



W.P.(MD)No.22253 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.22253 of 2023 &
W.M.P.(MD)Nos.18527 & 18529 of 2023

X.Shiny

... Petitioner

VS.

- 1.The Govt. of Tamil Nadu
Rep. by its Additional Chief Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
The Office of the Chief Educational Officer,
Madurai-625 002.
- 4.The District Educational Officer,
The Office of the District Educational Officer,
Melur, Madurai- 625 002.
- 5.The Correspondent,
Nirmala Girls Higher Secondary School,
161, Kamarajar Salai,
Madurai-625009.

... Respondents



W.P.(MD)No.22253 of 2023

WEB COPY

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings dated 25.04.2023 in Na.Ka.No. 9539/AA1/2022, on the file of the 3rd respondent and quash the same, and directing the respondents to accord approval to the appointment of the petitioner Mrs.M.Janci, working as B.T. Assistant (English) in the 5th respondent school, viz., Nirmala Girls Higher Secondary School, 161, Kamarajar Salai, Madurai-625009 with effect from 07.06.2019 and release the salary with all monetary and service benefits.

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

For Respondents :Mr.M.Siddharthan
Additional Government Pleader
for R1 to R4

ORDER

Heard Mr.S.Savarimuthu, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents 1 to 4.



W.P.(MD)No.22253 of 2023

WEB COPY

2. The petitioner has filed this writ petition seeking to issue a Writ of Certiorarified Mandamus to quash the impugned proceedings dated 25.04.2023 in Na.Ka.No.9539/AA1/2022 passed by the 3rd respondent and further to direct the third respondent to approve forthwith her appointment as B.T. Assistant (English) in the fifth respondent School with effect from the date of her appointment viz., 07.06.2019 with all attendant benefits including the arrears of salary and allowance.

3. The petitioner has been appointed as B.T. Assistant (English) in the fifth respondent School on 07.06.2019 in the vacancy arose due to the promotion of the then incumbent one Mrs.C.S.Maya. When the 5th respondent School submitted the proposal for approval of the petitioner's appointment, the same was returned the proposal the same was returned on 23.09.2019 for want of certain particulars. Thereafter, the fifth respondent School has resubmitted the proposal with all necessary documents. But the same was returned by the 3rd respondent vide impugned order dated 25.04.2023 by citing the orders of this Court in W.A.(MD)No.76 of 2019 and batch dated 09.04.2019 and W.P.No.31575



W.P.(MD)No.22253 of 2023

WEB COPY

of 2019 dated 08.11.2019. Since the appointment has been made prior to the date of the judgment rendered in W.A.(MD)No.76 of 2019 etc., batch **[The Secretary to Government, Government of Tamil Nadu, School Education Department, Fort St. George, Chennai – 9 vs Iruthaya Amali]** dated 31.03.2021, there is no confusion to grant approval to the appointment of the petitioner.

4.The other reason for rejecting the approval is concerned, it is about the availability of the sanctioned post. The petitioner has been appointed as against the sanctioned post. As per the staff strength permitted for the academic year 2018-2019, 3 sanctioned posts of BT Assistant (English) was available. As on the day when the petitioner was appointed in the fifth respondent School, there was no surplus in the post of BT Assistant either in the fifth respondent School or in the corporate Management, under which the fifth respondent School falls. Hence, the reason for rejection of the approval of appointment of the petitioner on the ground of non-availability of sanctioned post is also not valid.



W.P.(MD)No.22253 of 2023

WEB COPY

5. In respect of applicability of the cut off date for appointment, it is relevant to rely on the judgment of this Court held in W.P.(MD)No. 7479 of 2024 dated 17.04.2024, wherein in paragraph Nos.4, 5 & 6 it is held as follows:

*"4. However, 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**, wherein it is held as under:*

"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 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



WEB COPY



W.P.(MD)No.22253 of 2023

miscellaneous petition is closed.

5. *The learned counsel for the petitioner also submitted that the Government Order in G.O.Ms.No.165 dated 17.09.2019 has been kept inoperative 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 School Education Department, Fort St. George, Chennai – 9 vs Iruthaya Amali** and the relevant portion of the order is extracted hereunder:*

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases : (o) In view of the aforesaid, the G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative.”

6. *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 Sunitha as B.T.Assistant Tamil. Therefore, the respondents cannot decline the approval of the appointment due to the reasons of TET eligibility or the deployment of the alleged surplus.”*

6. Since the above analogy is applicable to the situation that has arisen in this case, the impugned order is liable to be set aside, the petitioner is also entitled for the same relief.



W.P.(MD)No.22253 of 2023

WEB COPY

7. In view of the above reasons, this writ petition is **allowed** and the impugned order dated 25.04.2023 is set aside. The respondents 3 and 4 are directed to consider and pass orders regarding the approval of appointment of the petitioner as BT Assistant (English) in the 5th respondent School with effect from 07.06.2019 within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

09.07.2024

NCC: Yes/No
Index : Yes/No
PJJ

To

- 1.The Additional Chief Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.
- 2.The Director of School Education,
DPI Campus, College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
The Office of the Chief Educational Officer,
Madurai-625 002.
- 4.The District Educational Officer,
The Office of the District Educational Officer,
Melur, Madurai- 625 002.



WEB COPY



W.P.(MD)No.22253 of 2023

R.N.MANJULA, J.

PJL

W.P.(MD)No.22253 of 2023

09.07.2024