



W.P.(MD)No.12391 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.12391 of 2022 &
W.M.P.(MD)Nos.8800 & 8801 of 2022

M.Selva Maheswari

... Petitioner

vs.

1.The Joint Director,
Elementary Education,
DPI Campus,
College Road,
Chennai.

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

3.The District Education Officer,
Sivakasi,
Virudhunagar District.

4.The Correspondent,
Muslim Higher Secondary School,
Sivakasi,
Virudhunagar 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



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pertaining to the order of the second respondent in P.Mu.No. 7188/E2/2021 dated 13.12.2021, quash the same and direct the respondents to approve the appointment of the petitioner.

For Petitioner : Mr.C.Robert Bruce
For Respondents : Mr.M.Siddharthan,
Additional Government Pleader
for R1 to R3

ORDER

Heard Mr.C.Robert Bruch, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents 1 to 3.

2. The petitioner who was appointed as a B.T. Assistant (Tamil) in the fourth respondent School on 03.09.2019, has filed this writ petition to quash the order of the second respondent in P.Mu.No.7188/E2/2021 dated 13.12.2021, wherein, the proposal sent for approval of her appointment was rejected by stating that as per the interim order passed by the Principal Seat of this Court in W.P.No.31575 of 2019 dated 08.11.2019, until the deployment of surplus Teachers in Middle Schools



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and High Schools run by the Government is completed, there cannot be any recruitment; and approval of appointment will be subject to the outcome of the S.L.P.No.22575 of 2021 pending before the Hon'ble Supreme Court with regard to the surplus Teachers issue.

3. To be noted, the approval to the appointment of the petitioner was rejected based on the interim order passed in W.P.No.31575 of 2019 on 08.11.2019. However, the said writ petition was subsequently tagged along with W.A.(MD)No.76 of 2019 and batch and this Court by Judgment in *W.A.(MD).No.76 of 2019 batch dated 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]* has held that the availability of surplus Teachers in other Schools may not affect the appointment of Teachers in a stand alone minority institution within their sanctioned strength. The relevant portion is extracted hereunder.



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“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 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.”



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4. Even the Special Leave Petition preferred against the ***Iruthaya Amali's case*** in S.L.P.No.15702 of 2021 was disposed of by the Hon'ble Supreme Court on 16.02.2024 by relegating the matter to the Division Bench of this Court itself.

5. Furthermore, following the ***Iruthaya Amali's case***, in various batch of writ petitions, orders were passed stating that the Government Order in G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019, which speaks about the surplus has come into force only in the year 2019 and that is not applicable to the appointments made prior to the date of the Government Order. One such order was passed by the Principal Seat of this Court in ***W.P.No.3194 of 2020 and batch dated 18.04.2022 (B.Kurinjimalaron vs. The State of Tamil Nadu, rep. by its Secretary, Education Department, Fort St.George, Chennai - 600 009)*** and the relevant portion is extracted hereunder.

"9. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.



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165 issued by the School Education Department, dated 17.9.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and proposals for the said appointment were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.

10. Having regard to the rival submissions of the parties, taking note of the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., G.O.Ms.No.165 issued by the School Education department, dated 17.9.2019 will not prohibit the educational authorities to approve the appointment made by the School Management in the instant writ petitions since the proposals for approval of appointment made by the School Management were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.9.2019 in proper perspective and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the



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impugned orders passed by the respondent department are liable to be quashed."

6. Since in the instant case also, the petitioner was appointed in the fourth respondent School on 03.09.2019 and proposal in this regard was forwarded to the respondents 2 and 3 on the same date itself, which is prior to the issuance of the Government Order in G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019, the impugned order of the second respondent is liable to be set aside.

7. In view of the above stated reasons, the writ petition is **allowed** and the impugned order of the second respondent in P.Mu.No. 7188/E2/2021 dated 13.12.2021 is set aside. The fourth respondent School is directed re-submit the proposal with regard to the appointment of the petitioner as B.T. Assistant (Tamil) in their School on 03.09.2019 within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the second respondent is directed to consider the same and pass orders to approve the appointment of the



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petitioner, if she is otherwise found eligible within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.

13.06.2024

NCC: Yes/No

Index : Yes/No

Speaking/Non-Speaking order

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To

- 1.The Joint Director,
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College Road,
Chennai.
- 2.The Chief Educational Officer,
Virudhunagar, Virudhunagar District.
- 3.The District Education Officer,
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R.N.MANJULA, J.

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