



W.P.(MD).No.18299 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.18299 of 2024
and WMP(MD) Nos.15583 & 15584 of 2024

The Correspondent
St.Ephrem's M.S.C., Higher Secondary School,
Sooriacode – 629 190,
Kanyakumari District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.

2.The Director of School Education,
College Road, Chennai – 600 009.

3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District – 629 001.

4.The District Educational Officer,
Marthandam, Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the CEO in Na.Ka.No.1678/E4/2019 dated



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18.11.2020 and the consequential proceedings of the DEO in Oo.Mu.No. 1303/A3/2022, dated 04.06.2024 quash the same and further direct the 3rd and 4th respondents to approve forthwith the appointment of C.Ambujam as BT Assistant (History) in petitioner's school w.e.f. the date of her appointment viz., 01.06.2015, with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Ms.M.F.Rooshi Maas
For M/s.Isaac Chambers

For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

Heard Ms.M.F.Rooshi Maas, for M/s.Isaac Chambers, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader for the respondents.

2.This Writ Petition has been filed challenging the impugned orders in Na.Ka.No.1678/E4/2019 dated 18.11.2020 in Oo.Mu.No. 1303/A3/2022, dated 04.06.2024 and further direct the 3rd and 4th respondents to approve forthwith the appointment of C.Ambujam as B.T Assistant (History) in petitioner's school w.e.f. from the date of her appointment viz., 01.06.2015.



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3.Ms.M.F.Rooshi Maas, learned counsel for the petitioner submitted that one post of Secondary Grade Teacher in the petitioner School fell vacant on 01.06.2015 due to the retirement of the then incumbent S.Prabhada Pushpam on 31.05.2015. In that vacancy, the petitioner appointed a fully qualified candidate namely, C.Ambujam as B.T.Assistant (History) with effect from 01.06.2015. When the School submitted proposal for approval of appointment, the same was returned on 28.07.2017 stating that the said post was rendered surplus and the subject roster has not been followed. Aggrieved over the same, the School filed a Writ Petition in W.P.(MD).No.14016 of 2018 seeking for approval and this Court vide order, dated 02.07.2018 disposed of the Writ Petition directing the respondents to grant approval to the appointment of the said C.Ambujam from the date of her initial appointment.

4.As the order of this Court was not complied by the respondents, the petitioner filed a Contempt Petition in Cont.P.(MD).No.213 of 2021. When the Contempt Petition was taken up for hearing, the 3rd respondent circulated the impugned proceeding, dated 18.11.2020, wherein the third respondent had declined to approve the appointment of C.Ambujam stating that the said post has been rendered as surplus during the academic year 2014-2015. The



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petitioner has also sent a representation to the 3rd and 4th respondents on 12.04.2024 requesting to approve the appointment of C.Ambujam as B.T.Assistant. However, the 4th respondent vide impugned proceedings, dated 04.06.2024 returned the same stating that the petitioner's proposal has already been rejected by the 3rd respondent vide order, dated 18.11.2020.

5. The learned counsel for the petitioner attracted the attention of this Court to the judgment passed by the Division Bench of this Court in ***W.A. (MD).No.2119 of 2021 dated 23.06.2023*** in the case of ***The Commissioner of School Education, Vs Aided Muslim Committee Primary School, Rep. by its Correspondent, S.Sheik Shajakhan Sithik***, through which, the G.O.(Ms).No. 165, School Education Department, dated 17.09.2019 has been held inoperative. The relevant portion is extracted hereunder:

“8.Moreover, the said G.O., was issued only on 17.09.2019, whereas the teacher was appointed well before the issuance of the said G.O., ie., 03.07.2018. Therefore, assuming if the said G.O., ultimately would be declared to be valid, that will have a prospective effect. Moreover, as on today, the said G.O., is no more available to the appellant department to say the reason that by virtue of G.O.Ms.No.165, the appointment made in respect



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of the teacher concerned at the 1st respondent school cannot be approved.

9.In that view of the matter, we have no hesitation to hold that the order impugned passed by the learned Single Judge is perfectly valid and therefore, it is to be sustained. In the result, this Writ Appeal fails, therefore, it is to be dismissed, accordingly, it is dismissed. As a sequel, there shall be a direction to the appellant Department to approve the appointment of the teacher concerned in the 1st respondent School and extend all service benefits from the date of such appointment to the teacher concerned within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

6.The School, in which, the petitioner was appointed is a minority stand alone institution. The petitioner has been appointed only against a sanctioned post. However, during the academic year 2014-15, the said post was held as surplus. Prior permission for appointment in the sanctioned post as held to be unnecessary, in view of in-operation of G.O.Ms.No.165, 17.09.2019 as held by this Court in W.A(MD) No.76 of 2019 etc., batch, dated 31.03.2021.



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7. In this regard, it is relevant to refer to the earlier similar orders of this Court on similar facts in WP(MD) No.6614 of 2024, dated 10.04.2024, wherein, this Court has held as under:

“5. Since the petitioner is a Minority Institution, they need not seek any prior approval. Further, if the post fell under surplus, the petitioner has to get prior approval. However, the third respondent has passed an order stating that fresh appointments cannot be made in view of G.O.Ms.165 dated 17.09.2019.

6. The legal position in respect of G.O.Ms.165 dated 17.09.2019 has been dealt in various orders of this Court and it is held that so far as the appointments made against the sanctioned posts for private aided schools, the Government Order in G.O.Ms. 165 dated 17.09.2019 has got no application. It is not in dispute that the post for which the said V.Bable Vijila has been appointed is a sanctioned post. There is no question of prior permission since G.O.Ms.165 dated 17.09.2019 is inoperative by virtue of the judgment of the Division Bench rendered in W.A.(MD)No.76 of 2019 & batch and the same has been followed in various other orders of this Court including the orders passed in similar such cases involved in W.P.No.1307 & 18248 of 2021, W.P.No. 4021/2023 and W.P.No.16698/2012.”

8. The issue involved in this matter is no more a *res-integra* in view of the judgment rendered in ***W.A.(MD).No.76 of 2019 batch dated 31.03.2021*** in the case of ***The Secretary to Government Government of Tamil Nadu***



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Amali. Even though the appointment has been made on 01.06.2015, that is prior to the judgment rendered in the above case and hence the official respondents have to positively consider the proposal sent by the petitioner with regard to the appointment of C.Ambujam as BT Assistant (History) and pass orders.

9. The petitioner's appointment has been made prior to the order dated 31.03.2021 passed in W.A.(MD).No.76 of 2019 batch. Hence, the petitioner School can get the advantage of getting approval of the appointment of C.Ambujam as BT Assistant (History). Therefore, the respondents cannot decline the approval of the appointment due to surplus.

10. In view of the above stated reasons, this Writ Petition is allowed and the impugned orders in Na.Ka.No.1678/E4/2019 dated 18.11.2020 and Oo.Mu.No.1303/A3/2022, dated 04.06.2024 are hereby set aside. The respondents 3 and 4 are directed to consider and pass orders regarding approval of appointment of C.Ambujam as BT Assistant (History) with effect from 01.06.2015. The said exercise shall be completed within a period of four weeks



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from the date of receipt of a copy of this order. No costs. Consequently,
connected miscellaneous petitions are closed.

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NCC : Yes / No

Index : Yes / No

Internet : Yes

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To

- 1.The Secretary, State of Tamil Nadu,
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Fort St.George, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 009.
- 3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
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