



WP(MD) No.14095 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.14095 of 2023
and WMP(MD)Nos.11951 & 11953 of 2023

The Correspondent,
St.Joseph's Convent Higher Secondary School,
Kanyakumari District-629 001.

.. 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 - 600 009.

3. The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District - 629 001.

4. The District Educational Officer,
Nagercoil - 629 001,
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,

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calling for the records relating to the impugned order passed by the 4th respondent District Educational Officer in O.Mu.No.4988/Aa1/2020 dated 04.02.2022 denying approval to the appointment of A.Colleen Clemency as BT Assistant (Tamil), quash the same, and further direct the 3rd and 4th respondents to approve forthwith the appointment of A.Colleen Clemency as BT Assistant (Tamil) in the petitioner School w.e.f., 01.06.2018, with all attendant benefits including arrears of salary.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

Heard Mr.K.Ragatheesh Kumar, learned counsel appearing for the petitioner and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents.

2. The petitioner has filed this writ petition seeking Writ of Certiorarified Mandamus, to quash the impugned order passed by the 4th respondent District Educational Officer in O.Mu.No.4988/Aa1/2020 dated 04.02.2022 denying approval to the appointment of A.Colleen



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Clemency as BT Assistant (Tamil) and further direct the 3rd and 4th respondents to approve forthwith the appointment of A.Colleen Clemency as BT Assistant (Tamil) in the petitioner School w.e.f., 01.06.2018, with all attendant benefits including arrears of salary.

3. The petitioner School has appointed one A.Colleen Clemency as BT Assistant (Tamil) on 01.06.2018 due to the retirement of the then incumbent Tmt.S.Rosari on 31.05.2018. When the School submitted that proposal for approval of appointment of the said A.Colleen Clemency, the same was rejected by the 4th respondent vide order dated 04.02.2022 citing the pendency of the Special Leave Petition which is filed against the order passed in W.A.(MD)No.76 of 2019 etc., batch [***The Secretary to Government Government of Tamil Nadu School Education Department, Fort St. George, Chennai – 9 vs Iruthaya Amali***] dated 31.03.2021. Since the appointment has been made prior to the date of the above judgment rendered in W.A.(MD)No.76 of 2019, there is no confusion to grant approval to the appointment made by the petitioner in this case.



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4. The other reason for rejecting the approval is concerned, it is about the availability of the sanctioned post. The petitioner has appointed the said A.Colleen Clemency as BT Assistant (Tamil) in the year 2018. As per the staff strength permitted for the academic year 2018-2019, one post of BT Assistant (Tamil) was available. There was no surplus in the post of BT Assistant. Hence the petitioner appointed the said A.Colleen Clemency to the post of BT Assistant (Tamil) on which date the BT Assistant (Tamil) post was very much a sanctioned vacancy. Hence, the reason for rejection of the approval of appointment made by the petitioner School on the ground of non-availability of sanctioned post is also not valid.

5. In respect of applicability of the cut off date for appointment, it is relevant to rely on the judgment of this Court held in W.P.(MD)No. 7479 of 2024 dated 17.04.2024, wherein in paragraph Nos.4, 5 & 6 it is held as follows:

*"4. However, the learned counsel for the petitioner attracted the attention of this Court to the judgment passed by the Division Bench of this Court in **W.A.(MD).No.2119 of 2021 dated 23.06.2023** in the case of **The Commissioner of School Education, Vs Aided***



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Muslim Committee Primary School, Rep. by its Correspondent, S.Sheik Shajakhan Sithik, wherein it is held as under:

“8. Moreover, the said G.O., was issued only on 17.09.2019, whereas the teacher was appointed well before the issuance of the said G.O., ie., 03.07.2018. Therefore, assuming if the said G.O., ultimately would be declared to be valid, that will have a prospective effect. Moreover, as on today, the said G.O., is no more available to the appellant department to say the reason that by virtue of G.O.Ms.No.165, the appointment made in respect of the teacher concerned at the 1st respondent school cannot be approved.

9. In that view of the matter, we have no hesitation to hold that the order impugned passed by the learned Single Judge is perfectly valid and therefore, it is to be sustained. In the result, this Writ Appeal fails, therefore, it is to be dismissed, accordingly, it is dismissed. As a sequel, there shall be a direction to the appellant Department to approve the appointment of the teacher concerned in the 1st respondent School and extend all service benefits from the date of such appointment to the teacher concerned within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

5. The learned counsel for the petitioner also submitted that the Government Order in G.O.Ms.No.165 dated 17.09.2019 has been kept inoperative 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 and the relevant portion of the order is extracted hereunder:

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases : (o) In view of the aforesaid, the G.O.Ms.No. 165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be



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inoperative."

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 Tamil. Therefore, the respondents cannot decline the approval of the appointment due to the reasons of TET eligibility or the deployment of the alleged surplus."

6. Since the above analogy is applicable to the situation that has arisen in this case, the impugned order is liable to be set aside, the petitioner School is also entitled for the same relief.

7. In view of the above reasons, this writ petition is **allowed** and the impugned order is set aside. The respondents 3 and 4 are directed to consider and pass orders regarding the approval of appointment of A.Colleen Clemency as BT Assistant (Tamil) in the petitioner School with effect from 01.06.2018 within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
NCC : Yes / No
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R.N.MANJULA, J.

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