



W.P.No.34498 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2025

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.34498 of 2023

and

W.M.P.No.34404 of 2023

S. Mani

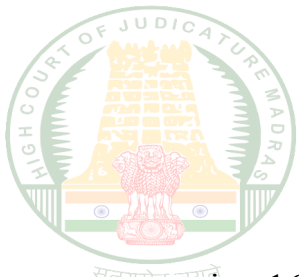
.. Petitioner

Versus

1. The Director of Elementary Education,
College Road, Chennai 600 006.
2. The District Educational Officer(Elemenatary)
Virudhachalam, Cuddalore District.
3. The Block Educational Officer,
Nallur, Cuddalore District.
4. The Correspondent
D.M.Elementary School,
Kattumailur – 606 304.
Cuddalore District.

...Respondents

Prayer: This petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent made in his proceedings in Na.Ka.No.096/Aa4/2022, dated 30.11.2022 and quash the same and direct the respondents 1 to 3 to approve the appointment of the petitioner in the 4th respondent school from the date of his appointment



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i.e 16.11.2016 with all consequential service and monetary benefits including arrears of salary and to pass orders.

For Petitioner : Mr.A.S. Kaizer
For Respondents 1 to 3 : Mr.S.Prabhakaran, GA
For Respondent 4 : Mr.S.Aishwarya

ORDER

This writ petition is filed seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent made in his proceedings in Na.Ka.No.096/Aa4/2022, dated 30.11.2022 and quash the same and direct the respondents 1 to 3 to approve the appointment of the petitioner in the 4th respondent school from the date of his appointment i.e 16.11.2016 with all consequential service and monetary benefits including arrears of salary and to pass orders.

2.Brief facts of the case is as follows:

2.1.The case of the petitioner is that he was appointed as Secondary Grade Assistant Teacher on 16.11.2016 in the fourth respondent school, who had sent a proposal for approval of appointment of the petitioner as a secondary Grade Assistant Teacher to the second



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respondent, who in turn has returned the said proposal on 28.03.2018 to the 4th respondent to rectify the short comings with regard to certain additional documents. Thereafter, the fourth respondent school rectified the defects and sent the proposal again for the approval of the appointment of the petitioner to the third respondent. The third respondent also recommended for the appointment of the petitioner on 20.04.2018. There was no progress in the case, due to which the petitioner made a representation on 28.04.2018 to the second respondent herein. However, the representation was not considered, due to which the petitioner filed W.P.No.22735 of 2019 before this Court and this Court has disposed of the same on 19.09.2019 with a direction to the second respondent herein to pass orders on merits. Pursuant to the directions passed by this court in W.P.No. 22735 of 2019 dated 19.09.2019, the second respondent passed the order in Na.Ka.No. 8341/Aa2/2019, dated 06.12.2019, wherein the proposal for the approval of the appointment of the petitioner was rejected.

2.2. Aggrieved over the same the petitioner has filed W.P.No.4594 of 2020, wherein this Court has allowed the writ petition on 19.04.2022



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and remitted the matter back to the authorities concerned to consider the matter afresh with regard of approval of the appointment made by the School management, provided the said proposals satisfies all the norms prescribed for such appointments as per the Rules and pass orders as expeditiously as possible preferably within a period of twelve(12) weeks from the date of receipt of a copy of the order.

2.3. After receipt of the copy of the order passed in W.P.No.4594 of 2020 dated 19.04.2022, the second respondent herein once again rejected the proposal for approval of petitioner's appointment on 30.11.2022. Challenging the same the petitioner has come up with this petition.

3. According to the petitioner, the second respondent rejected the proposal of the fourth respondent for approval of appointment of the petitioner as a secondary Grade Assistant teacher by relying upon the decision of the Division Bench of this Court at Madurai in W.A.(MD) No.76 of 2019 etc. cases (Batch), dated 9.4.2019 and the Government Order in G.O.Ms. No. 165, School Education Department, dated 17.09.2019.



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4. The learned counsel appearing for the petitioner would submit that the Government has passed G.O.Ms.No.165, School Education Department dated 17.09.2019 based on the interim order passed by the Division Bench of this Court at Madurai in W.A.(MD) No.76 of 2019 etc. cases (Batch), dated 9.4.2019 and thereafter, in the said batch of cases in W.A.(MD) No.76 of 2019, the Division Bench of this Court by judgment, dated 31.3.2021 issued comprehensive directions to the respondent department and also this Court observed that till the rules are framed, directions issued by the Division Bench of this Court in the aforesaid order shall be strictly followed by both the State Government and the Educational Institutions. The learned counsel appearing for the petitioner would further submit that the said G.O.Ms.No.165 was challenged in the Writ Appeals in W.A.(MD) No.76 of 2019, etc. Batch cases and judgment also passed in the aforesaid Batch cases. However, in present case, writ petitioner is not covered under the G.O.Ms.No.165 dated 17.9.2019 or the final order passed by the Division Bench of this Court in the aforesaid Batch cases for the reason that in the instant writ petition, petitioner was appointed prior to the issuance of



