

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:28.03.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.255 of 2015
and
M.P.No.1 of 2015

- 1.The Director of Elementary Education,
Government of Tamil Nadu,
D.P.I. Campus, College Road,
Nungambakkam, Chennai - 600 006.
 - 2.The District Elementary Education Officer,
Nagapattinam District.
 - 3.The Assistant Elementary Education Officer,
Sembanarkoil, Nagapattinam District.
- ...Appellants/Respondents

Vs.

G.Raghunath ...Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order of this Court dated 04.07.2014 in W.P.No.25927
of 2012.

W.P.No.25927 of 2012:- Petition filed under Article 226 of the
Constitution of India, praying for issuance of a Writ of
Certiorarified Mandamus, Calling for the records on the file of
the Second Respondent in Reference NO.O.Mu.2162/A2/2012 dated
11.07.2012 to quash the same and consequently to direct the
respondents to approve the appointment of one Mr.R.Saravana Babu
as Secondary Grade Teacher in the Primary School, in petitioner
school from the date of Appointment i.e. 20.02.2012 and to pay
all necessary attendant Financial benefits like salary with
arrears and all other emoluments.

For Appellants : Mr.K.Karthikeyan
Government Advocate

For Respondent : Mr.S.N.Ravichandran

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellants/Respondents have preferred the instant intra-Court Writ Appeal as against the order dated 04.07.2014 in W.P.No.25927 of 2012 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order on 04.07.2014 in W.P.No.25927 of 2012 (filed by the Respondent/Petitioner) at paragraphs 6 to 8, had observed the following:

"6.For ready reference, I rely upon the operative portion of the order passed by this Court in W.P.No.19473 of 2012 dated 03.08.2012, wherein a learned single Judge of this Court has passed the following order: "In similar cases, this Court also allowed the writ petition in W.P.No.3355 of 2010 on 18.11.2010. Considering the fact that the appointment made by the petitioner is within the permissible ratio, the appointment of Mr.Prabhu as Secondary Grade Teacher is required to be approved by the respondents. Therefore, the impugned order is set aside. The respondents are directed to approve the appointment of Mr.Prabhu as Secondary Grade Teacher in the petitioner school, within a period of eight weeks from the date of receipt of a copy of this order. It is not in dispute that the said Prabhu was appointed by the education committee by way of resolution on 23.02.2012 and he is continuously working. Therefore, his appointment should be approved retrospectively from the date of his appointment i.e. on 24.02.2012."

7.Since the case in hand is similar to that of the case already decided by this Court and the direction issued by this Court, the writ petition is to be allowed.

8.In the result, the writ petition is allowed and the impugned order is set aside and consequently the second respondent is directed to approve the appointment of Mr.R.Saravana Babu, as Secondary Grade Teacher, made by the petitioner, within a period of eight weeks from the date of receipt of copy of this order. It is

admitted by the learned counsel for the petitioner as well as by the learned Additional Government Pleader, Mr.R.Saravana Babu was appointed by the petitioner school on 20.02.2012 and he reported to the duty on 20.02.2012 and he has been continuously working. If that be so, there is no impediment for approving his appointment. Hence, the appointment of Mr.R.Saravana Babu should be approved retrospectively from the date of his appointment i.e. on 20.02.2012 and necessary orders to be passed to this effect, as directed above. No costs."

3.The Learned Government Advocate for the Appellants submits that the Learned Single Judge could have seen that the preponderance of probability is sufficient for the Writ Petition filed by the Petitioner seeking approval for the appointment made by the Respondent/ Petitioner, which was reserved for 'Woman Candidate'.

4.The Learned Government Advocate for the Appellants urges before this Court that the Learned Single Judge should have taken into consideration that in G.O.(Ms)No.788, Education dated 31.07.1991, the Government had ordered that in future in all vacancies in classes I to V standards should be filled up by Women Teachers alone and confirmed their earlier orders in G.O.(Ms).No.250 Education dated 28.02.1989 and G.O.Ms.No.667 Education Dated 17.05.1990 for appointing only Women Teachers in all vacancies from the classes I to III.

