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W.A.No.86 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2025

CORAM

**THE HONOURABLE MR JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

WA No. 86 of 2023 and C.M.P.No.801 of 2023

1. The Government Of Tamil Nadu
Rep. by its Secretary, School Education
Department, Fort St. George,
Chennai - 600009
- 2.The Director Of Elementary Education
College Road, DPI Campus,
Chennai - 600006
- 3.The District Elementary Education Officer,
Kanniyakumari District, Nagercoil - 629001
- 4.The Assistant Elementary Education Officer,
Munchirai Range, Pudukadai Post,
Vilavancode TK., Kanyakumari District - 629171

... Appellants

Vs

1. R.L.Bennet Singh
S/o. C. Robert Madhuram, Singh Cottage,
Anucode, Kollencode Post, Kanniyakumari
District - 629160.
- 2.C.Reju
S/o. N. Chellasamy, Kuzhinjanvilai, Vavarai, S.T.
Mankad Post, Kanyakumari District - 629172



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3.D.Santhakumari
W/o. Chandran, Ayaniaratharai Vilai, Kaliyal Post,
Kanniyakumari Dist.

4.The Correspondent,
St. Stephens Primary School, (South), Palavilai
Velayudha Nadar, Kollaumode Post, Kanyakumari
District - 629160

...Respondents

PRAYER

Writ Appeal under Clause 15 of the Letters Patent to set aside the order dated 15.07.2021 made in WP.No. 30363 of 2019.

For Appellants : Mr.U.M.Ravichandran
Special Government Pleader

For Respondents : Mr.Ebenezer Paul – for R1 to R3
Mr.K.Sathish Kumar – for R4

JUDGMENT

(Judgment of the Court was delivered by R.Suresh Kumar, J.)

This intra Court appeal is filed against the order passed by the Writ Court 15.07.2021 made in WP.No. 30363 of 2019.

2. The three respondents herein viz., R1, R2 and R3 were appointed as Secondary Grade Teachers at the fourth respondent School on the following dates respectively, 30.04.2011, 31.05.2012 and 13.01.2011.



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3. According to the fourth respondent School as well as the teachers, the School is a recognized minority institution run with the aid of the Government, where five posts of Secondary Grade Teachers were sanctioned and it has been continuously sanctioned during the relevant years. While that being so, one post has become vacant on 30.04.2011 due to the retirement of one Lizi Dani, wherein one of the respondent has been appointed and the second and third respondents were also appointed in the vacancies of one E.A.Roseline on 31.05.2012 and one R.Joseph on 13.01.2011 respectively.

4. Therefore, all the three posts, where the erstwhile incumbents retired, superannuated or transferred, became vacant and that is how respondents 1 to 3 came to be appointed in the fourth respondent School on the above mentioned dates. After making these appointments, the School Management has sent the proposal to the appellant Department, who were the official respondents before the Writ Court seeking approval of such appointments.

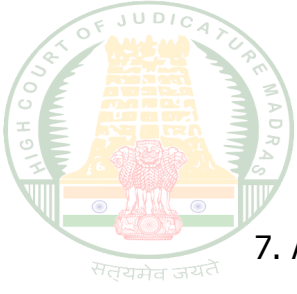
5. However, quoting G.O.Ms.No.54, School Education Department dated 12.03.2015, the appellant Department, vide proceedings dated 21.11.2017, had rejected the proposal sent by the School for appointment of those teachers. Therefore, combinedly challenging G.O.Ms.No.54 dated 12.03.2015 as well as the proceedings dated 21.11.2017, the respondents 1 to 3 / teachers who had got



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appointed, filed the said writ petition in W.P.No.30363 of 2019. The Writ Court, after going into the facts and by taking precedence of the earlier decision of the Division Bench of this Court made in W.P(MD) No.12363 of 2001 dated 22.01.2004 and also Section 26 of the Tamil Nadu Recognized Private Schools Regulation Act, has come to the conclusion that, if at all there are sanctioned posts, where teachers are appointed, and subsequently it is found that the teacher-pupil ratio has significantly got reduced and some teachers have become surplus in the School concerned, the appellant Department, after approving such appointments, can transfer such excess or surplus teachers to the needy Schools.

6. When that being the legal position as has been held by the Division Bench judgment and also the rule position would go to support the legal position, the learned Judge, having applied such legal position, has come to the conclusion that the order passed on 21.11.2017 refusing to approve the appointment of these three teachers was unlawful and therefore such an order was to be quashed and accordingly he has quashed the order, giving direction to the appellant Department to approve the appointments and, if the student strength has come down in the School and one or two posts among the three posts has become surplus in the said School, those teachers can be redeployed to the needy schools. That is the order passed by the Writ Court through the impugned order.



