



WP(MD). No.13937 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 28/06/2024

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

**WP(MD). No.13937 of 2024
and WMP(MD) Nos.12227 and 12229 of 2024**

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... Petitioner

Vs

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

2. The Director of School Education
College Road, Chennai - 600 006..

3. The Chief Educational Officer,
Madurai District at Madurai..

4. The District Educational Officer
(Secondary), Madurai,
Madurai District..

5. The Correspondent,
Telc Girls Higher Secondary School, Usilampatti,
Madurai District - 625 532..

... Respondents

PRAYER :-Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the



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3rd respondent Chief Educational Officer, Madurai in Na.Ka. No. 4204/A5/2020 dated --.01.2024, quash the same, and further direct the 3rd respondent Chief Educational Officer to approve the promotion of petitioner as PG Assistant in English w.e.f. 18.09.2017 in the 5th respondent school namely, TELC Girls Higher Secondary School, Usilampatti, Madurai District and disburse grant-in-aid towards her salary and other monetary benefits.

For Petitioner : M/s. Xavier Rajini. S,
For Respondents : Mr.T.Amjad Khan for R1 to R4
Government Advocate

ORDER

By consent, the writ petition itself is taken up for final disposal.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

3. The petitioner has challenged the impugned order dated --.01.2024, of the third respondent and direct the 3rd respondent to approve the promotion of petitioner as PG Assistant in English w.e.f. 18.09.2017 in the 5th respondent school namely, TELC Girls Higher Secondary



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School, Usilampatti, Madurai District and disburse grant-in-aid towards her salary and other monetary benefits.

4. The petitioner possessed B.A., M.A., B.Ed., in English and appointed as a Teacher in the 5th respondent school in the year 2003 and her appointment was also approved. While so, the post of PG English fell vacant in the school from 24.08.2017. Therefore, the petitioner was promoted to the post on 18.09.2017. However, her post was not approved by the respondents and the approval was rejected vide impugned order dated nil of 01.2024. Hence, the petitioner is before this Court with this writ petition.

5. The learned counsel for the petitioner submitted that the petitioner has earlier filed a writ petition in WP(MD) No.13135/2022 challenging the earlier order dated 18.03.2022, which has also been passed declining the approval for the appointment of the petitioner on the ground that the 5th respondent school falls under the corporate management and the appointment has been made without deploying the surplus teachers in the management and has further stated that the school



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was under the direct payment from 22.09.2016 and hence, the appointment made by the administrative officer is without jurisdiction. Even the writ Court has allowed the writ petition by remitting back the matter to the concerned authorities to consider afresh. However, challenging the said order, the department has filed an appeal, which was allowed by directing the writ petitioner to submit fresh representation.

6. From the reading of the judgment passed in the writ appeal, it is clear that the power of administration for making payment has been upheld. So far as the other consideration need to be made by the petitioner is about the educational qualification, validity of educational qualification and sanctioned strength including surplus teachers.

7. But in the impugned order, it is stated is that even in the year 2021, an order has been made to deploy the surplus teachers. However, so far the said exercise has not been done and even for the years 2019, 2022 and 2023, as per the students strength, PG teachers were considered to be surplus and since the 5th respondent school is a corporate management, the rule of surplus in the corporate management is



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applicable to the petitioner's appointment. Hence, without deploying the surplus teachers against whom the order of deployment is required to be passed, approval cannot be given.

8. So far as the earlier order is concerned, it can be considered only when the surplus post is to be pressed from two aspects. One is from the date of appointment and another is the nature of the institution whether the institution is a stand alone institution or an institution falling under the corporate management. So far as the second aspect is concerned, the 5th respondent school falls under the corporate management and it is not a stand alone institution. So far as the date of appointment is concerned, it assumes relevance in view of the judgment in ***WA(MD) No.76/2019 (The Secretary to Government, Government of Tamil Nadu, v. Irudhaya Amali and another)***.

9. Since the petitioner's appointment has been made even prior to the date of the above judgment ie., on 18.09.2017, the rule of surplus is not applicable to the petitioner's appointment. Even in the rejection order passed in the year 2022, it has been stated that the petitioner's



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appointment has been made on 18.09.2017. It is reported that in the judgment of the writ appeal, the above issue has been settled by holding that the administrator has every power for making appointment.

10. On the date of appointment of the petitioner, ie., on 18.09.2017, the rule of surplus is not applicable to the 5th respondent institution. Hence, the impugned order is liable to be set aside.

11. Accordingly, the writ petition is allowed and the impugned order of the third respondent is set aside. The respondents are directed to pass orders for granting the approval of the petitioner's appointment with effect from the date of appointment, ie., 18.09.2017 and pass orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petitions are closed.

28.06.2024

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TO

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R.N.MANJULA,J

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