5.According to the Learned Government Advocate for the Appellants, the Learned Single Judge had failed to appreciate that the Government, in G.O.Ms.No.197 School Education Department dated 21.07.2000, had cancelled its earlier order in G.O.Ms.No.580 Education Department dated 20.08.1996 wherein the instructions were issued to adopt 75% : 25% ratio in the appointment of Teachers Women and Men with a view to ensure that atleast one Male Teacher in a School so as to attend various outdoor work etc.

6.Advancing his arguments, the Learned Government Advocate for the Appellants submits that in the present case, out of the sanctioned strength of 5 Teachers including one Head Master, one male Teacher i.e. Head Master is working in the School and three women Teachers are also working. As such, in terms of the aforesaid ratio, the vacant place ought to have been filled up only through Woman Teacher and hence, the appointment of the said Saravana Babu is an irregular one and against the orders of the Government. The other plea of the Appellants is that as on the date of appointment of the Respondent/Petitioner, the order

in G.O.Ms.No.197 School Education dated 21.07.2000 is in force and therefore, the appointment of the Respondent/Petitioner is in negation to the Government Order which prescribes 75:25 of Women and Men Teachers ratio in the Panchayat Union and Aided Primary Schools.

7.The Learned Government Advocate for the Appellants projects an argument that consequent on the introduction of Right of Children to Free and Compulsory Education Act (RTE) 2009, the recruitment of Teachers will have to be made only from the qualified candidates with passing of Teachers Eligibility Test which is being conducted by the Tamil Nadu Teachers Recruitment Board. That apart, the Government had issued orders in G.O.Ms.No.181 School Education Department dated 15.11.2011 prescribing the TET qualification for the appointment of Teachers. Therefore, the appointment of the Respondent/Petitioner made on 20.02.2012 is against the orders of the aforesaid Government Orders, besides the same being an irregular one.

8.It is represented on behalf of the Appellants that if the order of the Learned Single Judge passed in the Writ Petition is implemented, then, it will pave way for other persons seeking similar relief.

9.Per contra, the Learned Counsel for the Respondent/Petitioner submits that on 01.05.2011 a vacancy arose to the post of Secondary Grade Teacher, consequent to the resignation of one Mrs.Vanitha, Secondary Grade Teacher on 30.04.2011 and in fact, the said resignation was duly approved by the 2nd Appellant/District Elementary Education Officer, Nagapattinam District, as per proceedings dated 27.09.2011. Later, the Respondent/School sought permission to fill up the vacant Secondary Grade Teacher post and the 3rd Appellant/Assistant Elementary Education Officer, Nagapattinam District, through proceedings dated 07.10.2011, had recommended to fill up the vacant Secondary Grade Post to the 2nd Appellant. Indeed, the 2nd Appellant, by proceedings dated 31.01.2012, had granted permission to fill up the post subject to the following conditions:

- "a) The communal Roaster should be followed.
- b) List of eligible candidates must be obtained in the Employment exchange and the candidates may be considered.
- c) The candidates should have the eligible qualification as prescribed under rule 15(6)a of the Tamil Nadu Reorganization Private School Regulation Act and also as per G.O.No: 125 dated 12.11.2003.

d) The Male and Female ratio should be followed as per G.O.197, dated 21.07.2000, cited in the Reference No:1

e) The agreement for appointment should be made as per amended Rule 15 (2)(1a) of the T.N. Recognized Private School Regulation Act and Rules; 1974 and format VII(A) and also as per G.O.Ms.No.125 dated 12.11.2003."

10.The Learned Counsel for the Respondent brings it to the notice of this Court that on the date of vacancy, there were 164 students studying in the Respondent/School and that the School had sanctioned five teaching posts and out of five, there were four Secondary Grade Teachers and three of them, female and one Head Master, who is a male.

11.Apart from that, the Learned Counsel for the Respondent proceeds to contend that to fill up the vacant Secondary Grade Post, the Respondent/School, by means of a letter dated 04.02.2012, had sought a list of eligible candidates from the Employment Exchange. Also, on 14.02.2012, the School issued a paper advertisement in Local Tamil News paper notifying the vacancy. On the basis of the interview, the School committee, by an order dated 20.02.2012, selected and appointed one Mr.R.Saravana Babu as Secondary Grade Teacher based on the merit and ability and that on the same day, the said person joined in the Respondent/School.

