



W.A(MD)Nos.620 of 2017 and 322 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A(MD) No.620 of 2017

and

C.M.P(MD)No.5145 of 2017

and

W.A(MD)No.322 of 2018

and

C.M.P(MD)No.2020 of 2018

W.A(MD)No.620 of 2017:

The Secretary,
Valliammai Hindu Teacher Training Institute,
Kulasekharapatnam,
Thoothukudi District – 628 206. ... Appellant/4th respondent

Vs.

1. Sheba Rani,
BT Assistant (Maths),
Valliammai Hindu Teacher Training Institute,
Kulasekarapatnam, Thoothukudi District.



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2.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort Saint George, Chennai – 600 009.

3.The Director of Teacher Education,
Research & Training, D.P.I Compound,
College Road, Chennai – 600 006.

4.The Principal,
District Institute of Education & Training,
Vanaramutti, Tirunelveli District.

... Respondents 2 to 4/
Respondents 1 to 3

Prayer: Appeal filed under Clause 15 of Letters Patent, against the order dated 10.01.2017 passed in W.P(MD)No.13912 of 2011.

For Appellant	:Mr.K.Vinoharan for Mr.G.Prabhu Rajadurai
For R-1	:Mr.P.Krishnasamy
For R-2 to R-4	:Mr.D.Sadiq Raja, Additional Government Pleader

W.A(MD)No.322 of 2018:

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



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2.The Director of Teacher Education,
Research and Training, D.P.I. Compound,
College Road,
Chennai – 600 006.

3.The Principal,
District Institute of Education and Trainin,
Vanaramutti,
Tirunelveli District.

... Appellants/respondents 1 to 3

Vs.

1.T.Shebarani,
BT Assistant(Maths),
Valliammaiyyar Hindu Teacher Training Institute,
Kulasekharanpatnam,
Thoothukudi District.

... 1st Respondent/writ petitioner

2.The Secretary,
Valliammaiyyar Hindu Teacher Training Institute,
Kulasekharapatnam,
Thoothukudi District.

... Respondents/Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent, against the order dated 10.01.2017 passed in W.P(MD)No.13912 of 2011.

For Appellants :Mr.D.Sadiq Raja,
Additional Government Pleader

For R-1 :Mr.P.Krishnasamy

For R-2 :Mr.K.Vinoharan for
Mr.G.Prabhu Rajadurai



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COMMON JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

The present writ appeals have been filed challenging the order, dated 10.01.2017, passed in W.P(MD)No.13912 of 2011. While, W.A(MD)No.620 of 2017 has been filed by the the 4th respondent, the Teacher Training Institute, W.A(MD)No.322 of 2018 has been filed by the State.

2.1 Brief facts as narrated in the writ petition are as follows:

- The fourth respondent in the writ petition is Valliammaiyyar Hindu Teacher Training Institute, Kulasekharapatnam. On 11.09.2009, it appointed the writ petitioner as BT Assistant (Maths) in an existing vacancy in the pay scale of Rs.9,300-34,800+4,400. The order of appointment added a rider that the said appointment will be subject to the approval by the 3rd respondent in the writ petition. Pending approval, the 4th respondent began to pay Rs.5,000/- per month as an advance amount within the pay scale.



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- On 13.03.2010, the fourth respondent Institution forwarded its proposal for obtaining approval from the 3rd respondent, the District Institute of Education & Training, Vanaramutti, but the 3rd respondent refused to grant approval and this decision of the third respondent was also accepted by the second respondent Director of Teacher Education, Research and Training, Chennai, vide his proceedings dated 04.07.2011.
- In between, upon the 3rd respondent refusing to grant approval for appointment of the writ petitioner, the fourth respondent Institution issued a proceedings, dated 31.05.2011, terminating the services for the writ petitioner.
- Challenging the said proceedings dated 31.05.2011, the writ petition has been filed. The writ petitioner also required the entire salary as per the pay scale to be paid to her from the date of her appointment.



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2.2 The second respondent in the counter affidavit has stated that no approval to the appointment of the writ petitioner could be obtained as she was not found to be eligible in terms of G.O.Ms.No.873, Education Science and Technology(D2) Department, dated 13.01.1995 and G.O.Ms.No.4, School Education(X2) Department, dated 19.01.2004.

