



W.P.(MD).No.9359 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.07.2024

PRONOUNCED ON : 11.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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A.Juliet Jeyanthi

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Director of School Education,
D.P.I.Campus, College Road,
Nungambakkam,
Chennai-600 006.
- 3.The District Elementary Educational
Officer, Tirunelveli,
Tirunelveli District.
- 4.The District Educational Officer,
Tirunelveli Educational District.
Tirunelveli.



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5.The Block Educational Officer,
Block Educational Office,
Palayamkottai Rural,
Palayamkottai.

6.The Correspondent,
T.D.T.A. Primary School,
Thachanallur,
Tirunelveli-627 358.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 4 and 5 to grant approval of the appointment of the petitioner as the Secondary Grade Assistant Teacher in the 6th respondent school from 05.10.2017, being the date of her appointment, with all service and monetary benefits.

For Petitioner : Mr.S.S.Thesigan

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

For R-6 : Mr.Alwin Balan

ORDER

This writ petition has been filed seeking a direction to the respondents 4 and 5 to grant approval of the appointment of the petitioner as the Secondary Grade Teacher in the 6th respondent school from 05.10.2017, from the date of her appointment, with all service and monetary benefits.



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2. The 6th Respondent School is a Religious Minority Education Institution. The petitioner was appointed as a Secondary Grade Teacher on 05.10.2017 in the 6th Respondent School, in a vacancy, which had arisen out of the retirement of one S. Juliet Roseline, following which, the 6th Respondent forwarded a proposal seeking approval of appointment of the petitioner on 30.11.2017. For want of certain documents, the said proposal was returned on 29.12.2017. Complying with the requirements, the proposal was further resubmitted for approval of appointment of the petitioner. However, again the same was returned for want of TET qualification from the petitioner. Since the petitioner came to be appointed in a minority School, the question of qualifying in TET did not arise. Again the said proposal was forwarded by the 6th Respondent School on 30.08.2018.

3. The 5th Respondent had sent a communication on 07.11.2018 to the 6th Respondent stating that the application for approval could be considered only after deploying the surplus teachers working in the Corporate Management, under which, the 6th Respondent School is functioning. In view of the same, the petitioner and the 6th respondent



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School forwarded the representations. However, the same were not considered. Hence, this writ petition came to be filed.

4. Heard the learned counsel for the petitioner appearing for the petitioner and the learned Additional Government Advocate appearing for the respondents. Perused the materials available on record.

5. The learned counsel for the petitioner submitted that the question of qualifying in TET will not arise, since the 6th respondent School is a minority institution.

6. As far as the question of surplus is concerned, the learned counsel drew my attention to the proceedings of Chief Educational Officer, Tirunelveli in Na.Ka.No.1335/E1/2018, dated 26-06-2019, in which, the letter of the Manager of the Corporate Management of the 6th respondent School, dated 20.02.2019 has been referred and observed that of the total number of 20 surplus teachers in the Corporate Management already 7 teachers have been deployed to the needy schools and 13 other surplus teachers were promoted and transferred to the other schools functioning under the said Corporate Management. The entire surplus has been



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exhausted during the year 2019. In view of the same, the question of surplus did not arise and hence, pressed for allowing the writ petition.

7. Per contra, the 4th respondent filed a counter affidavit and the learned Additional Government Pleader submitted that the petitioner's contention that TET is not necessary for the secondary grade teacher, who is appointed in a minority institution will not arise because the matter is pending before the Hon'ble Apex Court. As far as surplus is concerned, the proceedings of the Chief Educational Officer, dated 26.06.2019 is relied upon with respect to Education Department of Tirunelveli alone. However, the Corporate Managment function across all four southern Districts including Tirunelveli, Thoothukudi, Virudhunagar and Kanyakumari. Hence, unless and until surplus in four Districts is exhausted, fresh appointment cannot be done.

8. The petitioner came to be appointed as a Secondary Grade Teacher in the retirement vacancy arisen due to the retirement of Ms.S.Juliet Roselin. As fairly conceded by the learned Additional Government Pleader, the question of qualifying TET by a Secondary Grade Teacher serving in a minority institution though settled by this Court the same is yet to be finally



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decided by the Hon'ble Apex Court. As far as the surplus is concerned, the petitioner had diligently circulated the proceedings of the Chief Educational Officer, dated 20.02.2019, which makes it clear that the entire surplus has been exhausted by the Management. However, the learned Additional Government Pleader submitted that exhaustion of surplus in one District, would not suffice but the surplus in all the District of the Management should be exhausted. However such an argument is not sustainable.

9. The matter involved in the case is no more *res integra*. The Hon'ble Division Bench of this Court has already issued several directions in para 95 as a compendium of schedule dealing with surplus and deployment by Judgment dated 31.03.2021 in W.A.(MD)No.76/2019. A special leave appeal was preferred against the same in Special Leave to Appeal (C)No(s).15702 of 2021. The aforesaid Special Leave Appeal has been disposed on 16.02.2024 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.



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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 (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.”



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10. 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.

11. 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:

“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



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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 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.



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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. “*

12. 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 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 05.10.2017, this Court hereby quash the impugned order dated 26.06.2019 and consequently direct the respondents to forthwith approve the appointment of the petitioner as Secondary Grade Teacher in the 6th respondent school with



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effect from 05.10.2017 with all service benefits within a period of four (4) weeks from the date of receipt of a copy of this order.

13. With the above observations, this writ petition stands allowed.

There shall be no order as to costs.

11.09.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

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To

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.

2. The Director of School Education,
D.P.I. Campus, College Road,
Nungambakkam,
Chennai-600 006.

3. The District Elementary Educational
Officer, Tirunelveli,
Tirunelveli District.

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L.VICTORIA GOWRI, J.

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