



W.P.(MD).No.15014 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.15014 of 2024
and WMP(MD) No.13171 of 2024

B.Jegan Jose

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.
2. The Commissioner of School Education,
College Road, Chennai.
3. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
Marthandam, Kanyakumari District.
5. The Correspondent,
M.M.K.M.High School, Varuthattu,
Methukummal Post, Kanyakumari District.

... Respondents



W.P.(MD).No.15014 of 2024

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 on the file of the 3rd respondent pertaining to its proceeding in Na.Ka.No. 7164/Aa4/2022, dated 13.12.2022 and to quash the same and consequently direct the respondents to approve the petitioner's appointment as Junior Assistant with effect from his date of appointment that is 01.06.2022 and to grant all the service and monetary benefits in consequent to the same within a time frame that may be fixed by this Court by considering the proposal submitted by the 5th respondent on 01.08.2022.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.M.Siddharthan (R1-R4)
Additional Government Pleader

ORDER

Heard Mr.S.C.Herold Singh, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader, for the respondents 1 - 4.

2.This Writ Petition has been filed challenging the order passed by the 3rd respondent in Na.Ka.No. 7164/Aa4/2022, dated 13.12.2022 and consequently to direct the respondents to approve the petitioner's appointment



W.P.(MD).No.15014 of 2024

as Junior Assistant with effect from his date of appointment ie., 01.06.2022 and to grant all the service and monetary benefits in consequent to the same.

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

4. The petitioner was appointed as a Junior Assistant in the fifth respondent School on 01.06.2022. On 01.08.2022, a proposal has been sent by the fifth respondent School to the 3rd & 4th respondents for granting approval to the appointment of the petitioner and the same is pending without any progress. Therefore, the petitioner approached this Court in W.P(MD) No.18908 of 2022 and this Court vide order, dated 22.08.2022 directed the respondents to consider the proposal of the petitioner. Pursuant to the order passed by this Court, the third respondent has passed the impugned order, dated 13.12.2022 by rejecting the proposal stating that based on G.O.Ms.No.238, dated 11.11.2018, only after exhausting the surplus posts, the proposal of the 5th respondent would be considered. However, as per the said G.O., if the student strength is more than 250, one post of Junior Assistant has to be appointed.



W.P.(MD).No.15014 of 2024

Now the student strength of the School is more than 250, therefore, the petitioner's appointment has to be approved.

5. The learned counsel appearing for the petitioner attracted the attention of this Court to the Judgment of this Court in ***W.P.(MD)No.17044 of 2023 dated 10.10.2023 [The Correspondent, Lourdu Annai Girls Higher Secondary School, K.Pudur - 625 007, Madurai District vs. The State of Tamil Nadu, Represented by its Secretary, Department of School Education, Fort St.George, Chennai - 600 009]*** rendered in respect of similarly placed persons, wherein, the Court has observed as under.

"4. According to the learned counsel appearing for the writ petitioner, the order impugned in the writ petition points out the surplus Office Assistants available in the other aided schools which do not form part of the corporate management of the petitioner school. Therefore, the question of directing the petitioner school to avail the services of the said surplus employees would not arise. Further, the learned counsel for the petitioner brings to the notice of the Court that G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 has been stayed by this Court on 14.06.2019 in W.M.P(MD)No.9975 of 2019 in W.P(MD)No.13404 of 2019 by a learned Single Judge of this Court. The said order has been followed by the Hon'ble Division Bench in C.M.P(MD)Nos.



6675 and 6677 of 2023 in W.A(MD)No.816 of 2023, dated 14.06.2023. Therefore, it is clear that as on today, the said G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 is not in force.

5...

6. The Court has stayed the implementation of G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 on 14.06.2019. Only thereafter, the order of appointment has been issued by the petitioner school management in favour of one S.Rajesh on 03.07.2019. Hence, it is clear that the order of appointment in favour of S.Rajesh has been issued when G.O.Ms.No. 238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 was under the stay orders of this Court. Therefore, it is clear that the order impugned in the writ petition relying upon G.O.Ms.No.238 School Education [Pa.Ka.6(1)] Department, dated 13.11.2018 is not legally sustainable. Therefore, the order impugned in the writ petition is set aside and the matter is remitted back to the file of the 3rd respondent for passing fresh orders in the light of the observations made by this Court in the preceeding paragraphs. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order."

6. In the instant case also, it appears that the third respondent had chosen to reject the proposal for appointment of the petitioner only by invoking



W.P.(MD).No.15014 of 2024

WEB COPY

the Government Order in G.O.Ms.No.238, School Education Department, dated 13.11.2018. The said Government Order itself is stayed and it cannot be brought into operation in the case of the petitioner. Since this petitioner is similarly placed, I feel that he is also entitled to the same relief granted above.

7. In view of the above stated reasons, the writ petition stands **allowed** to the extent that the impugned order issued by the 3rd respondent in Na.Ka.No. 7164/Aa4/2022, dated 13.12.2022 is quashed. The matter is remitted back to the file of the third respondent for passing fresh orders in the light of the observations made by this Court in the preceding paragraphs. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM



W.P.(MD).No.15014 of 2024

To

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W.P.(MD).No.15014 of 2024

R.N.MANJULA, J.

PNM

ORDER IN
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08.07.2024