



WP(MD) No.12815 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

WP(MD) No.12815 of 2019
and
WMP(MD) Nos.9544 & 9545 of 2019

X.Mary Jini

.. Petitioner

Vs.

- 1.The Secretary To Government
School Education Dept.,
St.George Fort, Chennai.
- 2.The Director Of School Education,
Dpi Campus, College Road,
Chennai-6.
- 3.The Chief Educational Officer
Kanyakumari District,
At Nagercoil.
- 4.The District Educational Officer,
Kuzhithurai,
Kanyakumari Dt.
- 5.The Correspondent ,
St.Aloysius Hr.Sec.School,
Marthandanthurai, Kollemcode Po,
Kanyakumari Dt.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records on the files of the fourth respondent pertaining to its order bearing Oo.Mu.No.135/A2/2018 dated 22.06.2018 and to quash the same and consequently directing the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (MATHS) from the date of appointment that is on 01.06.2016 and to disburse monetary and other attendant service benefits.

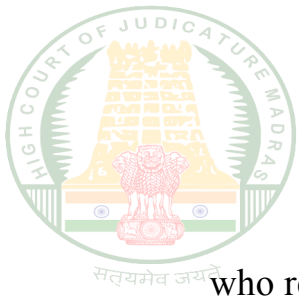
For Petitioner : Mr.S.C.Herold Singh

For RR1 to 4 : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

Under assail is the order passed by the fourth respondent dated 22.06.2018 and to consequently direct the respondent to approve the appointment of the writ petitioner in the post of B.T.Assistant (MATHS) from the date of appointment.

2. The case of the writ petitioner is that the fifth respondent herein is St.Aloysius Higher Secondary School, Marthandanthurai is a religious minority school duly recognized by the Educational Department, receiving grant-in-aid from the State Government. There was a vacancy arose in the fifth respondent school due to the retirement of one J. Daisy,



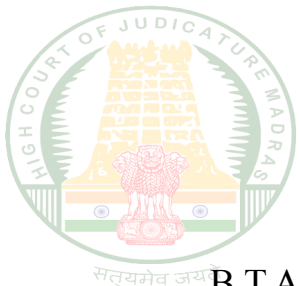
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who retired on 31.05.2016, who was working as secondary grade teacher.

The writ petitioner made an application for an appointment to the said post. She was appointed as B.T.Assistant (MATHS) with effect from 01.06.2016. After considering the seniority her service, the fifth respondent sent a proposal on 02.01.2008 by letter No.79/2017 and the same was returned for certain complaints.

2(i). The petitioner has passed Teacher Eligibility Test during 2013 thereby there may not be any impediment to approve her appointment. The fifth respondent school sent a proposal to the District Education Officer, Kuzhithurai to approve her appointment and to disburse salary along with requisite documents and a communication regarding change of staff was also sent. The fourth respondent herein by its proceedings in Oo.Mu.No.135/A2/2018 dated 22.06.2018 return the proposal saying that the proposal would be considered after the completion of review process with regard to appointment, fixation and with regard to the excess post of teaching and non-teaching staffs to approve the appointment by following general instructions regarding appointments. Totally overlooking the fact that the fifth respondent school is the minority institution and as per the fixation there is a vacancy to the post of



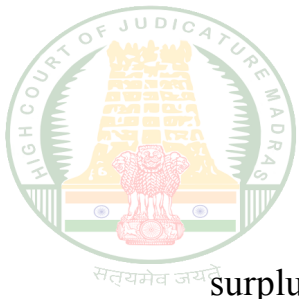
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B.T.Assistant (MATHS). Hence, this writ petition.

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3. The learned counsel appearing for the petitioner would submit that the fifth respondent school is a minority aided school and the appointment made by the fifth respondent school comes within the sanctioned strength due to the vacancy under the staff fixation made by the fourth respondent for the academic year 2016-17 itself. He would submit that the order impugned is liable to be set aside inasmuch as in similar circumstances, this Hon'ble Court *vide* order dated 25.04.2018 in WP(MD).No.8110 of 2018 was pleased to allow the writ petition. He would submit that the writ petitioner is working in the fifth respondent school without salary from 01.06.2016 onwards and the appointment made, comes within the sanctioned strength due to the vacancy under the staff fixation which was already fixed by the fourth respondent for the academic year 2016-17.