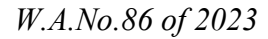
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7. Assailing the said order, the learned Special Government Pleader appearing

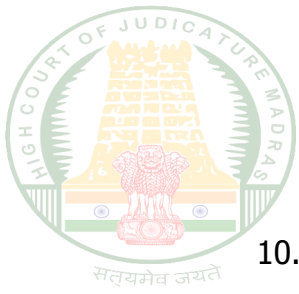
for the appellant Department, would invite our attention to Paragraph 4 in

G.O.Ms.No.54 dated 12.03.2015, wherein the following has been stated.

4. மேலும், தொடக்கக் கல்வி இயக்குநர் கன்னியாகுமரி மாவட்டம், முஞ்சிறை சரகம், தெற்கு பாலவினை, புனித ஸ்டீபன் தொடக்கப் பள்ளியில், 1982-1983 ஆம் ஆண்டு முதல் பணிபுரிந்ததாக தெரிவிக்கப்பட்ட ஆசிரியர்களின் பணி பதிவேடுகள், வருகை சான்றிதழ்கள் மற்றும் பள்ளி தாளாளரால் அளிக்கப்பட்ட 19.02.2011 நாளிட்ட மனு ஆகியவை பரிசீலிக்கப்பட்டதில் பல்வேறு குறைபாடுகள் காணப்பட்டது. எனவே பள்ளிக் கல்வி இணை இயக்குநரால் இப்பள்ளிக்கு பணியிடம் மீள வழங்கப்பட்ட நாளான 09.08.1999 முதல் ஊதியம் பெற்ற வழங்க இயலுமே தவிர, பணியிடமின்றி நிர்வாகத்தால் 1982 முதல் 08.08.1999 முடிய நியமனம் செய்யப்பட்ட ஆசிரியர்களுக்கு ஊதியம் பெற்று வழங்க இயலாது என்றும், பள்ளிக் கல்வி இணை இயக்குநரால் இப்பள்ளிக்கு 5 பணியிடங்கள் மீள வழங்கப்பட்ட நாளான 09.08.1999 முதல் 31.03.2014 முடிய ஒன்பது ஆசிரியர்கள் பணிபுரிந்துள்ளனர் என்றும், மேலும், தற்போதுள்ள மாணவர்களின் வருகையின் அடிப்படையில் இரண்டு ஆசிரியர்கள் மட்டுமே அனுமதிக்க தகுதியாக உள்ளதால் இவ்விரு பணியிடங்களை மட்டும் தொடர்ந்து அப்பள்ளியிலேயே அனுமதித்தும், மீதமுள்ள 3 இடைநிலை ஆசிரியர் உபரி பணியிடங்களை இயக்குநர் தொகுப்பிற்கு சரண் செய்ய வேண்டும் என்றும், இப்பள்ளிக்கு 09.08.1999ல் மீள வழங்கப்பட்ட 5 பணியிடங்களில் பணிபுரிந்தவர்களுக்கான நியமனங்களை ஏற்பளிக்கவும், ஏற்பளிப்பு வழங்கப்பட்ட ஆசிரியர்களுக்கு ஊதியம் பெற்று வழங்க அனுமதி வழங்குமாறும் இதனால் அரசுக்கு ரூ.91,11,744/- (ரூபாய் தொண்ணூற்றொரு இலட்சத்து



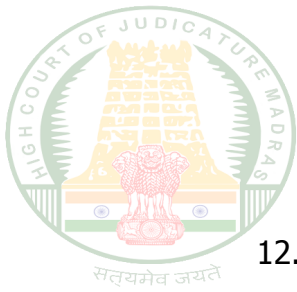
<https://www.mhc.tn.gov.in/judis>



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10. We have heard Mr.Ebenezer Paul appearing for the respondent teachers, who would submit that even though it was the claim of the School management to get sanction of the posts of five teachers even prior to 1999 at least from 09.08.1999 by virtue of G.O.Ms.No.54, the posts have been sanctioned and after the sanction has been made in the year 1999 since those appointments have been made only in the year 2011 and 2012, at the time of making these appointments since the earlier incumbents have already retired, as these vacancies have arisen and appointments of these teachers are to be approved, as the posts have been sanctioned since 09.08.1999. Therefore, the refusal to give such approval of appointment of these teachers through the order passed by the appellant Department dated 21.11.2017 cannot be sustained. Therefore, the learned Judge has quashed it, of course rightly, he contended.

11. Learned counsel would also contend that in view of the period in which these three teachers have been appointed is only after 09.08.1999, the date on which the five posts have been sanctioned, there was no need to quash or interfere with the Government Order No.54 even though it was challenged by the writ petitioners and therefore non-quashing of G.O.Ms.No.54 or interference by the writ Court in G.O.Ms.No.54 would no way improve the case of the appellant Department to seek interference of the order passed by the Writ Court through the impugned order, he contended.



