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W.P.(MD)No.15063 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.15063 of 2024

and

W.M.P.(MD)Nos.13204 and 13208 of 2024

J.Packialakshmi

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Office of the Chief Educational Officer,
Madurai.
- 2.The District Educational Officer (Secondary),
Office of the District Educational Officer,
Madurai, Madurai District.
- 3.The Secretary,
Savithabai (Kovai) Higher
Secondary School,
Thirunagar, Madurai District-625 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in Na.Ka.No.1012/A5/2024 dated 13.02.2024, the copy of which was served on the petitioner on 29.06.2024 and quash the same and consequently direct the respondents 1 and 2 to grant permission to fill up the post of Post Graduate Assistant in English subject in the third respondent School and grant approval for the appointment of the petitioner as postgraduate assistant in English in the third respondent School with effect from 30.01.2023 with all consequential monetary and service benefits.



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W.P.(MD)No.15063 of 2024

For Petitioner : Mr.V.R.Shanmuganathan
For R1 and R2 : Mr.T.Amjad Khan
Government Advocate

ORDER

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

2.Heard Mr.V.R.Shanmuganathan, learned counsel for the petitioner and Mr.T.Amjad Khan, learned Government Advocate for the respondents 1 and 2.

3.The petitioner has filed this writ petition challenging the order of the third respondent dated 13.02.2024, through which the proposal sent by the petitioner's School for approval of appointment of the petitioner as PG Assistant has been rejected stating that no prior permission was obtained for such appointment.

4.The learned counsel for the petitioner submitted that the petitioner's School had made an application seeking prior permission, but the same has not been considered so far. In fact, the petitioner had earlier filed a writ petition in W.P.(MD)No.8170 of 2023 seeking a direction to the respondent to approve the appointment of the petitioner. The said writ petition



W.P.(MD)No.15063 of 2024

was disposed of directing the respondents to pass orders on merits and in accordance with law. Even at the time when the writ petition was disposed, the respondent had not raised the issue of getting prior permission for appointing the petitioner and now, the respondent had mechanically rejected the proposal of the petitioner's School solely on that ground.

5.The learned Government Advocate for the respondents Submitted that as per the Rule 28-7 of the Tamil Nadu Private School (Regulation) Rules, 2018, no appointment in a non-minority school shall be made by the school Committee without the prior permission of the competent authority. There cannot be any violation of the said mandatory Rule. Hence, the proposal to approve the appointment of the petitioner was rejected.

6.It is learnt from the records that the application made by the petitioner's School seeking permission for appointment of the petitioner was kept pending without consideration and after the petitioner was appointed, the approval was denied on the ground that the prior permission was not obtained.

7.The proceedings of the Commissioner of the School Education, dated 29.03.2023 stipulates that the stand-alone Schools can appoint Teachers to sanctioned post of PG Assistant, if there is no feeder category candidates



W.P.(MD)No.15063 of 2024

available for promotion. Even when there are feeder category Teachers available in the School and they are not found to be fit to be promoted to the post of PG Assistant, then the School Management is entitled to go for direct recruitment.

8.This is not the case of the respondents that the petitioner's School have feeder category Teachers, who ought to have been considered for promotion first. If the stand of the respondent that the mandatory Rule of getting prior permission should not be violated, the respondent ought to have considered the application of the petitioner's School seeking prior permission, when the School had knocked the doors of the respondent. It would have been an idealistic way of submitting a point that in the case of non-consideration of the application for prior permission, the applicant ought to have filed a mandamus seeking such consideration. However, the inaction on the part of the respondent cannot be allowed to be culminated into a litigation. The respondent shall not stand on formalities while considering the application of the Petitioner's School, in view of the terms of the circular dated 29.03.2023. Since the impugned order has been passed on account of technical ground of delay, the same is liable to be set aside.



W.P.(MD)No.15063 of 2024

9.In view of the above stated reasons, the impugned order is set aside and the third respondent/Petitioner's School is directed to re-submit proposal seeking approval of the petitioner's appointment to the first respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall consider the proposal on its own merits and in accordance with law and in light of the observations made above within a period of four weeks from the date of receipt of fresh proposal.

10.In the result, this writ petition is allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

09.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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To

- 1.The Chief Educational Officer,
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Madurai.
- 2.The District Educational Officer (Secondary),
Office of the District Educational Officer,
Madurai, Madurai District.
- 3.The Secretary,
Savithabai (Kovai) Higher
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Thirunagar, Madurai District-625 006.



WEB COPY



W.P.(MD)No.15063 of 2024

R.N.MANJULA, J.

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W.P.(MD)No.15063 of 2024

09.07.2024