



WP(MD). No.5743 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 12/04/2024

CORAM

The Hon`ble Ms.Justice **R.N.MANJULA**

WP(MD). No.5743 of 2024
and WMP(MD) No.5421 of 2024

The Secretary
SHN Ethel Harvey Girl's Higher Secondary school
Sattur
Virudhunagar District

... Petitioner

Vs

1. The Chief Educational Officer,
Virudhunagar District..
2. The District Educational Officer,
Virudhunagar District..

... Respondents

PRAYER :-Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in his proceedings in Mu.Mu.No.4532/A1/2020 dated 15.02.2022 and consequential order passed by the 2nd respondent in proceedings in Oo.Mu.No. 1871/A5/2020 dated 22.02.2022 and quash the same and direct the respondents to approve appointment of K.Packiyalakshmi as Office Assistant from the date of appointment i.e from 11.12.2019 with



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salary and all consequential benefits

For Petitioner : Mr.V.Panneerselvam
For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

Challenging the impugned order of the first respondent dated 15.02.2022 and the consequential order passed by the 2nd respondent dated 22.02.2022 and for a consequential direction to the respondents to approve appointment of K.Packiyalakshmi as Office Assistant from the date of appointment i.e from 11.12.2019 with salary and all consequential benefits, this writ petition has been filed.

2.Heard Mr.V.Panneerselvam, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader for the respondents.

3.The petitioner school has appointed one Packiyalakshmi as Office Assistant on 11.12.2019 in the vacancy that arose due to the promotion of Muthumanikandan as Record Clerk.



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4.The learned counsel for the petitioner would submit that having granted prior permission for filling up the said post, after appointment was made, approval for the said post was rejected vide impugned order. There is no disagreement about the fact that the earlier permission has been granted by taking into consideration of the staff strength that existed during the academic year, during which the appointment was made. Despite the same, the rejection was made, which is contrary to the decision of the Hon'ble Supreme Court in ***SLP(C) No.15702/2022 (The Secretary to Government, Government of Tamil Nadu and Others Vs Iruthaya Amali and another)*** with regard to appointment made in respect of Teachers.

5. Heard the learned Additional Government Pleader, who would submit that the rejection was made pursuant to the pendency of the issue before this Court in a batch of writ petitions and till the disposal of the said cases, proposal will not be granted for non teaching post. Hence, he would submit that the rejection made by the respondents 1 and 2 is perfectly in order.



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6. With regard to the reference made by the learned counsel for the petitioner to the decision of the Hon'ble Supreme Court in ***SLP(C) No.15702/2021 (The Secretary to Government, Government of Tamil Nadu and Others Vs Iruthaya Amali and another)***, it would go to show that it relates to fixation of staff and staff grant for those additional teaching staff, who were pressed into service for additional standards and additional classes started from the academic year 2021-22 in compliance of the provisions of the Right To Education Act.

7. However, in the present case on hand, the appointment has been made for non-teaching category and it pertains to the year 2018-19. For better appreciation, Paragraph No.95(i) of the judgment passed in the case of ***The Secretary to Government Government of Tamil Nadu School Education Department, Fort St. George, Chennai - 9. Vs Iruthaya Amali (W.A.(MD).Nos.76 of 2019 batch dated 31.03.2021)*** is extracted as under:

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

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(i) Insofar as the teaching grant for the additional staff employed in the already aided school as on the academic year 1991-92, irrespective of the medium of instructions or irrespective of the students strength, as per the teacher pupil ratio as indicated above especially in the context of RTE Act and subsequent G.O issued in this regard, the staff fixation shall be made and for those additional teaching staff, who are pressed into service for additional standard or additional class started, from the academic year 2021-22, staff grant shall be sanctioned by the State Government as such sanctioning of staff grant will be the essential requirement to meet the object of the provisions of the RTE Act, otherwise, the Fundamental Right guaranteed to the children between the age of 6 and 14 studying in those schools would get affected.

.....”

8. From the above, it is clear that the above reference has got no application to the facts of the present case and the appointment that was made by the petitioner school. The authority concerned, without considering the scope and purpose of the orders of the Hon'ble Supreme Court made in the decision supra, has passed the order simply by taking into account of the stay that has been granted in the pending writ



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petition. Since the present appointment is neither the subject matter of the earlier proceedings nor the disposal given in the SLP to apply the judgment for appointment made to the post of Office Assistant and that too in the year 2018-19, is not correct. Hence, it is wrong on the part of the respondents to reject the proposal submitted by the petitioner School consequent to the promotion of the erstwhile incumbent to Record Clerk and for which permission also accorded.

9. In view of the above, this writ petition is **allowed** and the impugned orders of the respondents 1 and 2 dated 15.02.2022 and 22.02.2022 respectively are hereby quashed and the respondents are directed to pass orders to approve the appointment of Ms.K.Packiyalakshmi, as Office Assistant, from the date of her appointment ie., 11.12.2019, within a period of eight weeks from the date of receipt of a copy of this order. No costs. consequently connected Miscellaneous Petition is closed.

12.04.2024

NCC : Yes/No
Index : Yes/No
RR

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2. The District Educational Officer,
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