



W.P.(MD)No.24066 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.24066 of 2022
and
W.M.P(MD)No.18170 of 2022

P.Deisi Rani

... Petitioner

Vs.

1.The Chief Educational Officer,
Thanjavur District,
Thanjavur.

2.The District Educational Officer,
Thanjavur Educational District,
Thanjavur.

3.The Correspondent,
St.Mary's High School,
Thirukanurpatty,
Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 and 2 to pass orders granting approval of appointment of petitioner in the sanctioned post of B.T.Assistant (Tamil) in the third respondent school with effect from 04.10.2018



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with all consequential benefits including payment of arrears of salary from the date of appointment, in consideration of proposal submitted by the third respondent school, dated 08.11.2018, within a time frame fixed by this Court.

For Petitioner : Mr.G.Sailendrababu

For R1 & R2 : Mr.J.K.Jeyaseelan
Government Advocate

For R3 : Mr.S.Rabeek Raja

ORDER

The writ petition has been filed directing the respondents 1 and 2 to approve the appointment of petitioner in the sanctioned post of B.T.Assistant (Tamil) in the third respondent school with effect from 04.10.2018 with all consequential benefits including payment of arrears of salary from the date of appointment, by considering the proposal submitted by the third respondent school, dated 08.11.2018.

2. The case of the petitioner is that the petitioner was qualified with B.Lit., (Tamil), B.Ed, M.A., M.Ed., M.Phil and Ph.D and she has also passed in Teacher Eligibility Test (TET) in August 2023. In the third respondent school, one M/s.A.Arockiamary, who was working as secondary grade Assistant was promoted as B.T.Assistant on 10.01.2018. The vacancy to the post of secondary



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grade Assistant upgraded as B.T.Assistant (Tamil) as per G.O.Ms.No.100 Education Department, dated 27.06.2003. Accordingly, the petitioner was selected and appointed as B.T.Assistant (Tamil) in the third respondent school vide order, dated 03.10.2018 and she joined duty on 04.10.2018. Subsequently, the third respondent school forwarded the proposal to the first respondent in November 2018 seeking approval of appointment of the petitioner as B.T.Assistant (Tamil) and the same was returned by the Department, duly re-presented by the third respondent school in May 2020. The first respondent again returned the proposal in April 2021 by stating that Public Interest Litigation has been filed before this Court in W.P.No.31575 of 2018 to make appointments after deployment of surplus teachers.

3. Thereafter, the proposal was submitted by the third respondent school which clearly states that the petitioner's appointment was based on the permission granted by the Department and again, the same was returned by the department on 19.08.2021. Subsequently, the school has re-presented the same in September 2021. Thereafter, the proposal is kept pending by the office of the first respondent without passing any order on the premise that the State Government issued orders in G.O.Ms.No.165, dated 17.09.2019 by which the direct recruitment to the post of teacher can be made only after deployment of



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surplus teachers working in other schools within the District. The operative portion of the above said Government order has been suspended by the interim orders of this Court in W.A.(MD)No.76 of 2019 etc., batch, dated 19.09.2019. The Division Bench of this Court passed final order on 31.03.2021 framing compendium of guidelines for deployment of surplus teachers to be followed from the academic year 2021-2022 pending framing of rules by the State Government and declared the above said Government order as inoperative and unenforceable.

4. The approval of the petitioner's appointment after obtaining permission from the department cannot be denied or deferred by referring to G.O.Ms.No.165. This Court passed an order for appointments made prior to the Government order vide order dated 18.04.2022 in W.P.No.3194 of 2020 etc., batch. This Court vide order dated 02.09.2022 in W.P(MD)No.6340 of 2018 granting approval of the appointment in the teaching posts without referring the above said Government order. As against the order of this Court in W.A(MD)No.76 of 2019 etc., the Hon'ble Supreme Court has limited the stay only to Clause (i) of paragraph No.95 of the order. The Government order cannot be applied against the petitioner's appointment since she was appointed as early as on 04.10.2018 based on the order issued by the department dated



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26.07.2018. The fact remains that the department has approved the appointment of B.T.Assistants in other schools, which is evident from the proceedings of CEO, Cuddalore District, dated 11.02.2019.

