



W.P.(MD).No.12646 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.12646 of 2021

and

W.M.P.(MD)No.9862 of 2021

A.Elango

...Petitioner

Vs.

1.The Chief Educational Officer,
Tirunelveli.

2.The District Educational Officer,
Valliyoar, Tirunelveli.

3.The Correspondent,
The Salvation Army Noble
Memorial High School,
Valliyoar, Tirunelveli 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 of the 1st respondent in O.Mu.No. 1289/A3/2021 dated 27.05.2021 and the consequential impugned order of the 2nd respondent in O.Mu.No.1539/A5/2021 dated 01.07.2021 and quash the same and consequently direct the respondents 1 and 2 to approve the



W.P.(MD).No.12646 of 2021

appointmnet of petitioner as B.T.Assistant (Science) in the 3rd respondent School and pay the salary and all service benefits within the time fixed by this Court.

For Petitioner : Mr.H.Arumugam

For R-1 & R-2 : Mr.M.Sarangan,
Additional Government Pleader

ORDER

The present writ petition has been filed to quash the impugned order of the 1st respondent dated 27.05.2021 and the consequential impugned order of the 2nd respondent dated 01.07.2021 and consequently directing the respondents 1 and 2 to approve the appointmnet of petitioner as B.T.Assistant (Science) in the 3rd respondent School and pay the salary and all service benefits.

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

The petitioner was appointed to the post of B.T.Assistant (Science) on 01.06.2018 in the 3rd respondent School in a sanctioned vacancy which had arisen due to the promotion of the then B.T.Assistant (Science) namely



W.P.(MD).No.12646 of 2021

WEB COPY

R.Berlin Santhi as Headmistress. Thereafter, the 3rd respondent had sent a proposal for the approval of the petitioner's appointment to the 2nd respondent. The same was duly returned by the 2nd respondent, vide letter, dated 04.12.2019 stating that no appointment shall be made in the vacancies until deployment of surplus teachers in the Government run Middle Schools and the High Schools. In view of the order passed by the Hon'ble Division Bench of this Court in W.A.(MD)No.76 of 2019 batch, dated 31.03.2021, the 3rd respondent School being a stand alone institution, the proposal was further forwarded by the 3rd respondent to the 2nd respondent. However, the 1st respondent has passed the impugned order in O.Mu.No.1289/A3/2021 dated 27.05.2021 stating that the proposal will be considered only after deployment of 47 B.T. Assistants working in the Tirunelveli Revenue District. Consequently, the 2nd respondent also passed the very same order in O.Mu.No.1539/A5/2021 dated 01.07.2021 and returned the proposal. Challenging both the impugned orders, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner, Mr.H.Arumugam submitted that the petitioner was appointed in the 3rd respondent School which



W.P.(MD).No.12646 of 2021

is a stand alone institution. In view of the same, the impugned orders are bad in the eye of law and the respondents 1 and 2 ought not to have rejected the proposal sent by the 3rd respondent seeking approval of the petitioner's appointment and pressed for allowing the writ petition.

4. Per contra, the learned Additional Government Pleader, Mr.M.Sarangan, appearing for the respondents 1 and 2 submitted that the petitioner has not qualified in TET examination. That apart, unless and until the district surplus of 47 B.T. Assistants working in the Tirunelveli District is exhausted, the question of approval of the petitioner's appointment in the 3rd respondent School would not arise and on that basis he pressed for dismissal of the writ petition.

5. Heard, the learned Counsels on either sides. Carefully perused the materials available on record.

6. No doubt the petitioner has been appointed as B.T. Assistant (Science) in the 3rd School which is a stand alone institution. Hence, the lis in hand is no



W.P.(MD).No.12646 of 2021

WEB COPY

more res-integra and I have dealt with the similar issue in a couple of cases and in ***W.P.(MD)No.31285 of 2023 dated 02.01.2024*** and the relevant portion of the same which is applicable to the facts and circumstances of this case is extracted as follows:

“7.The case in hand is no more res-integra. The Division Bench in W.A(MD) No.76 of 2019 and batch has issued a compendium of schedule to be followed and Clause (V) is extracted as follows:

“(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



W.P.(MD).No.12646 of 2021

teachers identified in the group of schools under the same corporate management, they shall be free to make promotion afresh from open market in the vacancy if any still, within the sanctioned strength."

8. In view of the said directive and considering the fact that the petitioner school is a stand alone institution, the fourth respondent/D.E.O ought to have approved the promotion of Mr.A.James Jeyakumar as B.T.Assistant (Tamil). In yet another case in W.P(MD) No.26738 of 2023, dated 14.03.2023, this Court has dealt with a similar case and the relevant portion is extracted hereunder:

"4. Under the impugned order, G.O.Ms.No.165 School Education Department, dated 17.09.2019 has been cited as one of the reasons to contend that when there are surplus teachers, the question of fresh promotion would not arise. This order has been passed without even considering the fact that the petitioner school is a stand alone minority school. The question of surplus teachers would not arise. The authority has to see the staff fixation order for the academic year 2019-20 and if there are vacancies for filling up B.T Assistant teachers within the sanctioned strength, he has to proceed and pass orders approving the promotion."



W.P.(MD).No.12646 of 2021

WEB COPY

9. In view of the above, I am fully in consonance with the order as discussed supra and as such the fourth respondent is directed to approve the promotion of Mr.A.James Jeyakumar as B.T.Assistant (Tamil) in the petitioner school with effect from 03.07.2023 with all attendant benefits. The said exercise shall be completed within a period of four weeks from the date of receipt of copy of this order. ”

7. In line of the aforesaid order passed by me and fully fortified by the judgment passed by this Court in W.A.(MD)No.76 of 2019 batch., dated 31.03.2021 and considering the fact that the 3rd respondent School is a stand alone institution, the impugned order passed by the 1st respondent dated 27.05.2021 and the consequential impugned order passed by the 2nd respondent dated 01.07.2021 are hereby quashed and the respondents 1 and 2 are hereby directed to approve the appointment of petitioner as B.T.Assistant (Science) in the 3rd respondent School with effect from the date of his initial appointment, that is, on 01.06.2018 with all service benefits within a period of eight (8) weeks from the date of receipt of a copy of this order.



W.P.(MD).No.12646 of 2021

WEB COPY

8. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

- 1.The Chief Educational Officer,
Tirunelveli.
- 2.The District Educational Officer,
Valliyoar, Tirunelveli.



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W.P.(MD).No.12646 of 2021

L.VICTORIA GOWRI, J.

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W.P.(MD).No.12646 of 2021

12.04.2024