



W.P.(MD).No.31204 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.31204 of 2023
and W.M.P(MD) Nos.26730, 26733 of 2023

The Correspondent
St. Antony's High School, Melanmarainadu,
Virudhunagar District

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 009.
3. The Chief Educational Officer,
Virudhunagar, Virudhunagar District.
4. The District Educational Officer,
Virudhunagar, Virudhunagar District.

... Respondents

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 order passed by the 4th respondent DEO in O.Mu.No.4441/Aa2/2022, dated 20.01.2023, quash the same, and further to direct the 3rd and 4th respondents to approve forthwith the appointment of



W.P.(MD).No.31204 of 2023

Tmt.S.Ezhil Mano Bala as BT Assistant (Science) in the petitioner school w.e.f. 01.06.2022, with all attendant benefits including arrears of salary.

For Petitioner : M/s.Isaac Chambers

For Respondents : Mr.G.Suryananth
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the impugned order passed by the 4th respondent DEO in O.Mu.No.4441/Aa2/2022, dated 20.01.2023, quash the same, and further to direct the 3rd and 4th respondents to approve forthwith the appointment of Tmt.S.Ezhil Mano Bala as BT Assistant (Science) in the petitioner school w.e.f.01.06.2022, with all attendant benefits including arrears of salary.

2.By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3.Heard, the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents. Perused the materials on record.



W.P.(MD).No.31204 of 2023

WEB COPY

4.The petitioner school namely, St. Antony's High School, Melanmarainadu, Virudhunagar District is recognised as an aided Minority Educational Institution administered by the Don Bosco Society. The petitioner school is the only school administered by the above said society. The school was initially established as a Primary school in the year 1924 and upgraded as High School in the year 1980. Currently the school is offering education from standard 6th to 12th.

5.One of the post of B.T.Assistant (Science) in the school fell vacant on 01.06.2022 due to the superannuation of the then incumbent Mr.K.Kanagaraj on 31.05.2022. In the said vacancy, the school appointed a fully qualified candidate namely Tmt.S.Ezhil Mano Bala, B.T.Assistant (Science) with effect from 01.06.2022. However, the 4th respondent/D.E.O refused to approve the appointment of Tmt.S.Ezhil Mano Bala as B.T.Assistant (Science) vide impugned proceedings, dated 20.01.2023.

6.As per the order of this Court in W.A(MD) No.76 of 2019 and batch and as per the G.O.Ms.No. 165, School Education Department, dated 17.09.2019, it was instructed that until the surplus teachers working in minority



W.P.(MD).No.31204 of 2023

and non-minority private aided schools were deployed to the needy schools, no new appointment should be made in any schools and that no approval should be granted thereof, thereby rejecting the appointment of Tmt.S.Ezhil Mano Bala as B.T.Assistant (Science). Challenging the impugned order, this writ petition came to be filed.

7.The case in hand is no more *res-integra*. The impugned order is nothing, but the result of non-application of mind of Authorities in interpreting the order passed by the Division Bench in W.A(MD) No.76 of 2019. The Division Bench in the said batch has issued a compendium of schedule to be followed and Clause (V) is extracted as follows:

“(v) Like that insofar as aided minority institutions are concerned,if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management,



W.P.(MD).No.31204 of 2023

they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength."

8.In view of the said directive considering the fact that the petitioner school is a stand alone institution, the fourth respondent/D.E.O ought to have approved the appointment of Tmt.S.Ezhil Mano Bala as B.T.Assistant (Science). In yet another case in W.P(MD) No.26738 of 2023, dated 14.03.2023, this Court has dealt with similar case and the relevant portion is extracted hereunder:

"4. Under the impugned order, G.O.Ms.No.165 School Education Department, dated 17.09.2019 has been cited as one of the reasons to contend that when there are surplus teachers, the question of fresh appointment would not arise. This order has been passed without even considering the fact that the petitioner school is a stand alone minority school. The question of surplus teachers would not arise. The authority has to see the staff fixation order for the academic year 2019-20 and if there are vacancies for filling up B.T Assistant teachers within the sanctioned strength, he has to proceed and pass orders approving the appointment."

9.In view of the above, I am fully in consonance with the order as discussed supra and as such, the impugned order is set aside. The fourth respondent is directed to approve the appointment of Tmt.S.Ezhil Mano Bala as



W.P.(MD).No.31204 of 2023

B.T.Assistant (Science) in the petitioner school with effect from 01.06.2022 with all attendant benefits. The said exercise shall be completed within a period of four weeks from the date of receipt of copy of this order.

10.Accordingly, this writ petition stands allowed. Consequently the connected miscellaneous petitions are closed. No costs.

02.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

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 - 600 009.
3. The Chief Educational Officer,
Virudhunagar, Virudhunagar District.
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W.P.(MD).No.31204 of 2023

L.VICTORIA GOWRI, J.

PNM

ORDER IN
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02.01.2024