12.The Learned Counsel for the Respondent invites the attention of this Court to the fact that the Respondent/School had submitted a proposal for approval of appointment of Mr.R.Saravana Babu as Secondary Grade Teacher with effect from 20.02.2012 by means of proposal dated 05.03.2012 to the 2nd Appellant. The 3rd Appellant, by means of a letter dated 25.04.2012, had recommended the proposal for approval to the 2nd Appellant/2nd Respondent. In turn, the 2nd Appellant, through proceedings dated 11.07.2012, declined to approve the appointment of R.Saravana Babu as Secondary Grade Teacher based on the ground reason that 'Male and Female' ratio were not followed as per G.O.Ms.No.197 dated 21.07.2000 and consequently returned the proposal.

13.The Learned Counsel for the Respondent refers to filing of W.P.No.25972 of 2012 by the Respondent as against the order of rejection passed by the 2nd Appellant and this Court on 04.07.2014 allowed the Writ Petition by setting aside the impugned order dated 11.07.2012 of the 2nd Respondent/2nd Appellant and directed the Respondents/Appellants to approve the appointment of R.Saravana Babu as Secondary Grade Teacher with

effect from 20.02.2012, within a period of eight weeks from the date of receipt of copy of this order. Only as against the said order dated 04.07.2014 in W.P.No.25927 of 2012 passed by the Learned Single Judge, the Appellants, as aggrieved persons, have preferred the instant Writ Appeal.

14.At this stage, the Learned Counsel for the Respondent emphatically submits that G.O.Ms.No.197 dated 21.07.2000 was challenged before the Tamil Nadu State Administrative Tribunal in O.A.No.6446 of 2002 and the said G.O. was stayed by the Tribunal. Therefore, the Government had issued a Letter bearing Ms.No.267, School Education, dated 19.10.2000 for making the ratio as 50:50 purely as an interim measure. Thereafter, after the abolition of the Tribunal, the aforesaid O.A. got transferred to this Court and renumbered as W.P.No.41691 of 2006.

15.Lastly, it is the plea of the Learned Counsel for the Respondent that the Respondent/School commenced the appointment process before issuance of G.O.Ms.No.181 dated 15.11.2011 and therefore, the appointment procedure that was in existence prior to the aforesaid G.O. ought to be followed.

16.It comes to be known that when W.P.No.41691 of 2006 came up for hearing, the Learned Government Advocate for the Respondents therein submitted that subsequently, the Government of Tamil Nadu, vide its Letter No.267 School Education Department dated 19.10.2000, had modified the category and therefore, nothing survived in the Writ Petition and based on the same, the Writ Petition was dismissed as infructuous one.

17.As far as the present case is concerned, it is to be borne in mind that the rejection of approval of appointment of R.Saravana Babu was not based on the issue pertaining to 'Teachers Eligibility Test', but it was concerned with G.O.Ms.No.197 dated 21.07.2000. In this connection, this court very relevantly points out the observation made by this Court in W.P.No.4346 of 2011 on 09.07.2012 (between E.S.T.Bakthavatchalam V. The Director of Elementary Education, Chennai and others), at paragraph 13, whereby and whereunder, which runs as follows:

"13.Therefore, there appears to have been a confusion with regard to the effective implementation of the Government Order. Moreover, Rule 21 of the General Rules for Tamil Nadu State and Subordinate Services stipulates that if suitable women candidates are not available, male candidates can always be appointed to the posts which are earmarked for women. These

aspects have not been examined by the respondents."

18.Be that as it may, in the light of careful consideration of respective contentions and also this Court, on going through the impugned order dated 04.07.2014 in W.P.No.25927 of 2012, is of the considered view that the order of the Learned Single Judge, in allowing the Writ Petition and issuing necessary directions, does not suffer from any material irregularities or legal infirmities or patent illegalities in the eye of Law. Consequently, the Writ Appeal fails.

19.In the result, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sgl

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Director of Elementary Education,
Government of Tamil Nadu,
D.P.I. Campus, College Road,
Nungambakkam, Chennai - 600 006.
- 2.The District Elementary Education Officer,
Nagapattinam District.
- 3.The Assistant Elementary Education Officer,
Sembanarkoil, Nagapattinam District.

+ 1 cc to Mr.S.N.Ravichandran, Advocate Sr 19302

+ 1 cc to The Govt.Pleader, Sr 19781

KR/15/4/16

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