



W.P.(MD)No.19863 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.19863 of 2023

Eswaramoorthy Primary School,
Represented by its Correspondent,
Orumankulam,
Tisaiyanvilai Taluk,
Tirunelveli District.

... Petitioner

Vs.

1.The District Educational Officer,
Valliyoor District Educational Officer,
Valliyoor,
Tirunelveli District.

2.The Block Educational Officer,
Radhapuram Block,
Radhapuram,
Tirunelveli 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 on the file of the second respondent in connection with the impugned rejection order passed by him vide his proceeding in O.Mu.No.Aa2/2023 dated 17.04.2023 and quash the same as illegal, arbitrary and consequently direct the second



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respondent to approve and pay grant / salary for the substitute Secondary Grade Teacher namely A.Sathya for the period from 14.12.2021 to 13.12.2022 in the light of G.O.Ms.No.198 Education, Science and Technical Education (D1) Department dated 15.03.1995 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.K.Sankar

For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

Heard Mr.K.Sankar, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader for the respondents.

2. This Writ Petition has been filed seeking to quash the order dated 17.04.2023 passed by the second respondent and consequently direct the second respondent to approve and pay grant / salary for the substitute Secondary Grade Teacher namely A.Sathya for the period from 14.12.2021 to 13.12.2022 in the light of G.O.Ms.No.198 Education, Science and Technical Education (D1) Department dated 15.03.1995.



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3. The petitioner School has given maternity leave to one of its employee and the vacancy due to maternity has been filled up by temporary appointment of one R.Sathya. When the appointment proposal was sent to the second respondent for approving the grant, the same was rejected vide order dated 17.04.2023 by the second respondent. The reason for rejection as seen in the impugned order is that as per G.O.Ms.No.165 Pa.Ka.(Tho.Ka.) Department dated 17.09.2019, no new appointment can be made without prior approval or without following the guidelines and hence the substituted appointment cannot be approved.

4. Mr.M.Siddharthan, learned Additional Government Pleader attracts the attention of this Court to the judgment of this Court in W.P.(MD).No.5314 of 2012 dated 03.03.2020, wherein this Court has held that there are RC Schools in which surplus teachers were working, even before filling up the maternity vacancy and without utilizing the surplus, the School management had appointed one more substitute teacher and hence the respondent cannot be compelled to sanction salary to the substituted teacher.



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5. Mr.K.Sankar, learned counsel for the petitioner had tried to make distinction by stating that the School mentioned in W.P.(MD).No.5314 of 2012 is a group of RC Diocese school, but in the instant case the petitioner School is a single entity, in which there was no surplus. There is no quarrel on the point that if the teacher goes on maternity leave, the vacancy can be filled up by a substitute for which the Government can also permit grant. The only contention of the learned counsel for the petitioner is that as per G.O.Ms.No.165 dated 17.09.2019, prior permission is required. The said Government Order has already been declared as inoperative. Even if it is presumed to be operative it can be applicable only for new appointments to permanent vacancies and not applicable to the temporary vacancies arising out of maternity leave availed by a teacher. The respondents have not stated that in the petitioner School there was any surplus teacher and the petitioner school teacher without availing the service of the surplus teacher had proceeded to fill up the substituted teacher. Under such circumstances, the respondents ought to have accorded sanction to the substituted post for the period during which the substituted person was in appointment.



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6. There is no quarrel on the fact that one Sathya who was appointed as substituted teacher for the period from 14.12.2021 to 13.12.2022. The respondent has chosen to reject the proposal on a wrong premise and has tried to apply the logic applicable to the group of Schools falling under the RC Diocese. It is not applicable to the case of the petitioner's School which is a single entity.

7. Hence, this Writ Petition is allowed and the impugned order dated 17.04.2023 is set aside and the second respondent is directed to approve and pay grant / salary for the substitute Secondary Grade Teacher namely A.Sathya for the period from 14.12.2021 to 13.12.2022 within a period of six weeks from the date of receipt of a copy of this order. No costs.

02.04.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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To:

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- 1.The District Educational Officer,
Valliyoor District Educational Officer,
Valliyoor,
Tirunelveli District.

- 2.The Block Educational Officer,
Radhapuram Block,
Radhapuram,
Tirunelveli District.



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R.N.MANJULA, J

Nsr

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