



W.P.(MD)No.8146 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2024

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.8146 of 2017

and

W.M.P.(MD).Nos.6256 to 6258 of 2017

The Correspondent,
St.Peter's RC Primary School,
Chekkal,
Thirparrappu Post,
Kanyakumari District-629 161.

... 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-600 006.

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

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

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari Mandamus, calling for the records relating to the impugned proceedings of the 4th respondent District Educational Officer in Na.Ka.No.5600(3)/A1/2015 dated 10.2015 and Na.Ka.No.4938/A1/2016 dated09.2016 (settling the Staff Fixations for the petitioner-school for the academic years 2015-2016 and 2016-2017 respectively) quash the same insofar as they took away the only post of Junior Assistant in the petitioner-School and further direct the fourth respondent District Educational Officer to approve forthwith the appointment of K.Florence Jude Metilda as Junior Assistant with effect from 11.06.2015 and disburse the grant-in-aid towards her salary and allowances.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For R-1 to R-4 : Mr.T.Amjad Khan,
Government Advocate

ORDER

This Writ Petition has been filed challenging the staff fixation order in respect of the petitioner / School for the academic years 2015-2016 and 2016-2017.



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2. Learned counsel appearing for the petitioner claims that erroneously and illegally, the post of Junior Assistant in the petitioner / School has held to be surplus by the fourth respondent pertaining to the petitioner / School for the academic years 2015-2016 and 2016-2017.

3. Learned counsel appearing for the petitioner / School drew the attention of this Court to an order, dated 10.03.2010, passed by this Court in W.P.No.44721 of 2002, wherein, the petitioner / School had challenged the non-grant of sanction for the post of Junior Assistant in the petitioner / School with effect from the academic year 1993-1994. W.P.No.44721 of 2002 filed by the very same petitioner / School came to be allowed by the learned Single Judge of this Court on 10.03.2010 and the Director of School Education was directed to consider the representation of the petitioner / School on the strength of the recommendations made by the third respondent (District Educational Officer) that the petitioner / School has got the students strength of 300 right from the academic year 1993-1994 and that the petitioner / School is entitled to have one post of Junior Assistant and pass orders in the light of the superseded G.O.(Ms).No.340, School Education Department, dated 01.04.1992, without waiting for orders of the first respondent (the Government of Tamil Nadu) represented by its Secretary, Secondary Education, Fort St.George, Chennai-9



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on the recommendations made by the High Power Committee appointed by it in the year 1998 within one month from the date of receipt of a copy of the said order.

4. A Writ Appeal filed by the State in W.A.No.1680 of 2011 against the order dated 10.03.2010 passed in W.P.No.44721 of 2002 was dismissed by the Division Bench of this Court confirming the order of the learned Single Judge, dated 10.03.2010 passed in W.P.No.44721 of 2002 referred to supra. In accordance with the directions issued by the learned Single Judge of this Court on 10.03.2010 passed in W.P.No.44721 of 2002 referred to supra, the School Education Department issued G.O.(Ms).No.40, School Education Department, dated 04.03.2014, sanctioning of the post and approval for the appointment of M.Mary Rossery to the post of Junior Assistant in the petitioner / School.

5. Therefore, according to the petitioner / School, even though the petitioner is seeking for approval of appointment of a different person to the post of Junior Assistant though G.O.(Ms).No.40, School Education Department, dated 04.03.2014 pertains to a different person, it is clear that the Junior Assistant post cannot be declared to be surplus as seen from the impugned proceedings.



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6. Learned counsel appearing for the petitioner / School would further submit that the impugned proceedings has to be quashed and the request of the petitioner / School for approving the appointment of K.Florence Jude Metilda to the post of Junior Assistant will have to be sanctioned by the respondents.

7. On the other hand, learned Government Advocate appearing for the respondents would submit that the petitioner / School did not challenge the staff selection order for the year 2014-2015 and having kept quiet, the petitioner / School is not permitted to challenge the staff fixation order pertaining to the year 2015-2016. He would also submit that G.O.(Ms).No.40, School Education Department, dated 04.03.2014, was issued specifically in favour of M.Mary Rossery and the said Government Order cannot be made applicable to K.Florence Jude Metilda. However, learned counsel appearing for the petitioner / School would submit that once a person's appointment to the post of Junior Assistant in the petitioner / School has been approved through G.O. (Ms).No.40, School Education Department, dated 04.03.2014, it is presumed that the staff fixation order declaring that the Junior Assistant post in the petitioner / School is surplus, is arbitrary and illegal. As seen from the impugned staff fixation order, the contentions of the petitioner / School as



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referred to supra has not been considered by the fourth respondent. The said contention also seems to have some merit which requires further consideration by the fourth respondent.

8. For the foregoing reasons, this Court is of the considered view that the impugned order has to be quashed and the matter will have to be remanded back to the third respondent for fresh consideration on merits and in accordance with law after giving due consideration to the contentions raised by the petitioner / School in this Writ Petition including the submissions made by the learned counsel appearing for the petitioner / School before this Court.

9. Accordingly, the impugned staff fixation order passed by the fourth respondent insofar as the petitioner / School pertaining to the post of Junior Assistant is hereby quashed and the matter is remanded back to the third respondent for fresh consideration on merits and in accordance with law. The petitioner / School is permitted to submit written submissions to the fourth respondent and the fourth respondent is directed to pass final orders on merits and in accordance with law after giving due consideration to the written submissions submitted by the petitioner / School within a period of twelve weeks from the date of receipt of written submissions.



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WEB COPY 10. With the aforesaid direction, the Writ Petition stands **disposed of**. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC:yes/no
Index:yes/no
Internet:yes/no
TSG

To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai-600 009.
- 2.The Director of School Education,
College Road,
Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.
- 4.The District Educational Officer,
Thuckalay, Kanyakumari District.



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ABDUL QUDDHOSE, J.

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