



W.P.(MD).No.3734 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.06.2024

PRONOUNCED ON : 11.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.3734 of 2024

and

W.M.P.(MD)Nos.3646 and 3648 of 2024

The Secretary,
MSP Solai Nadar Memorial Higher
Secondary School,
No.54/8, G.T.N.Salai,
Dindigul District-624 005.

... Petitioner

Vs.

1.The Director of School Education,
College Road, Chennai-600 006.

2.The Chief Educational Officer,
Dindigul, Dindigul District.

3.The District Educational Officer,
Dindigul, Dindigul 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 relating to the impugned order passed by the 2nd respondent Chief



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Educational Officer in Mu.Mu.No.4038/A2/2020 dated 24.04.2023, quash the same, and further direct the respondents 2 and 3 to approve forthwith the appointment of T.Marikannu as B.T. Assistant (Science) in the petitioner school w.e.f., 01.06.2018, with all attendant benefits including arrears of salary and allowances.

For Petitioner : Mr.K.Ragatheesh Kumar

For Respondents : Mr.N.Ramesh Arumugam,
Government Advocate (Civil)

ORDER

The present writ petition is a Writ of Certiorari, to call for the records relating to the impugned order passed by the 2nd respondent Chief Educational Officer in Mu.Mu.No.4038/A2/2020 dated 24.04.2023, quash the same, and further direct the respondents 2 and 3 to approve forthwith the appointment of T.Marikannu as B.T. Assistant (Science) in the petitioner school w.e.f., 01.06.2018, with all attendant benefits including arrears of salary and allowances.

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



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2.1. The petitioner is the Secretary of the MSP Solai Nadar Memorial Higher Secondary School, Dindigul (herein after referred as 'the school'). The school is a recognised and aided private school. The school was established as High School in the year 1966 and upgraded as Higher Secondary School in the year 1978. There are 68 teaching staffs and 11 non- teaching staffs working in the school under the Aided Scheme. There are 4251 students now studying in the school. One post of PG Assistant in Chemistry in the school fell vacant on 01.06.2016 due to the retirement of then incumbent Thiru. N. Arul Raj on 31.05.2016. In that vacancy, the school promoted one T.S. Vijaya Murugan, BT Assistant (Science) as PG Assistant (Chemistry) w.e.f. 27.07.2016. The DEO vide proceedings in O. Mu. No. 5291/A4/16 dated 28.10.2016 approved the promotion of Thiru. T.S.Vijaya Murugan as PG Assistant (Chemistry) w.e.f. 27.07.2016. Considering the need and eligibility of the post, the CEO vide proceedings in Mu. Mu. No. 2800/Aa2/2018 dated 18.04.2018 gave permission to the school to fill up the post with eligible candidate under GT Category.

2.2. At once, the school affixed the vacancy position in school Notice Board inviting eligible applications for the post on 19.04.2018. The school also notified the same in News Paper on 20.04.2018 inviting applications



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from the eligible candidates and also required the District Employment Exchange to sponsor list of eligible candidates for the post of BT Assistant (Science) under GT category. The District Employment Exchange vide proceedings in Na. Ka. No. 2/36, 37/2018 dated 25.04.2018 sponsored list of 5 eligible candidates for the post. That apart, the school received 15 applications from the eligible candidates who responded to the News Paper Notification. The school invited all the 20 candidates for the selection scheduled on 07.05.2018. Out of 20 applicants, 16 candidates took part in the selection process on 07.05.2018.

2.3. On assessment of overall merit and ability of the participants, the school found one Thiru. T. Marikannu as most meritorious candidate and resolved to appoint him in the post. He possessed full qualification for the post viz., B.Sc., B.Ed., and also passed in Teachers Eligibility Test (TET). The school appointed him as BT Assistant (Science) w.e.f. 01.06.2018 vide proceedings of the school in Ref. No. 64/Aa/2018 dated 09.05.2018. The incumbent joined on 01.06.2018 and continued to work in the said post. For the purpose of approval of his appointment and disbursement of grant-in-aid towards his salary, the school submitted necessary proposal to on 01.06.2018. The school enclosed the entire relevant document viz., the



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promotion and approval order of previous incumbent, permission granted by CEO for filling up the post, list of candidates sponsored by District Employment Exchange, News Paper Notification, Roster Register, Educational Qualification Certificate, Staff Fication order, etc.,