5. Aggrieved by the same, the petitioner has come forward with the present writ petition.

6. The learned counsel for the petitioner submitted that the first respondent has granted permission on 26.07.2018 to appoint the petitioner as B.T.Assistant Tamil in the third respondent school and subsequently, the petitioner has joined on 04.10.2018. He further submitted that in similar case, this Court, by following the judgment of the Division Bench of this Court, has passed an order in W.P(MD)Nos.10824 of 2021 etc., batch, dated 09.08.2024.

The relevant portion of the order reads as under:

“6.The Hon'ble Division Bench of our High Court in W.A(MD).No.15157 of 2023 (State of Tamil Nadu Rep.by its Principal Secretary, Department of School Education, Chennai and others Vs.C.Esakkimuthu and another) by an order dated 21.09.2023 has held that the order of the Hon'ble Division Bench in W.A(MD).No.76 of 2019 batch case dated 31.03.2021 is prospective in nature.”



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7. The learned Government Advocate for the respondents submitted that the only contention of the respondent is that the surplus teacher have to be deployed first, then the petitioner can be accommodated as per the judgment of the Division Bench of this Court as stated supra.

8. The learned Government Advocate for the respondents drew attention of this Court to Paragraph No.10 and 12 of the counter affidavit and the same is extracted hereunder:

“10. I submit that surplus teachers working in the aided post in a batch of case in W.A.(MD)No.76 of 2019 and by order, dated 31.03.2021 issued serious of direction to the department to be followed in the matter of granting approval by order, dated 31.03.2021, in the said order Hon'ble Division Bench held that even after making redeployment process within the unit, still excess staff are available, the education department shall take further effort, and those excess teachers still available at the hands of the education department to be redeployed to a needy school beyond the corporate management concerned, i.e., to any school located in the same educational district or revenue district and even beyond which if still excess staff are available, they can be redeployed to any school beyond the Revenue District of Course after getting the choice of such teacher concerned.

12. I submit that department issued circulars to all the chief educational officers and District Educational Officers not to grant any approval for fresh appointments made by the private management schools till the disposal of the above said SLP and further this respondents have directed send the surplus



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teachers list to the Government for the purpose of initiating deployment process. I submit that infact stating all the above reasons already this respondent have returned the proposal to the third respondent school management. It is settled principal of law as repeatedly held by Hon'ble Apex Court and this Hon'ble Court that if any orders passed by the department to particular school or individual as the case may be, then the same should be questioned only by the person on whose request the said order was made by the Department. In the present case admittedly this respondent have already processed the proposal submitted by the third respondent school and the same was returned, if the third respondent management is aggrieved that it is for the third respondent school management to question the same in manner known to law. I submit that the post is only sanctioned to the third respondent school and not to the writ petitioner, hence she cannot maintain the present writ petition. I submit that above writ petition is devoid of merits and deserves to be dismissed in limini. This respondent reserve his right to file additional counter affidavit if and when required."

9.The learned Government Advocate for the respondents further submitted that S.L.P(C)No.15702 of 2021 is pending before the Hon'ble Apex Court, to which the learned counsel for the petitioner submitted that the same has already been disposed of on 16.02.2024.

10. Heard both sides and perused the materials available on record.

11. In the case on hand, the petitioner was appointed prior to the judgment passed by the Division Bench of this Court i.e. on 04.10.2018 and the



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cut off date fixed by the Division Bench of this Court is 31.03.2021 and the same is only prospective in nature, which is categorically stated in paragraph No.6 of the judgment of this Court and the same is extracted and reads as follows:

“6.The Hon'ble Division Bench of our High Court in W.A(MD).No.15157 of 2023 (State of Tamil Nadu Rep.by its Principal Secretary, Department of School Education, Chennai and others Vs.C.Esakkimuthu and another) by an order dated 21.09.2023 has held that the order of the Hon'ble Division Bench in W.A(MD).No.76 of 2019 batch case dated 31.03.2021 is prospective in nature.”

12. In the result, the writ petition stands allowed with a direction to the respondents 1 and 2 to consider the proposal for approval of appointment of the petitioner, which is submitted by the School Management to the post of B.T.Assistant (Tamil) and also to pass appropriate orders in the light of the above said observations, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

16.10.2024

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