in the petitioner's School from the date of appointment I.e., on 09.12.2019 with all consequential and other attendant benefits including arrears of salary by considering petitioner's proposal for approval dated 09.12.2019 and representation dated 02.11.2023.

For Petitioner

: Mr.T.Robert Chandra Kumar

For Respondents

: Mr.P.T.Thiraviyam

Government Advocate



WP.(MD).No.2198 of 2024

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ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, seeking to direct the respondents to grant approval for appointment of Mohideen Ashifa Begum in sanctioned post of Secondary Grade Teacher in the petitioner's School from the date of appointment I.e., on 09.12.2019 with all consequential and other attendant benefits including arrears of salary by considering petitioner's proposal for approval dated 09.12.2019 and representation dated 02.11.2023.

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

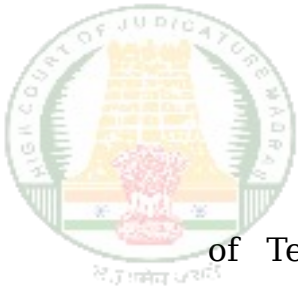
(i)The petitioner School is a stand alone minority aided Primary School. On 09.12.2019, one Tmt.Mohideen Aushifa Begum was appointed as Secondary Grade Teacher in the vacancy, which had arisen due to the retirement of one Thiru.Thangavel. On the same day, the proposal seeking approval of her appointment was sent to the respondents. After receiving the same on 21.09.2020, the first respondent informed that the approval would be considered only after assessment of surplus Teachers post in



WP.(MD).No.2198 of 2024

Karungulam Union based on 2019-2020 Employees Appointments sanctioned strength. Thereafter, on 13.07.2021, the petitioner sent a proposal for approval of appointment of the said Mohideen Aushifa Begum again, for which the respondents vide reply dated 26.07.2021 and it was further reiterated that unless and unless the assessment of surplus Teachers are completed, her appointment cannot be approved. On 06.03.2023, the petitioner School sent a representation to the respondents informing that one Ashiq Ali who had been the Headmaster of the School, was going to retire on 30.06.2023 and hence, insisted for approval of appointment of the said Mohideen Aushifa Begum before 30.06.2023 I.e., date of superannuation of the incumbent Headmaster. Further on 03.04.2023 and 26.05.2023, similar representations were made by the first respondent and the same was further forwarded to the second respondent on 30.05.2023. Since the same was not considered, the representation was submitted to the District Collector on 31.05.2023.

(ii)Following which on 10.06.2023, the first respondent issued the proceedings and affirmed the total students strength of the petitioner School as 161 as on 01.08.2022 and sanctioned strength



WP.(MD).No.2198 of 2024

of Teachers was one Headmaster and one Secondary Grade Teacher. Even after that, the proposal was not considered. Hence, the petitioner made a representation to the Director of the Elementary Education and on 25.09.2023, the same was forwarded to the first respondent. In the meanwhile, on 30.06.2021, the Headmaster retired on attaining superannuation. Therefore, on 02.11.2023, the petitioner submitted yet another representation to the first respondent through the second respondent for approval of appointment of the said Mohideen Aushifa Begum from 09.12.2019 but the same is kept pending endlessly. Hence, this Writ Petition came to be filed.

3.The learned counsel for the petitioner submitted that relying upon the staff fixation report arrived at by the District Educational Officer, Thoothukudi vide proceedings dated Nil. 05.2023 signed on 10.06.2023 submitted that there was no surplus in terms of said staff fixation and two sanctioned posts were also available in the said School. The petitioner School being a stand alone minority institution, is entitled to make appointment in the sanctioned vacancy and the said Mohideen Aushifa Begum has been appointed in the sanctioned vacancy. In view of the same, the



WP.(MD).No.2198 of 2024

respondents 1 to 3 ought to have accorded approval of appointment of the said Mohideen Aushifa Begum and pressed for allowing the Writ Petition.

4.The first respondent has filed a counter and the learned Government Advocate appearing for the respondents submitted that it is only on the request of the petitioner vide representation dated 06.03.2023 seeking to deploy surplus Teachers in his School, already two Teachers have been deployed to the petitioner's School. In view of the same, the appointment of the said Mohideen Aushifa Begum as Secondary Grade Teacher cannot be approved and pressed for dismissal of the Writ Petition.

5.The learned counsel for the petitioner further submitted that two Teachers have been deputed by the first respondent and Teachers are not deployed. Since the request of the petitioner School for the past five years seeking approval of appointment of the said Mohideen Aushifa Begum was not considered, in the verge of superannuation of the sole existing Headmaster namely Ashiq Ali, left with no other option, the petitioner School made a representation seeking to provide any Teacher from the



WP.(MD).No.2198 of 2024

Government side. In response to the same, the respondents have deputed some Teachers temporarily considering the administrative exigency which has arisen in the petitioner's School due to the retirement of the said Ashiq Ali.

6. 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.

7. The petitioner School is a stand alone minority institution. The petitioner's School has appointed one Tmt. Mohideen Aushifa Begum on 09.12.2019 and the question of appointment of Teachers in stand alone institution by the Management is no more *res integra* and the same has been dealt in similar case by the Hon'ble Division Bench of this Court in W.A.(MD)No.976 of 2023 dated 20.11.2023 and the relevant portion which is applicable to the facts and circumstances of this case, is extracted as follows:-

“3. The learned Additional Advocate General appearing on behalf of the appellants also fairly submitted that there is no excess or surplus teacher in the respondent – School. Being a stand alone minority institution, the respondent – School had appointed one R.Jagatha Perumal as a teacher on



WP.(MD).No.2198 of 2024

02.01.2019. He would rely upon the judgment of this Court dated 31.03.2021 made in W.A.(MD)Nos.76 of 2019 etc., batch (The Secretary to Government, Government of Tamil Nadu, School Education Department, Fort St.George, Chennai and others Vs. Iruthaya Amali and another) and would invite our attention to the conclusion at paragraph No.95.

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 2018-2019. 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.'

8.Fully fortified by the judgment passed by the Hon'ble Division Bench of this Court in the case discussed supra observing that the petitioner School is stand alone institution with no surplus



WP.(MD).No.2198 of 2024

Teacher, the petitioner School cannot be faulted for appointing the said Mohideen Aushifa Begum as Secondary Grade Teacher and in view of the same, following the mandates of the aforesaid judgment, the respondents are hereby directed to accord sanction to the appointment of the said Mohideen Aushifa Begum in the sanction post of Secondary Grade Teachers in the petitioners School from the date of appointment dated 09.12.2019, with all consequential and other attendant benefits including arrears of salary within a period of eight weeks from the date of receipt of copy of this order.

9. In view of the above, this Writ Petition stands allowed.
There shall be no order as to costs.

13.03.2024

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

Note: Issue order copy on **14.03.2024**.



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WP.(MD).No.2198 of 2024

To

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Primary Education, Office at Pudukottai,
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Thoothukudi.
- 2.The Block Educational Officer,
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WP.(MD).No.2198 of 2024

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)No.2198 of 2024

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