2.4. On receipt of the same, the DEO forwarded the same to the CEO with due recommendation to approve the appointment vide proceedings in Na. No. 3117/A2/2018 dated 04.09.2018. A copy of the same was also marked to the petitioner. However, the CEO did not pass any order approving the appointment of Thiru. T. Marikannu as BT Assistant (Science) and the incumbent is working without any salary since 01.06.2018. Hence, W.P.(MD)No.828 of 2020, directing the 2nd respondent Chief Educational Officer to approve the appointment of Thiru.T.Marikannu as B.T. Assistant (Science) in the petitioner-school w.e.f., 01.06.2018, with all attendant benefits including arrears of salary was filed. This Court was pleased to dispose of the Writ Petition by Order dated 13.01.2020 directing the 2nd respondent CEO to consider the proposal forwarded by the DEO vide his proceedings in Na. Ka. No. 3117/A2/2018 dated 04.09.2018.



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2.5. The CEO without considering the proposal forwarded by the DEO vide proceedings dated 04.09.2018 on merit as per the directions of this Court, had simply denied approval to the appointment of Thiru. T. Marikannu as BT Assistant (Science) w.e.f., 01.06.2018, vide proceedings in Mu. Mu. No. 965/E1/2019 dated 19.03.2020 stating that as per the Order of this Court in W.A. (MD). No. 76, 225, 341 of 2019, etc., batch dated 09.04.2019 and Order in W.P. No. 31575 of 2019 dated 08.11.2019 and as per G.O. Ms. No. 165, School Education Department dated 17.09.2016, it is instructed that until the surplus teachers working in Minority and non-minority private aided schools are deployed to the needy schools, no new appointments shall be made in any school and no approval would be granted and hence, approval to the appointment of Thiru.T.Marikannu as BT Assistant (Science) cannot be granted. Immediately the school challenged the said proceedings before this Court in W.P (MD) No. 8281 of 2020 and sought for a consequential direction to approve forthwith the appointment of Thiru. T.Marikannu as BT Assistant (Science) in the petitioner-school w.e.f., 01.06.2018. This Court was pleased to dispose of the Writ Petition by Order dated 19.12.2022 directing the respondents to consider the fresh proposal forwarded by the school.



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2.6. The CEO without considering the proposal forwarded by the school dated 25.01.2023 on merit as per the directions of this Court, had again denied approval to the appointment of Thiru. T. Marikannu as BT Assistant (Science) w.e.f., 01.06.2018, vide impugned proceedings in Mu. Mu. No. 4038/A2/2020 dated 24.04.2023 stating that the proposal will be considered after disposal of the pending Special Leave Petition filed by the Government before Hon'ble Supreme Court as against the Order dated 31.03.2021 in W.A. (MD). No. 76 of 2019. Challenging the said impugned order dated 24.04.2023, this writ petition came to be filed.

3. The appointment of Thiru.T.Marikannu as B.T. Assistant (Science) was made in accordance with law with effect from 01.06.2018 by the petitioner School. The impugned order rejecting the approval of the said T.Marikannu's appointment as B.T.Assistant (Science) came to be rejected by a reasoning that the proposal for approval of appointment will be considered only after the disposal of the pending Special Leave Petition filed by the Government before the Hon'ble Apex Court against the order of the Hon'ble Division Bench of this Court in W.A.(MD)No.76 of 2019 dated 31.03.2021. However, it is brought to the notice of this Court that the Hon'ble Apex Court in the petition(s) for Special Leave to Appeal (C) No(s).



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15702 of 2021 dated 16.02.2024 has disposed of the S.L.P as against the order dated 31.03.2021 in W.A.(MD)No.76 of 2019 and the operative portion of the same is extracted as follows:

“2.The counsel would refer to this Court's proceedings dated 27.09.2023 and the earlier proceeding dated 10.08.2022 to point out that following the liberty granted in Clause (m) of Paragraph 95 in the impugned judgment dated 31.03.2021, the Tamil Nadu Private Schoos (Regulation) Act, 2018 and Rules were enacted w.e.f., 20.01.2023. Thus the enacted laws will govern the process of approval for teachers in the concerned schools provided the individual and the school concerned satisfy the criteria laid down in the 2023 Regulations.

3.However, the above 2023 Regulations and the Rules are subject matter of challenge before the Madras High Court and an interim order was passed therein on 21.04.2023, ordering status quo on the operation of the 2023 Regulations.

