



W.P.(MD).Nos.18854, 18890 & 18897 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.18854, 18890 & 18897 of 2022

and

W.M.P(MD)Nos.13752, 13753, 13787, 13788 & 13795 of 2022

W.P(MD)No.18854 of 2022:

Shanthi Selva Nayaki

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai-9.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai-6.
- 3.The Chief Educational Officer,
O/o the Chief Educational Officer,
Tenkasi District.
- 4.The District Educational Officer,
O/o the District Educational Officer,
Tenkasi District.



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5.The Correspondent,
St.Michael's Girls Higher Secondary School,
Tenkasi-627 811.

... Respondents

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 pertaining to the impugned proceedings, dated 07.02.2022, in O.Mu.No.2510/AA1/2021, on the file of the 4th respondent and quash the same, directing the respondents to accord approval to the promotion of the petitioner, Sr.Shanthi Selva Nayaki, working as B.T.Assistant in the 5th respondent, St.Michaels Girls Higher Secondary School, Tenkasi - 627 811, w.e.f. 07.06.2019, and release salary with all monetary and service benefits.

W.P(MD)No.18890 of 2022:

A.Jaya Ceceli

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai-9.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai-6.
- 3.The Chief Educational Officer,
O/o the Chief Educational Officer,
Tenkasi District.



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4.The District Educational Officer,
O/o the District Educational Officer,
Tenkasi District.

5.The Correspondent,
St.Michael's Girls Higher Secondary School,
Tenkasi-627 811.

... Respondents

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 pertaining to the impugned proceedings, dated 25.01.2022, in O.Mu.No.2370/AA1/2021, on the file of the 4th respondent and quash the same, directing the respondents to accord approval to the transfer of the petitioner, Sr.A.Jaya Ceceli, working as PET Teacher in the 5th respondent, St.Michaels Girls Higher Secondary School, Tenkasi - 627 811, w.e.f. 29.07.2021, and release salary with all monetary and service benefits.

W.P(MD)No.18897 of 2022:

S.Ruby

... Petitioner

Vs.

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

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



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- 3.The Chief Educational Officer,
O/o the Chief Educational Officer,
Tenkasi District.
- 4.The District Educational Officer,
O/o the District Educational Officer,
Tenkasi District.
- 5.The Correspondent,
St.Michael's Girls Higher Secondary School,
Tenkasi-627 811.

... Respondents

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 pertaining to the impugned proceedings, dated 02.02.2022 in A.Thi.Mu.No.090/AA1/2022, on the file of the 4th respondent and quash the same, directing the Respondents, to accord approval to the promotion and transfer of the petitioner, Sr.S.Ruby, working as B.T. Assistant, in the 5th respondent, St.Michaels Higher Secondary School, Tenkasi 627 811, w.e.f. 04.08.2021, and release salary with all monetary and service benefits.

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

For R1 – R4 : Mr.M.Sarangan
Additional Government Pleader



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ORDER

All the writ petitioners herein were appointed in the 5th respondent School administered by the corporate management namely, the Immaculate Conception Society, Madurai, run by the Catholic Religious “Congregation of the Immaculate Conception”. The details of the writ petitioners' service for convenience is tabulated here under:

S.No	Writ Petition Number	Name of the writ petitioner	Date of appointment & post	Promoted to / transferred to	Date of proposal for approval of promotion / transfer	Date of return
1.	W.P(MD)No.18897 of 2022	S.Ruby	15.11.2002 Secondary Grade Teacher	B.T Assistant (English) w.e.f 04.08.2021	08.01.2022	02.02.2022
2.	W.P(MD)No.18854 of 2022	Shanthini Selva Nayaki	16.06.2004 Secondary Grade Teacher	B.T Assistant (History) w.e.f 07.06.2019	21.09.2020	07.02.2022



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3.	W.P(MD)No.18890 of 2022	A.Jaya Ceceli	02.05.2014 PET Teacher	Transferred to 5 th respondent school as PET w.e.f 29.07.2021	19.11.2021	25.01.2022
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2. The petitioner in W.P(MD)No.18897 of 2022 was promoted to the post of B.T Assistant (English) with effect from 04-08-2021 and transferred from R.C Primary School, Sivakasi to the 5th respondent School. The petitioner in W.P(MD)No.18854 of 2022 was promoted as B.T Assistant (History) with effect from 07-06-2019 and was transferred from R.C Fatima Middle School, Kayathar, Tuticorin District to the 5th respondent School. The petitioner in W.P(MD)No.18890 of 2022 was transferred from St.Theresa's Teacher Training Institute, Nirmal Nagar, Viraganur, Madurai to the 5th respondent School as Physical Education Teacher with effect from 29-07-2021. The 5th respondent School has forwarded the proposal for the approval of the promotion / transfer of these writ petitioners on various dates and the same came to be rejected and returned by the District Educational Officer of Tenkasi on various dates. Challenging the order of rejection passed by the District Educational Officer, Tenkasi, these writ petitions came to be filed.



