



W.P.(MD)No.4625 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.4625 of 2024

and

W.M.P(MD).No.4461 of 2024

S.Alphonse Mary

... Petitioner

vs.

1.The Chief Educational Officer,
Trichy, Trichy District.

2.The District Educational Officer(Elementary),
Manaparai, Trichy District.

3.The Block Development Officer,
Manaparai Union,
Trichy District.

4.The Correspondent,
St.Mary's Primary School,
Manaparai - 621 306,
Trichy District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned proceedings issued by the first respondent vide Na.Ka.No.7337/E3/2020 dated 22.02.2021, quash the same and



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further direct the second respondent herein to approve the appointment of petitioner as Secondary Grade Teacher in the 4th respondent school *w.e.f.* 01.03.2019 and disburse grant-in-aid towards salary and other attendant benefits.

For Petitioner : Mr.S.Ajith Geethan
For R1 to R3 : Mr.T.Amjad Khan
Government Advocate
For R4 : Mr.V.John Kennedy
for M/s.Father Xavier Associates

ORDER

Heard Mr.S.Ajith Geethan, learned counsel appearing for the petitioner, Mr.T.Amjad Khan, learned Government Advocate appearing for the respondents 1 to 3 and Mr.V.John Kennedy, learned counsel appearing for the fourth respondent.

2. The petitioner has filed this petition seeking to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned proceedings issued by the first respondent vide Na.Ka.No.7337/E3/2020 dated 22.02.2021, quash the same and further direct the second respondent herein to approve her appointment as Secondary Grade



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Teacher in the fourth respondent school *w.e.f.* 01.03.2019 and disburse grant-in-aid towards salary and other attendant benefits.

3. The petitioner has been working as a Secondary Grade Teacher in the fourth respondent School, which is a recognized aided minority institution, from 01.03.2019 onwards. The fourth respondent School comes under the corporate Management 'the Society of the Congregation of Mother of Sorrows Servants of Mary', Tiruchirapalli. The fourth respondent School has submitted a proposal for approval of the appointment of the petitioner to the third respondent on 25.07.2019, who in turn, had forwarded that proposal to the second respondent on 18.12.2019. The second respondent has returned the proposal vide proceedings dated 12.06.2020. Challenging the same, the fourth respondent School has preferred an appeal to the first respondent and the first respondent vide impugned order dated 22.02.2021, rejected the appeal by confirming the order of the second respondent stating that,

(i) already approval of appointment of two Teachers by name Kiruba and Jesu Many in the fourth respondent School were denied for



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the reason that those posts were not filled by using the surplus Teachers under their Corporate Management and appeals over the denial order are pending before this Court, while so, instead of filling up the post of Secondary Grade Teacher by way of surplus Teacher, the fourth respondent School, in the capacity of a minority institution, has proceeded to recruit a new Teacher and that would cause financial loss to the Government.

(ii) there is a ban to make fresh recruitments as per the interim order of this Court in W.A.(MD)No.76 of 2019 and batch dated 09.04.2019.

(iii) there was nine months delay in sending the proposal for approval of appointment and no satisfactory reason was stated for the said delay.

(iv) the appointment order was pre-dated with an intent to evade the applicability of the interim order dated 09.04.2019 in W.A.(MD)No. 76 of 2019.

(v) the additional posts sanctioned to the School according to the students strength after 1991-1992 Academic Year, have to be declared



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as expired after such posts become vacant as per Private School Act, 1973, whileso, one of the two such Secondary Grade Posts sanctioned to the fourth respondent School during the year 2016 has expired due to the death of previous incumbent and hence the petitioner's appointment to the said post is contrary to the legal provisions.

(vi) there is discrepancy in the date of appointment of the petitioner.

4. Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents 1 to 3 submitted that the fourth respondent School is one of the cluster Schools under the corporate Management by name 'the Society of the Congregation of Mother of Sorrows Servants of Mary' and 39 surplus Secondary Grade Teachers are working in Primary and Middles Schools coming under the same corporate Management. Instead of making fresh appointments, those Teachers ought to have been deployed in the vacancies arising in the Schools coming under the same Management. In the order dated 17.06.2015 passed by the Division Bench of this Court in W.A.(MD)No.639 of 2015 and batch, it is stated



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that if surplus Teachers are found in the Schools of the same Management, the Authorities have every right to insist upon the Management to deploy those Teachers. Rule 15(4)(ii)(c) of the Tamil Nadu Recognized Private Schools (Regulations) Act mandates the Authorities to treat the corporate body running more than one School as one unit. Hence, the fourth respondent School cannot fill up the vacancies with fresh appointments. The Division Bench of this Court vide interim order in W.A.(MD)No.76 of 2019 and batch dated 09.04.2019 held that unless excess teaching staffs are identified under all the category of Schools, no recruitment shall be made by the Government.

5. It is to be noted that final orders itself has been pronounced by the Division Bench of this Court in ***W.A.(MD).No.76 of 2019 batch on 31.03.2021 in the case of The Secretary to Government Government of Tamil Nadu School Education Department, Fort St. George, Chennai – 9 vs. Iruthaya Amali [Iruthaya Amali's case]***.



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6. On perusal of the impugned order it is seen that the same has been passed mainly based on the Government Order in G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019. However, the Division Bench of this Court in **Iruthaya Amali's case** has declared the said Government Order to be inoperative. Furthermore, the Division Bench has dealt with the issue with regard to surplus Teachers at length and it has been decided as follows.

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases :

.....

(v) Like that insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned



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strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength."

7. According to **Iruthaya Amali's case**, if a School comes under a corporate Management, even though vacancy arose within the sanctioned strength, those vacancies shall not be filled up until the excess staffs identified in all other schools under the same corporate Management are exhausted fully; and only after exhausting the redeployment process, they shall be free to make fresh appointments within the sanctioned strength.

8. Whiles, Mr.A.Ajith Geethan, learned counsel appearing for



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the petitioner claims that the petitioner was appointed in the fourth respondent School on 01.03.2019 itself, which is prior to the passing of the final orders in the **Iruthaya Amali's** case and hence, she is entitled to get the benefit of getting her appointment approved as a Secondary Grade Teacher.

9. If the petitioner's appointment is prior to the order passed in **Iruthaya Amali's case**, the respondents 1 and 2 cannot deny to approve the appointment of the petitioner for the reason of deployment of surplus Teachers. However, in the impugned order, the first respondent has raised doubt about the genuineness of the date of actual appointment of the petitioner since the proposal for appointment has been sent with a delay of nine months. Therefore, if the petitioner and the fourth respondent School could prove that the petitioner's appointment has been made prior to the date of passing of the final order in **Iruthaya Amali's case**, that would be suffice and the petitioner would be eligible to get her appointment approved.



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10. In view of the above observations, the writ petition is **disposed of** and the fourth respondent is directed to re-present the proposal to the second respondent by giving the explanation as to the significance of the date of appointment of the petitioner as a Secondary Grade Teacher in their School within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the second respondent is directed to re-consider the proposal without being influenced by their earlier order and pass orders afresh on merits within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order
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To
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