



WP(MD) No.26108 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.26108 of 2023
and WMP(MD)Nos.22462 & 22464 of 2023 & 868 of 2024

The Correspondent,
St. Justins Girls Higher Secondary School,
Madurai Road,
Sivagangai- 623 560.

.. Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai- 600 009.

2. The Commissioner of School Education,
College Road,
Chennai-600 006.

3. The Chief Educational Officer,
The Chief Educational Office,
Marudhupandiyar Nagar,
Near Collector Office,
Sivagangai - 630 561.

4. The District Educational Officer,
District Educational Office,
Sivagangai-630 562.

...Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent District Educational Officer (DEO) in A.Thi.Mu.No. 2431/A5/2019, A.Thi.Mu.No. 2568/A5/2019 and A.Thi.Mu.No. 2570/A5/2019 dated 26.08.2019, quash the same, in so far as it relates to the appointment of Sr.Amalorpavathavitha, and further direct the 3rd and 4th respondents to approve forthwith the appointment of Sr. Amalorpavathavitha, as BT Assistant (Science) with effect from the date of her appointment viz., 27.06.2019, and release salary and all attendant benefits with effect from the said date.

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

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

Heard Mr.K.Ragatheesh Kumar, learned counsel appearing for the petitioner and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents.



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2. The petitioner has filed this writ petition seeking Writ of Certiorarified Mandamus, to quash the impugned order passed by the 4th respondent District Educational Officer in A.Thi.Mu.No. 2431/A5/2019, A.Thi.Mu.No.2568/A5/2019 and A.Thi.Mu.No. 2570/A5/2019 dated 26.08.2019, insofar it relates to the appointment of Sr.Amalorpavathavitha, and further direct the 3rd and 4th respondents to approve forthwith the appointment of Sr.Amalorpavathavitha, as BT Assistant (Science) with effect from the date of her appointment ie., 27.06.2019 with salary and all attendant benefits.

3. The petitioner School is an aided minority institution. The School has appointed one Amalorpavathavitha as BT Assistant (Science) with effect from 27.06.2019 due to the retirement of the then incumbent B.Sheela on 31.05.2019. When the School submitted that proposal for approval of appointment of the said Amalorpavathavitha, the same was rejected by the 4th respondent vide order dated 28.08.2019 citing the pendency of the Special Leave Petition which is filed against the order passed in W.A.(MD)No.76 of 2019 etc., batch [*The Secretary to Government, Government of Tamil Nadu, School Education*



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Department, Fort St. George, Chennai – 9 vs Iruthaya Amali] dated

31.03.2021. Since the appointment has been made prior to the date of the above judgment rendered in W.A.(MD)No.76 of 2019 etc., batch, there is no confusion to grant approval to the appointment made by the petitioner in this case. Sofaras the other reason for rejecting the approval is the non-availability of the sanctioned post.

4. The petitioner has appointed the said Amalorpavathavitha as BT Assistant (Science) in the year 2019. As per the staff strength permitted for the academic year 2019-2020, one post of BT Assistant (Science) was available. There was no surplus in the post of BT Assistant. Hence the said Amalorpavathavitha was appointed to the post of BT Assistant (Science) in a sanctioned vacancy. Hence, the reason for rejection of the approval of appointment made by the petitioner School on the ground of non-availability of sanctioned post is also not valid.

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



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"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 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



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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 Science. 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 as well, the petitioner School is also entitled to get the same relief.

7. In view of the above discussion, this writ petition is **allowed** and the impugned order in A.Thi.Mu.No. 2431/A5/2019, A.Thi.Mu.No. 2568/A5/2019 and A.Thi.Mu.No.2570/A5/2019 dated 26.08.2019 are set aside. The respondents 3 and 4 are directed to consider and pass orders regarding the approval of appointment of Amalorpavathavitha as



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BT Assistant (Science) in the petitioner School with effect from 27.06.2019 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.

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Index : Yes / No
NCC : Yes / No
PJJ

To

1. The Secretary,
State of Tamilnadu,
Department of School Education,
Fort St. George,
Chennai- 600 009.

2. The Commissioner of School Education,
College Road,
Chennai-600 006.

3. The Chief Educational Officer,
The Chief Educational Office,
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4. The District Educational Officer,
District Educational Office,
Sivagangai-630 562.



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PJL

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