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3. The learned counsel for the petitioners submitted that the writ petitioners were promoted and transferred in the available sanctioned vacancies. However, the District Educational Officer has rejected those proposals stating that there is no Government direction regarding staff fixation for the year 2021-2022.

4. The learned counsel for the petitioners submitted that the Honourable Division Bench of this Court in a detailed judgment, dated 31-03-2021 in W.A(MD) No. 76 of 2019 & batch has given a compendium of schedule for issuing the staff fixation, identifying excess teachers, deploying the excess teachers to the needy schools and it has given clear directions in respect of appointments to be made in minority schools. When the Honourable Division Bench of this Court has clearly stipulated a time frame to complete the process of fixation of staff strength, identification of excess staff and deployment of excess staff to the needy school, the respondents without complying the said direction has proceeded to pass the impugned orders for the reason that the Government has not given any direction regarding the staff fixation for the



year 2021-2022. The said order is *per se* illegal and pressed for allowing the writ petitions.

5. Per contra, the respondents 1 to 4 have filed their counter affidavit and the learned Additional Government Pleader submitted that the post to which the petitioners have been promoted / transferred is only sanctioned to the 5th respondent school and not to the writ petitioner. Hence, the writ petitioners are estopped from challenging the decision of the department. He further submitted that it is a settled proposition of law as held by the Honourable Apex Court repeatedly that if any orders passed by the department to a particular school or individual as the case may be, then the same should be challenged only by the person on whose request the said order was made by the department. He further contended that in that case, the impugned order of return was passed by the department only on the request and proposal submitted by the 5th respondent school and hence, it is only for the 5th respondent school to challenge the same and not the writ petitioner and pressed for dismissal of the writ petitions.



6. Heard the learned counsel on either side and carefully perused the available records.

7. Though the learned Additional Government Pleader contended that it is only for the 5th respondent school to challenge the impugned order of return / rejection of the proposal seeking promotion / transfer of the petitioners and it is not for the writ petitioners to challenge the same, such an argument cannot be sustained in view of the fact that the impugned orders are with respect to the writ petitioners' promotion / transfer. That apart, the compendium of schedule mandated by the judgment, dated 31-03-2021 of the Honorable Division Bench of this Court in W.A(MD)No.76 of 2019 & batch insist a time frame to complete the process of fixation of staff strength, identification of excess staff and deployment of the excess staff to the needy school and the same is extracted as follows:

“95. (f) COMPENDIUM OF SCHEDULE :

(i) Closing of Admission for the purpose of fixation of staff strength - 31st July of that academic year.



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(ii) Fixation of staff strength of the school concerned, based on the student strength as on 31st July as per the strength of the pupil updated in the EMIS - 10th August.

(iii) The aforesaid fixation of staff strength of the school shall be intimated to the school on or before 15th August.

(iv) On receipt of information from the Department, the School concerned shall give its objection if any, based on the teacher-pupil ratio on such fixation of staff strength by 25th of August.

(v) On receipt of such objection, if any, from the school concerned, the final order of fixing the staff strength of the school, with the provisional order for identification and redeployment of excess staff shall be passed by the Department by 5th of September.”

8. The Honorable Apex Court has also confirmed the aforesaid compendium of schedule given by the Honorable Division Bench of this Court in paragraph no.95 except that of class para 95-1 recently. In view of the same, the petitioners' rejection of the proposal sent by the 5th respondent school want of appropriate direction regarding staff fixation for the year 2021-2022 is not sustainable. The respondents 1 to 4 ought to have duly complied with the compendium of schedule issued by the Honorable Division Bench of this Court in W.A(MD)No.76 of 2019 by judgment, dated 31-03-2021 and ought to have



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completed the process of staff fixation as mandated within the time frame in the said judgment. Having not done the same, the respondents are not justified in any point of view in rejecting the 5th respondent's proposal to approve the petitioners, promotion / transfer. In view of the same, the orders impugned in the writ petitions are hereby quashed. Consequently, the file is remanded back to the District Educational Officer, Tenkasi / 4th respondent and forthwith the 4th respondent is directed to approve the transfers / promotion of the petitioners, if they are otherwise qualified within a period of six (6) weeks from the date of receipt of copy of this order.

9. Accordingly, the Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

11.03.2024

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

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To

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Department of School Education,
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- 2.The Director of School Education,
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L.VICTORIA GOWRI, J.

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