2.3 The 4th respondent (the Institution concerned) in its counter affidavit had averred that the appointment of the writ petitioner itself was subject to the approval to be obtained from the Department, and since the approval was not granted for appointing the writ petitioner, the writ petitioner was not entitled to the scale of pay payable in terms of the order of appointment. However, she could be paid Rs.3,500/- per month, the salary which the 4th respondent has paid to all those who were appointed on consolidated pay. It has also stated that during the term when the writ petitioner served, she had been paid Rs.1,00,000/- in total, whereas at the rate of Rs.3,500/- per month, she would be entitled to be paid Rs.71,633/- for the entire period of her service.



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3. The learned Single Judge has chosen to allow the writ petition essentially on the ground that when the District Institute of Education & Training, refused its approval to the appointment of the writ petitioner, the 4th respondent Institution ought to have informed the same to the writ petitioner to enable her to challenge the said order declining approval passed by the third respondent Institute and it proceeded to pass the following order:

“37. In the result:

(a)the writ petition is allowed by setting aside the order passed by the fourth respondent in Na.Ka.No.9-2011 dated 31.05.2011.

(b)the respondents 2 and 3 are hereby directed to approve the appointment of the petitioner as BT Assistant Teacher(Maths) from 11.09.2009 and disburse the grant-in-aid towards salary with effect from the date of appointment i.e., 11.09.2009.

(c)the said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.”

4. This order is now under challenge.



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5. The learned counsel for the appellant in W.A(MD)No.620 of 2017, has made the following submissions:

- That when the writ petitioner was appointed as BT Assistant (Maths), she knew fully well that she has no vested right in her to continue on the basis of the appointment order, since her appointment itself was subjected to the approval by the Department. That the refusal for the appointment of the first respondent by the 3rd and the 4th appellants in W.A(MD)No.620 of 2017, implied that the first respondent/writ petitioner cannot continue unless those orders are challenged by the first respondent/writ petitioner.
- The first respondent/writ petitioner cannot feel aggrieved since the very impugned proceedings of the appellant Institution, dated 31.05.2001, by which the appellant was forced to terminate the services of the first respondent/writ petitioner was only a consequential order to the earlier order of the Department not to lend its approval to the appointment of the writ-petitioner.



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- When a vacancy has to be filled up in a manner contemplated by the relevant Government Order, it cannot be bypassed and can be worked in any other manner. Indeed, subsequent to the termination of the writ-petitioner and when attempts were made to fill up the vacancy in terms of the Government Order, the first respondent/writ petitioner did participate in the selection process. However, since there were far more meritorious candidates than the first respondent, the 4th respondent Institution chose to appoint the other candidate and the first respondent/writ petitioner has not challenged the subsequent appointment of a third party. By the said appointment, the vacancy had already been filled up.

6. Summing up his argument, the learned counsel submitted that this Court may not direct the first respondent/writ petitioner to occupy the post which is not available. More so, when she had not chosen to challenge the fundamental proceedings of the fourth respondent-District Institute of Education & Training, in denying the approval to her appointment as well as the subsequent appointment made to fill up the vacancy created by her



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termination.

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7. The learned Additional Government Pleader appearing for the appellants in W.A(MD)No.322 of 2018, reiterated the contentions raised by the learned counsel appearing for the appellant in W.A(MD)No.620 of 2017.

8. The learned counsel for the first respondent/writ petitioner submitted that writ petitioner had responded to the newspaper advertisement inviting candidate for the said Post.

9. Heard both sides and perused the materials. This Court find it difficult to subscribe to the view of the learned single Judge that because the fourth defendant did not inform the denial of approval to the appointment of the writ-petitioner by the 3^r respondent, she must be granted relief. She knew for certain that her appointment is only provisional and that it is subjected to the confirmation of approval by the 3rd respondent. And, the approval itself was denied essentially because the procedure for appointment was not followed. Where has the writ-petitioner a vested right to the post to which



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she was appointed? And, why should she be informed about the denial of approval to her appointment by the authority concerned, more so when she had participated in the subsequent selection process and lost? And, even if she was informed, could it have brought about a different consequence? When law is settled prohibiting backdoor entry violating the procedure for appointments, this Court cannot be seen as providing one.

10. In conclusion, both the appeals are allowed, and the order of the learned Single Judge, dated 10.01.2017 in W.P.(MD) 13912 of 2011 is set aside.

(N.S.S., J.) (P.V.M., J.)
04.04.2024

Index:Yes/No
NCC:Yes/No
PM



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To

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State of Tamil Nadu,
Department of School Education,
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