



W.P.(MD).No.31171 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.31171 of 2023
and W.M.P(MD) Nos.26711, 26713 of 2023

The Correspondent
St. Mary's Higher Secondary School, Madurai

... 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,
Madurai - 625 001,
Madurai District.
4. The District Educational Officer,
Madurai - 625 001,
Madurai 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/District Educational Officer in Oo.MuNo.4511/Aa1/2022 dated 01.09.2022 denying



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approval to the appointment of S.Therasunanthan as B.T.Assistant (Mathematcis), quash the same and further to direct the 4th respondent DEO to approve forthwith the appointment of S.Therasunanthan as B.T.Assistant (Mathematcis) in the petitioner school w.e.f. 01.04.2022, with all attendant benefits including arrears of salary and allowances.

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/District Educational Officer in Oo.MuNo. 4511/Aa1/2022 dated 01.09.2022 denying approval to the appointment of S.Therasunanthan as B.T.Assistant (Mathematcis) and further to direct the 4th respondent DEO to approve forthwith the appointment of Mr.S.Therasunanthan as B.T.Assistant (Mathematcis) in the petitioner school w.e.f. 01.04.2022, with all attendant benefits including arrears of salary and allowances.

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



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

4.The petitioner school namely, St. Mary's Higher Secondary School, Madurai is recognised as an aided Minority Educational Institution administered by a registered society namely St. Mary's Society, Madurai, which is a society registered under the T.N Societies Registration Act of 1975. The petitioner school is the only school administered by the above said society. The school was initially established as a high school in the year 1908 and upgraded as Higher Secondary School in the year 1979 and currently offering education from standard 6th to 12th and the medium of instruction is Tamil.

5.One of the post of B.T.Assistant (Mathematcis) in the school fell vacant on 23.11.2021 due to demise of the then incumbent Mr.A.John Kennedy on 22.11.2021. In the said vacancy, the school appointed a fully qualified candidate namely Mr.S.Therasunanthan, B.T.Assistant (Mathematcis) with effect from 01.04.2022. However, the 4th respondent/D.E.O refused to approve



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the appointment of Mr.S.Therasananthan as B.T.Assistant (Mathematcis) vide impugned proceedings, dated 01.09.2022.

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 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 Mr.S.Therasananthan as B.T.Assistant (Mathematcis). 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



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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, 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 Mr.S.Therasananthan as B.T.Assistant (Mathematics). 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



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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 Mr.S.Therasanathan as B.T.Assistant (Mathematics) in the petitioner school with effect from 01.04.2022 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



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To
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2. The Director of School Education,
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3. The Chief Educational Officer,
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L.VICTORIA GOWRI, J.

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ORDER IN
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