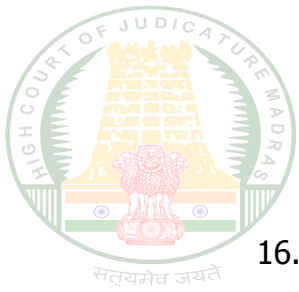
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12. We have considered the submissions made by the learned counsel for both sides and perused the materials placed on record.

13. Insofar as the fourth respondent School is concerned, it is a recognized minority School with the aid of the Government. Every year, normally the Education Department would sanction teachers posts. Insofar as the five teacher posts which is said to have been sent for approval, though the School has made such recommendation since 1982, such a sanction has been given only from 09.08.1999. Therefore, it is the admitted case of the appellant Department that by quoting Para 4 of the Government Order that from 09.08.1999 those five posts were sanctioned to the fourth respondent School.

14. If that being the position, in respect of the vacancies created by virtue of the retirement of the incumbents in the year 1991, whether those retired incumbents are entitled to get any salary prior to the period 09.08.1999 is altogether a different issue, which we are not concerned in this lis.

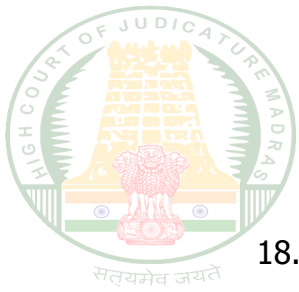
15. Here in the case on hand, the only question to be answered is whether in respect of respondents 1 to 3 are entitled to get approval from the date of their appointment ie., on 30.04.2011, 31.05.2012 and 13.01.2011 respectively, along with consequential pay benefits.



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16. In this context the fact remains that the posts were sanctioned at least from 09.08.1999. Therefore, on the date on which these respondents were appointed, the posts were sanctioned posts. After making these appointments, if subsequently in any academic year, the student strength got reduced based on which it is open to the appellant Department to seek for transfer and redeployment of those excess teachers to any needy School. But at the same time, when the plea for approval of such appointment comes to the Department from the School concerned for approving the appointment that has been made in respect of the respondents 1 to 3 in the sanctioned vacancies some time in the year 2011 and 2012, such an approval ought not have been rejected by the appellant Department. Therefore, the order rejecting such a proposal dated 21.11.2017 cannot be sustained and it has to be quashed. It has been rightly quashed by the learned Writ Court through the impugned order. Therefore, that order has to be sustained.

17. The learned Judge has not touched the Government Order in G.O.Ms.No.54 dated 12.03.2015 even though it was questioned before the Writ Court. Such a necessity does not arise because, in Para 4 of the said Government Order, in respect of the fourth respondent School since sanction for the five posts have been made with effect from 09.08.1999 and these appointments were made only in the year 2011 and 2012, there was no necessity to get into the correctness or otherwise of G.O.Ms.No.54. Therefore, the Writ Court has rightly left the Government Order untouched.

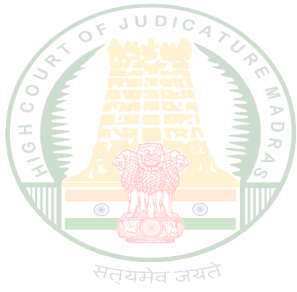


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18. Hence, merely because the Government Order has not been touched upon or quashed, the teachers are not entitled to seek the benefit of approval as directed by the Writ Court, as contended by the learned Special Government Pleader also cannot be sustained. Therefore, such argument is liable to be rejected.

19. In view of the aforesaid observations, absolutely there is no reason whatsoever to interfere with the order passed by the writ Court through the impugned order. Hence, the order impugned is liable to be sustained and accordingly it is sustained. Resultantly, the order passed by the Writ Court by giving direction to approve the appointment of the respondent teachers shall be undertaken by the appellant Department within a period of three months from the date of receipt of a copy of this order. It is needless to mention that once the appointment is approved, such approval shall date back from the date of their original appointment ie., 30.04.2011, 31.05.2012 and 13.01.2011 and they are entitled to get the salary benefits including arrears.

20. In respect of the surplus teachers are concerned, it is open to the appellant Department to verify the student strength as of now ie., the next academic year and if they find that one or more teachers have become surplus based on the student-pupil ratio in the fourth respondent School, it is open to the appellant Department to redeploy those teachers to any needy School, after giving such approval as directed herein above.



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21. With these clarifications, the order impugned herein is sustained and the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (A.D.M.C.,J.)
04-03-2025

Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No
KST

To

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Rep. by its Secretary, School Education
Department, Fort St. George,
Chennai - 600009
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