4. *Per-contra*, the learned Additional Government Pleader appearing for the respondents No.1 to 4 would submit that the petitioner was not appointed on 01.06.2016, as per the appointment order submitted by the fifth respondent school and wherein it has been mentioned as 01.06.2017, whereas the said post of the secondary grade teacher as



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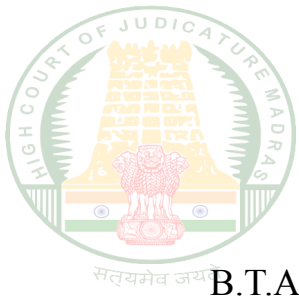
surplus of the third respondent as on 31.10.2016 itself. There is no provision to approve her appointment made in surplus post. Before converting the existing vacancy, if Secondary Grade Teacher post by the competent teacher, there is no order for automatic conversion from the date on which the post fell vacant.

5. This Court considered the submissions made on either side and perused the counter-affidavit filed by the fourth respondent and perused available record.

6. A perusal of the order impugned on 22.06.2018, wherein it has been stated that general guidelines to be issued in this regard to the staff fixation and therefore, the proposal has been returned.

7. It is pertinent to state that once the authority acting in any particular issue, the date on which action is taken and order is passed, what is the available legal position in Law, Rules, Requisitions, Guidelines etc. alone shall be a matter and anticipation of any Law, Rules, Requisitions, Guidelines etc. no authority can be expected to act.

8. According to the writ petitioner, there was a vacancy arose in fifth respondent school, due to retirement of one J.Daisy who retired as secondary grade teacher. The writ petitioner was appointed as



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B.T.Assistant (MATHS) with effect from 01.06.2016 by the appointment order dated 01.06.2016, the staff fixation done by the District Educational Officer that is the fourth respondent for the academic year 2016-17 for standards 6th to 10th to “*Tamil Medium*” including head master, B.T.Assistant, therefore, the appointment of the writ petitioner is within the sanctioned strength for the academic year 2016-17 onwards. The fifth respondent school sent a proposal on 02.01.2018 and the same was returned for certain complaints. Though, the appointment is made only as against the vacancy arises, during the retirement no prior permission is required for appointment insofar as minority institutions are concerned.

9. When the said appointment of the petitioner as B.T.Assistant (MATHS) was sent for approval by the fifth respondent school, the fourth respondent *vide* impugned order dated 22.06.2018 returned the same by setting aside the reason that unless a general guideline is issued with regard to the cadre strength, the appointment and surplus post etc. in Government aided and private minority and non-minority high schools and higher secondary schools, the approval proposal cannot be considered and therefore, it was returned, therefore, the order impugned



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discloses that as on date, in the order impugned dated 22.06.2018, no such guideline has been expected by the fourth respondent as being issued by the Government. It is relevant to cite the order dated 25.04.2018 in WP(MD).No.8110 of 2018, this Court has passed the following orders in paragraph No.9 which reads as follows:-

“9. Therefore, the impugned order also discloses as on date, all the impugned order (dated 26.02.2018) no such guideline as expected by the fourth respondent has been issued by the Government. Even today, it seems that no such guideline has been issued. Therefore, in anticipation of issuance of the guideline, the proposal of appointment of the petitioner can neither be withheld nor be rejected. Therefore, this Court has no hesitation to hold that the reason cited in the impugned order can stand in the legal scrutiny. Hence, the same is liable to be quashed. Accordingly, it is quashed.”

10. By applying the ratio laid down in the above order dated 25.04.2018, in the instant case on hand that it seems, no such guideline has been issued and therefore, in anticipation of the issuance of guidelines, the proposal of the appointment of the petitioner can neither be withheld nor be rejected. This Court is of the view that the reasons cited in the order impugned unsustainable in law and the same is liable to be quashed. Accordingly, it is quashed.



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11. In the result, the following orders are passed:-

- i. The impugned order is quashed.
- ii. The matter is remitted back to the fourth respondent for reconsideration of such representation.
- iii. It is open to the fourth respondent to verify the educational qualifications and other suitability of the petitioner for the appointment to the post of B.T.Assistant (MATHS) in the fifth respondent school, on the basis of the Rules available as on date and accordingly pass an order thereon with regard to the appointment in 5th respondent school within a period of six weeks from the date of receipt of copy of this order.
- iv. It is made clear that this Court has not gone into the merits of the matter, this writ petition is allowed to the extent indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions also stand closed.

24.03.2025

NCC : Yes
Index : Yes
Internet : Yes
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