



W.P.(MD).No.15838 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.15838 of 2023

and

W.M.P(MD)Nos.13248 & 13249 of 2023

A.Kulandia Therase Mary

... Petitioner

Vs

**1.The Government of Tamil Nadu,
Represented by its Additional Chief Secretary,
Department of School Education,
Fort St.George, Chennai-9.**

**2.The Director of School Education,
DPI Campus, College Road,
Chennai-6.**

**3.The District Elementary Educational Officer,
The Office of the Chief Educational Officer,
Thanjavur District.**

**4.The Block Educational Officer,
The Officer of the District Educational Officer,
Thiruvaiyaru, Thanjavur District.**

**5.The Correspondent,
St.Philominal Primary School,
Sengamedu, Kandiyur P.O.,
Thiruvaiyaru Tk, Thanjavur-613 202.**

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings, dated 20.09.2019, in O.Mu.No.5278/A3/2018, on the file of the 3rd respondent and quash the same, directing the Respondents, to accord approval to the appointment of the petitioner, A.Kulandai Therase Mary, working as Secondary Grade Teacher, in the 5th respondent, St. Philominal Primary School, Sengamedu, Kandiyur Post, Thiruvaiyaru Taluk, Thanjavur-613 202, w.e.f.04.10.2018, and release salary with all monetary and service benefits.

For Petitioner : Mr.S.Savarimuthu
for M/s.Father Xavier Associates

For Respondents : Mr.M.Sarangan
Additional Government Pleader

ORDER

The present writ petition has been filed to call for the records pertaining to the impugned proceedings, dated 20.09.2019, in O.Mu.No.5278/A3/2018, on the file of the 3rd respondent and quash the same, directing the Respondents, to accord approval to the appointment of the petitioner, A.Kulandai Therase Mary, working as Secondary Grade Teacher, in the 5th respondent, St. Philominal Primary School, Sengamedu, Kandiyur Post, Thiruvaiyaru Taluk, Thanjavur-613 202, w.e.f.04.10.2018, and release salary with all monetary and service benefits.



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2. The petitioner was appointed as Secondary Grade Teacher in the 5th respondent school with effect from 04.10.2018 in a sanctioned vacancy which had arisen due to the transfer of the erstwhile incumbent, namely A.Maria Mythiline on 06.06.2018. The 5th respondent school is run by the corporate management, namely The Roman Catholic Congregation of the Order of Immaculate Heart of Mary, Pondicherry. A proposal for the approval of the appointment of the petitioner as Secondary Grade Teacher in the 5th respondent school with effect from 04.10.2018 was forwarded to the educational authorities on 24.01.2019. The staff fixation for the 5th respondent school for the academic year 2017-18 would reveal that there was no surplus in the 5th respondent school, but there had been a sanctioned Secondary Grade Teacher post vacant. Despite the same, the 4th respondent vide proceedings, dated 30.04.2019 returned the proposal directing the 5th respondent to resubmit the proposal with relevant documents in respect of surplus teachers in the corporate management. The proposal was further resubmitted on 02.07.2019, but the 3rd respondent vide impugned proceedings, dated 20.09.2019 had returned the proposal without approval stating the pendency of W.P.No.11851 of 2018 and W.A(MD)No.76 of 2019 and batch. Challenging the same, this writ petition came to be filed.



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3. The learned counsel for the petitioner submitted that despite resubmitting the proposal with complete details of no surplus in the corporate management, the respondent authorities have returned the proposal refraining from approving the appointment of the petitioner and such an exercise is *per se* illegal and pressed for allowing the writ petition.

4. Per contra, the 3rd respondent has filed a counter and the learned Additional Government Pleader submitted that the appointment of the petitioner has been made in a vacancy which had arisen due to the transfer of erstwhile incumbent to another school and relying upon the order passed by this Court in W.P(MD)No.4293 of 2020, dated 30.01.2023, he submitted that transferred vacancy can be filled up only from the surplus teachers available in the corporate management and without exhausting the vacancies which had arisen due to the transfer with surplus teachers, fresh appointment from the open market cannot be made and on that basis, the appointment of the petitioner afresh without exhausting the surplus in the corporate management is *per se* illegal. Relying upon the judgment of the Hon'ble Division Bench in W.A(MD)No.861 of 2021, dated 30.04.2021, the learned Additional



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Government Pleader submitted that under the corporate management, the vacancies which are arising in the respective schools under the said management shall not be filled up unless the excess staffs identified in all the other schools under the same corporate management are fully exhausted and only after exhausting by redeployment process of all the excess teachers identified in the group of schools under the corporate management, the 5th respondent shall be free to make appointment afresh from open market in a vacancy if any still exists within the sanctioned strength and pressed for dismissal of the writ petition.

5. At the time of issuance of the impugned proceedings by the 3rd respondent, a batch case in W.A(MD)No.76 of 2019 was pending before this Court and yet another case with respect to exhaustion of surplus in corporate management in W.P.No.11851 of 2018 was also pending. Relying upon those two cases, appointment made as early as in the year 2018 came to be rejected by the 3rd respondent by the impugned proceedings, dated 20.09.2019. The Hon'ble Division Bench of this Court in W.A(MD)No.866 of 2018 by its order, dated 28.06.2018 has dealt with a similar case and the relevant portion of the same is extracted as follows:



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“8. When a teacher is transferred from one school to another school run by the same management and the teacher accepts the transfer and joins that school, her post in the school from which she is transferred would obviously fall vacant and that vacancy might be filled up in accordance with law either by a fresh appointment or by transfer.”

6. Yet another case in W.A(MD)No.1557 of 2023, dated 21.09.2023, this Court has categorically held that the mandates of ***Iruthaya Amali's case*** in W.A(MD)No.76 of 2019 batch cannot be applied retrospectively and the relevant portion of which is extracted as follows:

“18. The impossibility of retrospective or retro active application of directions in a Judgment has been considered by the Hon'ble Supreme Court of India in Goan Real Estate Construction Limited and Another -Vs- Union of India⁶ and it is specifically held in paragraph 31 that the Judgment should be read in the context and its entirety and the observations should not be applied out of context. In paragraph 39 it is held that the nature of directions should be considered to give prospective effect. In paragraph 34 it is held that whenever a new norm is established the ability to retrospectively effectuate the new rule should be considered. Thus, applying the dictum, it can be seen that the Division Bench had consciously did not nullify the appointments pending approval.”

7. Fully fortified by the mandates of the aforesaid judgments discussed supra, I am of the considered opinion that the petitioner has been appointed in a sanctioned vacancy of Secondary Grade Teacher post. Even assuming the



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contention of the learned Additional Government Pleader that there had been surplus at that point of time in 2017-18 in the corporate management, that will not absolve the school's right of appointment of teachers in a sanctioned vacancy that too when the staff fixation for the academic year 2017-18 by the authorities itself has ensured the fact that there was no surplus and there was an availability of the sanctioned Secondary Grade Teacher post during that academic year.

8. In view of the same, I hereby quash the impugned order, dated 20.09.2019 and remand the matter back to the 3rd respondent and the 3rd respondent is directed to approve the appointment of the petitioner within a period of twelve (12) weeks from the date of receipt of copy of this order.

9. With the above said observations, these Writ Petitions stand allowed.
No costs. Consequently, connected Miscellaneous Petitions are closed.

13.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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- To
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L.VICTORIA GOWRI, J.

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ORDER IN
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