



W.P.(MD)No.29880 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2025

CORAM:

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD).No.29880 of 2024

S.Emile

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St.George,
Chennai – 600 009.
2. The Director of School Education,
College Road,
Chennai – 600 009.
3. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
4. The District Educational Officer,
Tirunelveli, Tirunelveli District.
5. The Correspondent,
Cathedral Higher Secondary School,
Palayamkottai – 627 002,
Tirunelveli District.

... Respondents



W.P.(MD)No.29880 of 2024

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent Chief Educational Officer in Na.Ka.No.803/A4/2023 dated 27.06.2024 denying approval to the petitioner's appointment as BT Assistant (Science) and quash the same as illegal, and further direct the third respondent Chief Educational Officer to approve forthwith of his appointment as B.T. Assistant (Science) in the fifth respondent school w.e.f., 03.06.2019, with all attendant benefits including arrears of salary.

For Petitioner : Mr.Aayiram K.Selvakumar

For Respondents : Mr.T.Amjad Khan
Government Advocate

ORDER

Heard Mr.Aayiram K.Selvakumar, learned counsel appearing for the petitioner and Mr.T.Amjad Khan, learned Government Advocate appearing for the respondents 1 to 4. Carefully perused the materials available on records.

2. This writ petition has been filed for a Certiorarified Mandamus to quash the impugned proceedings passed by the 3rd respondent / Chief Educational Officer dated 27.06.2024 in Na.Ka.No.803/A4/2023 and further direct the 3rd respondent Chief Educational Officer to approve the



W.P.(MD)No.29880 of 2024

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appointment of the petitioner as BT Assistant (Science) in the fifth respondent school w.e.f. 03.06.2019 with salary, allowances and all attendant benefits including arrears of salary.

3. The fifth School has appointed the petitioner as BT Assistant (Science) on 03.06.2019 due to the retirement of the then incumbent Mrs.J.Margaret on 31.05.2019. The fifth respondent submitted a proposal for approval of appointment of the petitioner on 25.06.2019 and the same was returned by the 4th respondent vide proceedings dated 05.06.2020, stating that the school shall resubmit the proposal after obtaining No Objection Certificate (NOC) from the 3rd respondent / Chief Educational Officer. Thereafter, again the school resubmitted the proposal before the 4th respondent / District Educational Officer stating that the surplus posts in the other schools will in no way an impediment in approving the appointment made against the sanctioned posts, however the same was returned, and reiterated the same reasons.



W.P.(MD)No.29880 of 2024

WEB COPY

4. In such circumstances, the petitioner has filed a writ petition in W.P.(MD)No.29388 of 2023, seeking approval of appointment of the petitioner as BT Assistant (Science) with effect from 03.06.2019. This Court vide order dated 13.12.2023, allowed the writ petition and the set aside impugned order therein and the matter was remitted back to the file of the fourth respondent therein and the fourth respondent is directed to verify whether there is any surplus B.T. Assistant (Science) teacher within the Corporate Management for the academic year 2019-2020. In case, if there is no surplus B.T. Assistant (Science) Teacher, he shall proceed to approve the appointment of the petitioner with effect from 03.06.2019. However, the 4th respondent vide proceedings in Na.Ka.No.803/A4/2023 dated 29.06.2024 declined to approve the appointment of the petitioner stating that as surplus post available in the corporate management and also the petitioner did not pass the Teacher Eligibility Test. Therefore, the petitioner is constrained to file the present writ petition.



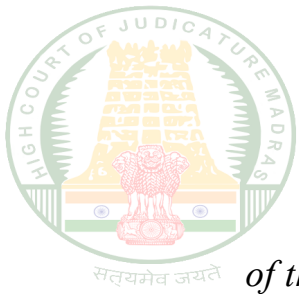
W.P.(MD)No.29880 of 2024

WEB COPY

5. The reason for rejecting the approval is concerned, it is about the availability of surplus teachers working in the other schools under the same management. The fifth respondent has appointed the petitioner as BT Assistant (Science) with effect from 03.06.2019. According to the petitioner, the surplus teachers working in the other schools coming under the same management will no way impediment in approving the appointment made against the sanctioned posts. Hence, the fifth respondent school has appointed the petitioner as BT Assistant (Science) on which date the BT Assistant (Science) post was very much a sanctioned vacancy. Hence, the reason for rejection of the approval of appointment made by the petitioner School on the ground that the school ought to have filled the sanctioned post with the surplus teachers is also not valid.

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

"4. However, the learned counsel for the petitioner attracted the attention of this Court to the judgment passed by the Division Bench



W.P.(MD)No.29880 of 2024

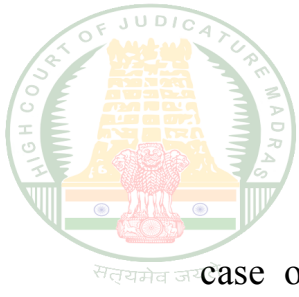
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of this Court in **W.A.(MD).No.2119 of 2021 dated 23.06.2023** in the case of **The Commissioner of School Education, Vs Aided Muslim Committee Primary School, Rep. by its Correspondent, S.Sheik Shajakhan Sithik**, wherein it is held as under:

“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.

7. 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



W.P.(MD)No.29880 of 2024

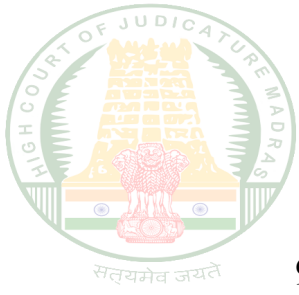
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case of **The Secretary to Government Government of Tamil Nadu**
School Education Department, Fort St. George, Chennai – 9 vs
Iruthaya Amali and the relevant portion of the order is extracted
hereunder:

“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 Tamil. Therefore, the respondents cannot decline the approval of the appointment due to the reasons of TET eligibility or the deployment of the alleged surplus.”

8. Since the above analogy is applicable to the situation that has arisen in this case, the impugned order is liable to be set aside, the petitioner School is also entitled for the same relief.



W.P.(MD)No.29880 of 2024

WEB COPY

9. In view of the above reasons, this writ petition is **allowed** and the impugned order is set aside. The respondents 3 and 4 are directed to pass orders to grant approval of appointment of the petitioner as BT Assistant (Science) in the fifth respondent School with effect from 03.06.2019 within a period of eight weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

01.04.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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W.P.(MD)No.29880 of 2024

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To

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Chennai – 600 009.
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W.P.(MD)No.29880 of 2024

BATTU DEVANAND, J.
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W.P.(MD).No.29880 of 2024

01.04.2025