



W.P.(MD) No.16121 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.16121 of 2020

and

W.M.P.(MD) No.13502 of 2020

M.R.Deepthi Evans

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep., by its Principal Secretary,
Department of School Education,
Fort St. George, Secretariat,
Chennai-600 009.
- 2.The Director of School Education,
D.P.I.Campus, College Road,
Nungambakkam,
Chennai-600 006.
- 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Thiruvattar,
Kanyakumari District.



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5.Higher Secondary School,
Rep., by its Chairman and Correspondent,
Arumanai-629 151,
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings passed by the 3rd respondent in Na.Ka.No. 7177/E2/2020, dated 31.10.2020 and quash the same and consequently direct the respondents 3 and 4 to approve the appointment of the petitioner as P.G. Assistant (Physics) in the 5th respondent school w.e.f 03.06.2019 with all attendant monetary benefits within a time frame to be fixed by this Court.

For Petitioner	:	Mr.M.Saravanan
For Respondents	:	Mr.V.Om Prakash Government Advocate

ORDER

The petitioner herein was appointed as P.G. Assistant (Physics) on 03.06.2019 by the 5th respondent-School, which is an aided minority school in a vacancy that arose due to retirement of one P.N.Birla on 31.05.2019. According to the petitioner, he joined the service on the date of appointment itself and a proposal was submitted by the 5th respondent in Na.Ka.No.



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138A/2019, dated 28.06.2019 for approval of the appointment of the petitioner to the 3rd respondent. When the said proposal was not considered by the 3rd respondent, the petitioner approached this Court by filing W.P.(MD) No.17931 of 2019 and the same was disposed of by this Court, by order dated 16.09.2018 directing the 3rd respondent to pass orders within a period of eight weeks from the date of receipt of a copy of that order. It is pursuant to the said order, Respondent No.3 passed an order in Na.Ka.No.7177/E2/2020, dated 31.10.2020 refusing to grant approval to the appointment of the petitioner in the 5th respondent-School. Aggrieved by the said order dated 31.10.2020, the petitioner approached this Court by filing the present writ petition.

2. From the perusal of the impugned order, it is noticed that in pursuant to an interim order dated 09.04.2019 passed in W.A.(MD) No.76 of 2019 and batch, and the consequential order issued by the Government in G.O.(Ms) No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019, the appointment of the petitioner as P.G. Assistant (Physics) was refused to be approved by Respondent No.3.



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3. Respondent No.3 filed a counter affidavit contending that Respondent No.5-School is eligible to fill up the post of P.G. Assistant (Physics) as per the strength and the staff fixation. However, the said post should be filled up from the list of surplus Teachers maintained at the District Level, instead of making fresh appointment. The stand of Respondent No.3 as taken in the counter affidavit also appears to be in tune with the interim order passed in W.A.(MD) No.76 of 2019 and batch and G.O.(Ms) No.165, dated 17.09.2019.

4. Learned counsel for the petitioner contended that the said interim order dated 09.04.2019 in W.A.(MD) No.76 of 2019 and batch, which is the basis for passing the impugned order was re-considered by a learned Division Bench by order dated 20.09.2019 and the consequential order issued in G.O. (Ms) No.165, dated 17.09.2019 was suspended until further orders. It is also further brought to the notice of this Court that the said writ appeals in W.A. (MD) No.76 of 2019 and batch were disposed of by the learned Division Bench by judgment dated 31.03.2021 issuing detailed directions and one such



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direction is at sub-para (v) of para 95 is relied in support of the case of the petitioner. Sub-para (v) of para 95 of the judgment reads as under:

“95(v) Like that insofar as aided minority institutions are concerned,if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength.”



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5. On the other hand, Sri V.Om Prakash, learned Government Advocate brought to the notice of this Court a recent decision of a learned Division Bench of this Court dated 06.12.2023 passed in W.A.(MD) No.1780 of 2023 and contended that there is no dispute about the right of the 5th respondent-Management School to appoint the Teachers in a vacancy. However, the said appointment can be made only on satisfying that there is need for filling up of such vacancy *vis-a-vis* the strength of the student. The relevant paragraph from the said decision reads as under:

“34. Therefore, we are of the considered opinion that, wherever the school is considered as a single Unit and no surplus Teachers are identified then approval is to be granted to those Teachers, who were appointed by following the procedures as contemplated under the Act and Rules in force and if they satisfy other conditions stipulated.”

6. From the above, it is noticed that in respect of the stand alone minority institutions, the question of filling up the vacancies with the surplus



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staff is dispensed with and they are granted liberty to fill up the vacancies without awaiting for filling up the vacancies from the surplus staff list. The 5th respondent herein is admittedly a stand alone aided minority institution and therefore, the 5th respondent is covered by the above extracted paragraph. If that be the case, the grounds on which the approval was refused to be granted for the appointment of the petitioner herein as P.G. Assistant (Physics) cannot be sustained.

7. From the above discussion, it is also evident that the right of the 5th respondent-School, which is a stand alone aided minority institution is not in dispute and in case of any vacancy arising in the said school, subject to having the necessity to fill up such post depending upon the strength of the students. As already noted above, in the counter affidavit filed by Respondent No.3, it is admitted that there is every necessity for appointing the P.G. Assistant (Physics) in the 5th respondent-school.

8. In the light of the above, the impugned order is not sustainable and the appointment of the petitioner as P.G. Assistant (Physics) is required to



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be approved by the Respondent No.3, in the light of the undisputed factual position noted hereinabove.

9. Accordingly, the impugned order is set aside and Respondent No. 3 is directed to grant approval to the appointment of the petitioner with effect from the date of his appointment, i.e., 03.06.2019 and extend all consequential benefits as expeditiously as possible, subject to satisfaction that the petitioner has been working in the respondent-School since the date of appointment, at any rate within a period of eight weeks from the date of receipt of a copy of this order.

10. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2024

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

ABR



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To

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State of Tamil Nadu,
Department of School Education,
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Chennai-600 009.
- 2.The Director of School Education,
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MUMMINENI SUDHEER KUMAR, J.

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