



W.P.(MD).No.14489 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.14489 of 2024
and WMP(MD) Nos.12731, 12732 of 2024

The Correspondent,
Sacred Heart High School, Kadiapattinam,
Kanyakumari District.

... 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,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Kanyakumari District.
4. The District Educational Officer (Secondary Education),
Nagercoil, Kanyakumari District.

... 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 in pursuant to the impugned order passed by the 3rd respondent Chief



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Educational Officer in Na.Ka.No.6413/A4/2019, dated 30.01.2024 denying approval to the appointment of S.Benita Josy B.T.Assistant (Science), quash the same and further direct the 3rd and 4th respondents to approve forthwith the appointment of Tmt.S.Benita Josy B.T.Assistant (Science), in the petitioner school w.e.f., 26.03.2012 with all attendant benefits including arrears of salary.

For Petitioner : Ms.M.R.Rooshi Maas
for ISAAC Chambers
For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

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

2.The petitioner has filed this Writ Petition challenging the impugned order passed by the 3rd respondent Chief Educational Officer in Na.Ka.No.6413/A4/2019, dated 30.01.2024 denying approval to the appointment of S.Benita Josy B.T.Assistant (Science), and further to direct the 3rd and 4th respondents to approve forthwith the appointment of Tmt.S.Benita Josy B.T. Assistant (Science), in the petitioner school w.e.f., 26.03.2012 with all attendant benefits including arrears of salary.



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3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The petitioner Management has filed this writ petition challenging the order of the second respondent, dated 03.01.2024 through which, the approval for the appointment of one S.Benita Josy as B.T.Assistant (Science) was rejected.

5.The learned counsel for the petitioner submitted that the individual by name S.Benita Josy has been appointed as B.T.Assistant (Science) on 26.03.2012. The proposal was sent for approval and the same was rejected by the 2nd respondent stating the following reasons:

- ✕ Prior permission not obtained.
- ✕ Without exhausting the surplus, appointment has been made.
- ✕ Since SLP No.15702 of 2021 is pending against the order passed by this Court in W.A(MD) No. 76 of 2019.

6.The learned counsel for the petitioner submitted that the S.Benita Josy B.T.Assistant (Science) has been appointed as a Secondary Grade Teacher.



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In view of earlier G.O.Ms.No. 79, School Education Department, dated 14.06.2002, the post would get automatic upgradation and therefore, prior permission is not required. The surplus appointment is pertaining to subsequent year and that cannot be the reason for rejecting the approval. The SLP has been disposed by confirming the order of the Division Bench so far as, it relates to other position including the surplus available in the School falling under Corporate Management.

7.The learned Additional Government Pleader submitted that the impugned order has been passed only by rightly appreciating the Tamil Nadu Private Schools Regulation Rules in place and hence, it shall not be set aside.

8.So far as the prior permission is concerned, in respect of the appointment made to academic upgradation of the post of secondary grade teachers to B.T. Assistant, the position has already been settled.

9.In this regard, it is relevant to refer the earlier Judgment of this Court in W.P(MD) No. 9287 of 2024, wherein, it is observed about the relevant



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G.O.Ms.No. 79, School Education Department, dated 14.06.2002. For the sake of clarity, the relevant portion is extracted hereunder:

“5. It is to be noted that the Government Order in G.O(Ms.).No.79 School Education (U1) Department dated 14.06.2002, the Government of Tamil Nadu took a policy decision that the Secondary Grade Teachers were not qualified enough to handle the advanced syllabus prescribed in the Middle School Sections namely Standards VI to X and evolved the policy of appointing Graduate Teachers in those posts. The posts of Secondary Grade Teachers were decided to be upgraded into that of Graduate Teachers with effect from 01.06.2002. In order to protect the interest of the existing Secondary Grade Teachers, the post of Second Grade Teachers would get upgraded as Graduate Teachers only when they fell vacant and on the said vacancies, the Graduate Teachers should be appointed. Such upgraded posts were called as Middle Grade Graduate Teachers.

6. The pendency of SLP before the Hon’ble Supreme Court is in no way connected with the approval or disapproval of the appointment of the Teacher appointed by the petitioner management. Therefore, the orders impugned in the writ petition are set aside. Considering the fact that the petitioner institution is a minority stand alone school, the respondent authorities are directed to verify



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whether the appointment is within the sanctioned staff strength of the school for the relevant academic year and proceed to approve the appointment of the concerned Teacher as B.T Assistant (History) with effect from 11.06.2018 with all attendant benefits. The said exercise shall be completed within a period of six weeks from the date of receipt of copy of this order.”

10.In view of the above, no prior permission is required. So far as the second reason is concerned, it is about the surplus, which is arisen in the subsequent year. As on the date, when the appointment was made by the petitioner School, the post was very much sanctioned and hence, surplus made in the subsequent year is not relevant for rejecting the proposal. Further so far as the guidelines as to surplus post arising in corporate management has been settled in WA(MD) No. 76 of 2019 dated 31.03. 2021. Since the date of appointment is 26.03.2012, the question of surplus will not arise even it is presumed that there were some surplus posts at the relevant point of time.

11.It is worthwhile to refer the earlier decision of this Court in WP(MD) No. 7479 of 2024, dated 17.04.2024, which is dealt in similar lines. The relevant portion is extracted hereunder:



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“6. The petitioner's appointment has been made prior to the order dated 31.03.2021 passed in W.A.(MD).No.76 of 2019 batch. Hence, the petitioner School can get the advantage of getting approval of the appointment of Sunitha as B.T.Assistant Maths. Therefore, the respondents cannot decline the approval of the appointment due to the reasons of TET eligibility or the deployment of the alleged surplus.”

12.In the SLP, which is referred in the impugned order has already been disposed by confirming all other aspects of the order passed in W.A(MD) No.76 of 2019. Hence, it cannot be a hurdle for granting approval to the proposal of the petitioner in respect of appointment of S.Benita Josy to the post of B.T.Assistant (Science).

13.In view of the above observations, this writ petition is allowed and the impugned order in Na.Ka.No.6413/A4/2019, dated 30.01.2024 is hereby set aside and the petitioner is at liberty to resubmit the proposal with the required documents and on receipt of the same, the third respondent is directed to consider and pass orders by granting approval to the proposal of the petitioner to the appointment of S.Benita Josy to the post of B.T.Assistant (Science) from the date of her appointment ie., 26.03.2012 within a period of



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four weeks from the date of receipt of copy of this order. No costs.

Consequently, connected miscellaneous petitions are closed.

03.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

PNM

To

1. The Secretary, State of Tamil Nadu,
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,
Kanyakumari District.
4. The District Educational Officer (Secondary Education),
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R.N.MANJULA, J.

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**ORDER IN
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