



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 19.08.2015
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THE HONOURABLE MR. JUSTICE T. RAJA

W.P (MD) No. 10321 of 2014
and
M.P. (MD) .NOs. 1 and 2 of 2014

M. Anbalagan .. 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 Elementary Education,
College Road, Chennai-600 006.

3. The District Elementary Educational Officer,
R.M.S. Road, Madurai.

4. The Assistant Elementary Educational Officer,
Usilampatti Region, Usilampatti,
Madurai District-625 532.

5. The Correspondent, TELC Primary School,
Nakkalapatti-625 532
Madurai District.

.. Respondents

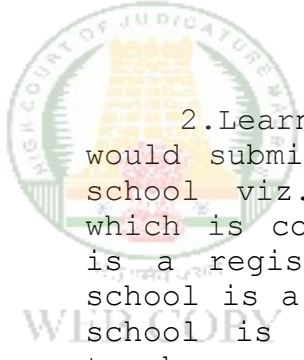
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the third respondent, District Elementary Educational Officer in O.Mu.No.3566/Aa3/2011 dated 10.11.2011, quash the same and further direct the third respondent, District Elementary Educational Officer to approve forthwith the appointment of the petitioner as Secondary Grade Teacher in the fifth respondent school namely, T.E.L.C Primary School, Nakkalapatti, Madurai District w.e.f. 01.07.2010 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Mr. S. Xavier Rajini

For Respondents : Mr. T. R. Janarthanam
Addl. Govt. Pleader

ORDER

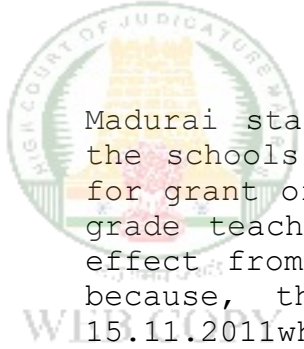
This writ petition has been filed by one A. Anbalagan, challenging the impugned order dated 10.11.2011 passed by the District Elementary Educational Officer addressed to the forth respondent, The Assistant Elementary Educational Officer, Usilampatti Region, directing him to get a certificate as to whether the fifth respondent school has got excess teachers.



2.Learned counsel for the petitioner challenging the impugned order would submit that the petitioner was appointed in the fifth respondent school viz., T.E.L.C Primary School, Nakkalapatti, Madurai District, which is coming under the Tamilnadu Evangelical Lutheran Church (TELC), is a registered Society bearing Registration No.2 of 1919. The said school is a recognized and aided Minority Educational Institution and the school is offering from first standard to fifth standard with five teachers viz., one headmistress and four secondary Grade Teachers. Whiles, one post of Secondary Grade Teachers fell vacant on 09.02.2010, due to the resignation of one teacher viz., S.Jublie Sahila on 08.02.2010. In the said vacancy, the petitioner was appointed as Secondary Grade Teacher with effect from 01.07.2010. Thereafter, the fifth respondent also submitted a proposal to the third respondent, Director of Elementary Education Officer, Madurai on 09.09.2010, requesting to approve the petitioner's appointment. But, the third respondent returned the proposal directing the school to enclose the certificate to show that there is no surplus teachers working in the school under Management of TELC vide impugned proceeding in O.Mu.No.3566/Aa3/2011 dated 10.11.2011. Hence, it is the grievance of the petitioner that when the petitioner was appointed in the year 2010 as secondary grade teacher in the sanctioned strength, left by the resignation of one S.Jublie Sahila on 08.02.2010, the respondent cannot deny approval.

3.Taking support from the judgment of this Court in the case of *Eka Ratchagar Sabai Higher Secondary School, rep by its Correspondent, Tuticorin District and others v K.Sumathi and another* reported in (2008) 1 MLJ 322, contended before this Court that the petitioner was appointed in the fifth respondent school well within the five teachers strength, hence, the respondent cannot deny the approval resulting deprivation of salary to the petitioner. Concluding the argument, the learned counsel would submit that the fifth respondent being a minority Educational Institution, the Educational Authority having confirmed the fact that the fifth respondent school is having sanctioned strength of only 5 teachers in the year 2010-2011 cannot withhold the order to grant approval to the petitioner's appointment, which is also in violation of the sanctioned strength of the teachers.

4.Learned Additional Government Pleader filed a detailed counter stating that the writ petition is not legally maintainable, since the impugned communication is between the second respondent and the fourth respondent to find out whether the fifth respondent school has got sanctioned strength or excess teacher. This apart, he submitted that the third respondent in his communication dated 10.11.2011, directed the fourth respondent, The Assistant Elementary Educational Officer to get certain particulars from the fifth respondent, Management, but, till date, the fifth respondent, Management did not come forward to give those particulars as directed by the fourth respondent school. Therefore, unless there is a statement from the fifth respondent school with regard to the sanctioned strength of the teachers, it is not proper on the part of the respondents No.2 and 4 to accept the case of the petitioner, who is working only as a teacher. In support of his above said submission, the learned counsel for the petitioner has brought to the notice of this Court a communication issued by the fifth respondent school dated 15.11.2011 addressed to the District Elementary Educational Officer,



Madurai stating that there are no surplus post available in any one of the schools in the TELC Management school in the academic year 2010-2011 for grant of approval of the appointment of the petitioner as a secondary grade teacher and to disburse his grant-in-aid towards his salary with effect from 09.02.2010. I also find some merits in the said submission because, this Court cannot go by such internal communication dated 15.11.2011 when the school authorities, the Director of Elementary Educational Officer, Chennai and Assistant Elementary Educational Officer, Usilampatti Region are awaiting a written statement from the fifth respondent school, in which the petitioner is appointed as a secondary grade teacher, hence, this Court is not able to see any reason why the fifth respondent school till date is not coming forward before this Court to make a submission that at the time of appointment of the petitioner in the year 2010, there are no surplus post in the cadre of secondary grade teacher.

5. Learned Additional Government Pleader submitted that the TELC management is retaining surplus teachers in the non-sanctioned post in some schools and they are still working and obtaining huge salary from the Government instead of deploying them to the needy school. Concealing this fact they are resorting to appoint a new teacher. Fully agreeing with the submission of the learned Additional Government Pleader, this Court as mentioned earlier hereby directs the fifth respondent school to submit a proper proposal making it clear whether they have got sanctioned strength of teacher as a precondition for grant of approval to the appointment of the petitioner. After a receipt of such statement from the fifth respondent school, it is for the third and fourth respondents to consider the same and pass appropriate orders in this writ petition. Hence, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

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To

1. The Secretary, Department of School Education,
Fort St. George, Chennai-600 009.

2. The Director of Elementary Education,
College Road, Chennai-600 006.

3. The District Elementary Educational Officer,
R.M.S. Road, Madurai.

4. The Assistant Elementary Educational Officer,
Usilampatti Region, Usilampatti,
Madurai District-625 532.

5. The Correspondent, TELC Primary School,
Nakkalapatti-625 532, Madurai District.