4.The suggestion made by the two senior counsel to this Court is to relegate the parties to the pending proceedings in the Madras High Court. It is however submitted that the Division Bench should limit itself to the core direction given in sub-clause (i) of paragraph 95 of the impugned judgment dated 31.03.2021 in the Writ Appeal



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(MD)No.76 of 2019 and need not be concerned with the other aspects in the earlier judgment (31.03.2021)

5.Accepting the above submission, this matter is ordered to be closed by relegating the parties to the Madras High Court. It is made clear that the Court should decide the pending matter on merit without being influenced by any observation made by this Court during the pendency of the present proceeding or under the impugned order.”

4. The Hon'ble Apex Court vide aforesaid order has confirmed the judgment of the Hon'ble Division Bench of this Court in W.A.(MD)No.76 of 2019, more particularly with respect to the compendium of schedule in paragraph 95, except sub-clause (i) to para 95. Sub-clause (i) to para 95 is unrelated to the instant *lis* in hand.

5. The Hon'ble Division Bench of this Court in W.A.(MD)No.1557 of 2023 dated 21.09.2023 has dealt with a similar case and has categorically held that the directions of the Hon'ble Division Bench of this Court in W.A. (MD)No.76 of 2019 can only be prospective and the relevant portion of the same is extracted as follows:



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“15. Because of the above position, even though an interim order was granted on 10.04.2019 pending the above decision not to approve the appointments, the Division Bench had not negated or stated anything about the fate of those appointments of which approvals were pending. It is to be seen that the earlier interim order given by another Coordinate Bench was also nullified and the G.O.Ms.No.165 which was issued pursuant to the earlier order was also expressly declared to be inoperative.

*16. The Hon'ble Division Bench was consciously did not nullify the appointments made earlier since it establishes a new norm to prevent administrative chaos and even directs framing of rules and it is not a simple case of upturning an earlier decision or ruling, by which it can be applied retrospectively to all pending cases. The findings of the Division Bench and the directions given depend on each other and without following the compendium of schedule, information of the school, etc, in isolation, the appointment which was made even prior to the interim order by the Hon'ble Division Bench cannot be construed as having been affected by the judgment in **Iruthaya Amali's case**.*

17. More so, whether the appointment which is made pursuant to an express permission can be refused approval or not was also not an issue in Irudaya Amali's case and thus would result in a great hardship and undue prejudice by applying the ratio to a case where the appointment itself was made after express permission. Accordingly, we hold that the appointment of the writ petitioner cannot be refused citing the directions



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given in **Iruthaya Amali's case**. As a matter of fact even in the impugned order, the appellants/respondents were not clear as to whether **Iruthaya Amali's case** is applicable or not and that in view of the pronouncement since the Government has not come clear with the clarification they are not approving. Further, it can be seen that there was no redeployment of any teacher at all to the second respondent school and on the contrary, the appellants gave express permission for the second respondent school to fill up the vacancy.

18. The impossibility of retrospective or retro active application of directions in a Judgment has been considered by the Hon'ble Supreme Court of India in **Goan Real Estate Construction Limited and Another -Vs- Union of India** and it is specifically held in paragraph 31 that the Judgment should be read in the context and its entirety and the observations should not be applied out of context. In paragraph 39 it is held that the nature of directions should be considered to give prospective effect. In paragraph 34 it is held that whenever a new norm is established the ability to retrospectively effectuate the new rule should be considered. Thus, applying the dictum, it can be seen that the Division Bench had consciously did not nullify the appointments pending approval. “

6. Fully fortified by the mandates of the judgment of the Hon'ble Division Bench of this Court in W.A.(MD)No.1557 of 2023, applying the



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same dictum recording the fact that the Hon'ble Division Bench had consiously did not nullify the appointments pending approval prior to the judgment in the aforesaid case dated 31.03.2021, considering that the petitioner was appointed as early as with effect from 01.06.2018, this Court hereby quash the impugned order dated 24.04.2023 and consequently direct the respondents to forthwith approve the appointment of the said Thiru.Marikannu as B.T. Assistant (Science) in the petitioner school with effect from 01.06.2018 with all service benefits within a period of four (4) weeks from the date of receipt of a copy of this order.

6. With the above observations,this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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- 1.The Director of School Education,
College Road, Chennai-600 006.
- 2.The Chief Educational Officer,
Dindigul, Dindigul District.
- 3.The District Educational Officer,
Dindigul, Dindigul District.



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L.VICTORIA GOWRI, J.

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