



W.P.(MD)No.16047 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.16047 of 2024

and

W.M.P.(MD)No.13955 of 2024

Mary Agnes Irene

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep.by its Additional Chief Secretary,
Department of School Education,
Fort St.George, Chennai-9.
- 2.The Director of School Educatio,
DPI Campus,
College Road, Chennai-6.
- 3.The Chief Educational Officer,
The Office of the Chief Educational Officer,
Thoothukudi District.
- 4.The District Educational Officer,
The Office of the District Educational Officer,
Thoothukudi District.
- 5.The Correspondent,
Holy Cross Girls' Higher Secondary School,
Thoothukudi, Thoothukudi District.

... 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 pertaining



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to the impugned order dated 16.12.2009 in Ni.Mu.No.7815/A4/09, on the file of the fourth respondent and quash the same and consequently, direct the respondents to accord approval from the date of appointment of the petitioner Mrs.Mary Agnes Irene, working as B.T.Assistant (Science) in Holy Cross Girls Higher Secondary School, Thoothukudi with effect from 06.11.2008 with all monetary and other service benefits.

For Petitioner : Mr.S.Savarimuthu
M/s.Father Xavier Associates
For R1 to R4 : Mr.T.Amjad Khan
Government Advocate

ORDER

Heard Mr.S.Savarimuthu, learned counsel for the petitioner and Mr.T.Amjad Khan, learned Government Advocate for the respondents.

2.By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

3.The petitioner was appointed as BT Assistant (Science) in the fifth respondent School on 06.11.2008 in the vacancy arising out of the voluntary retirement of an incumbent. However, the petitioner's appointment was approved only with effect from 01.10.2009 stating that the conversion of the post from Secondary Grade Teacher to B.T.Assistant in the fifth respondent



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school was given only from 01.10.2009. Hence, the petitioner has filed this writ petition seeking approval of her appointment from the date of appointment as B.T.Assistant i.e., from 06.11.2008.

4.The issue raised in this Writ Petition has been elaborately discussed and covered in the earlier judgment passed in W.P.(MD)No.9018 of 2024, dated 12.04.2024 (***R.Singarayan vs. The Director of School Education and others***), wherein this Court has analysed as under:

“8. The petitioner has got his appointment in the very same post of BT Assistant and his transfer can only be a mere transfer and it cannot be considered as an appointment through transfer. However, G.O.Ms.No.79, School Education Department, dated 14.06.2002, states that whenever the Secondary Grade post become vacant that will get automatically upgraded to BT Assistant and hence the petitioner's transfer to the said post would only entitle him to get his transfer approved in the post of BT Assistant from the date of his transfer and not from the date on which permission is granted for conversion.

9. In the Government Order issued in this regard in G.O.Ms.No. 79, School Education Department, dated 14.06.2002, it is mentioned that from 2002-2003 academic year, whenever a vacancy arises in the post of Secondary Grade Teacher for teaching classes VI to VIII, the posts would be converted to that of Middle Grade Graduate Teacher in a phased manner and B.Ed., qualified teachers would be appointed in Secondary Grade Teachers scale, but with one increment. In the judgment of this Court made in W.A(MD)No.1497 of 2017 (CEO and



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another v. Joseph.. and another) and the Division Bench judgment reported in 2018(1)WLR410 (The Government of Tamil Nadu rep. by the Secretary to Government, Department of School Education v. J.Remila and others), it is held that once Secondary Grade teacher post was upgraded to Graduate teacher, then whoever assumes the charge in the vacancy so arises on promotion of Secondary Grade Teacher, would automatically get the benefit of upgradation. In other words, the posts get automatically upgraded to BT Assistant from Secondary Grade Teacher on account of a Teacher resigns or gets promoted.

10. In the instant case, the petitioner who was already a BT Assistant got transferred to the transferee school in the vacancy arose due to promotion of the incumbent in the Secondary Grade post which would automatically get upgraded in pursuant to the G.O.Ms.No.79, School Education Department, dated 14.06.2002. In such case, the respondent ought to have approved the post of the petitioner as BT Assistant from the date of his assumption of the charge ie., on 26.10.2021 and not from the date when permission was granted for conversion, ie., 16.08.2023. Since the impugned order has been passed contrary to the Government Order as well as the settled position of law in this regard as held by the various judicial pronouncements above mentioned, it is liable to be set aside.”

5.Since the petitioner herein is also similarly placed as that of the petitioner in the above writ petition, this petitioner is also entitled for the same relief.

6.Accordingly, following the earlier decision of this Court *supra* (**W.P.(MD)No.9018 of 2024, dated 12.04.204**), this Writ Petition is allowed



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and the order passed by the fourth respondent in Ni.Mu.No.7815/A4/09 dated 16.12.2009 is hereby set aside. The second respondent is directed to approve the petitioner's appointment as BT Assistant (Science) in the fifth respondent School with effect from 01.10.2009 and issue orders within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

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

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R.N.MANJULA, J.

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