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G.O.Ms.No.165 dated 17.9.2019. The learned counsel appearing for the petitioner also drew the attention of this Court to the Clause (i) of paragraph 95 of the aforesaid judgment wherein the Division Bench of this Court has held as under:

(t) This exercise shall be completed on or before 31st July, 2021, so that the identification of excess staff and follow action as indicated in the compendium of schedule herein above can be undertaken and be followed strictly".

5. The learned counsel appearing for the petitioner would also submit that the G.O.Ms.No.165 dated 17.9.2019 as well as the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019 are prospective in nature. In the present case, the appointment was made prior to the Government order passed in G.O.Ms.No.165 issued by School Education Department, dated 17.9.2019. Therefore, there is no legal impediment for approving the appointment made by the School Management to the aforesaid post in the light of the existing Rules thereunder.



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6.*Per contra* the learned Government Advocate appearing for the respondent submitted that the second respondent considering the facts of the case in a proper manner and passed an appropriate order on 30.11.2022 vide proceedings Na.Ka.No.096/AA4/2022 stating that there are surplus teachers in the 4th respondent's school. Since, the appointment of the petitioner is an irregular one and the claim of the petitioner is not legitimate as per the directions given in the Govt. Letter No.3260/EE2(1)/2019 dated 04.12.2010 and G.O.Ms.No.231 School Education Dept dated.11.08.2020, wherein it has been clearly stated that the existence of surplus teachers in the Corporation Management/Other management schools do not make an appointment afresh until they are deployed to the needy schools. But the 4th respondent has failed to do this. It is further stated in the counter affidavit that there are surplus teachers in the Cuddalore Revenue District.

7. Heard both sides and perused the materials available on record.



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8.This Court while dealing with the identical facts of the case in W.P.Nos.17909 of 2023,17913 &17914 of 2023 has passed an order on 15.09.2023 and the relevant portion is extracted hereunder:

8.It is relevant to note that the very issue was whether G.O.Ms.No.165 dated 17.09.2019 was applicable to the petitioner case or not? This court has categorically stated that G.O.(Ms) No.165 dated 17.09.2019 was only prospective in nature and approval have to be given in the cases where appointment of teachers were made prior to the said Government Order. Having non-suited the petitioner in the earlier round of litigation citing G.O.(Ms) No.165, now the impugned order has been passed on a different ground. The authorities cannot take different stand at different points of time to stick on their stand so as to negate the claim of the petitioner. Be that as it may, the impugned order came to be passed not on merits but the proposal was rejected merely on the ground that there are surplus teachers.

9. The core contention of the respondents is that there are surplus teachers in the Cuddalore Revenue District and the relevant portion in the counter affidavit is extracted hereunder:

SURPLUS IN Cuddalore Revenue District (Cuddalore Educational + Viruthachalam Educational District)							
Year	17-18	18-19	19-20	20-21	21-22	22-23	23-24
No of Surplus	27 (13+14)	26 (12+14)	23 (11+12)	25 (10+15)	21 (9+12)	21 (10+9)	17 (8+9)

But the fact remains, that in the circular issued by the Secretary of the 4th



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respondent School on 29.12.2017 and 18.05.2018 for the academic year 2016-2017 and 2017-2018 respectively, it is seen that there is no surplus teachers.

10. Therefore, this Court is of the view that the Respondent/Department without considering G.O.Ms.No.165 dated 17.09.2019 in proper perspective, has passed the impugned order rejecting the proposal submitted by the School Management, Therefore, the impugned order passed by the second respondent is liable to be quashed.

11. Accordingly, the impugned order passed by the second respondent in his proceedings in Na.Ka.No.096/Aa4/2022, dated 30.11.2022 is quashed and the matter is remitted back to the second respondent to consider and pass an order of approving the appointment of the petitioner made by the 4th respondent, provided the said proposal satisfies all the norms prescribed for such appointment and rules therefore and she is otherwise eligible as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order.



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12. With the aforesaid direction, this writ petition is disposed of.

No order as to costs. Consequently the connected miscellaneous petitions are closed.

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Speaking order : Yes/No

Neutral citation : Yes/No

Index : Yes/No

smn

To

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College Road, Chennai 600 006.
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Virudhachalam, Cuddalore District.
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