



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.12.2016

C O R A M

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THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) No.23331 of 2016
and
W.M.P (MD) No.16756 & 16757 of 2016

J.Jebabhanu

.. Petitioner

Vs.

1.The Director of Elementary School Education,
D.P.I Compound, College Road,
Chennai.

2.The District Elementary Educational Officer,
Tirunelveli District.

3.The Addl.Assistant Elementary Educational Officer,
Valliyoor - 627 117, Tirunelveli District.

4.The Correspondent,
TDTA Primary & Middle School,
Kannanallur, Tirunelveli District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 2nd respondent in his proceedings O.Mu.No.1215/A2/2016 dated 29.03.2016 and consequential order passed by the 3rd respondent in Na.Ka.No.435/A1/2016 dated 20.05.2016 and quash the same and direct the respondents to approve the appointment of the petitioner from the date of appointment i.e. from 05.12.2014 and confer all the consequential benefits.

For petitioner

... Mr.S.Chellapandian

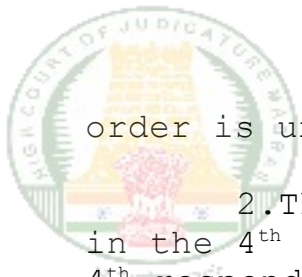
For Respondents

... Mr.V.R.Shanmugananthan

Additional Government Pleader

O R D E R

The impugned order has been passed by the second respondent declining to approve the appointment of the petitioner, on the ground that when there are excess teachers available in the schools, they could be redeployed to the needy schools, instead of resorting to fresh appointments. This



order is under challenge in this writ petition.

2. The petitioner was appointed as Secondary Grade Teachers in the 4th respondent school and when proposal was submitted by the 4th respondent, the same were returned by the 2nd respondent on the ground that there are surplus teachers in other schools run by the same Management and that approval for new appointments will be granted, only after rectifying the surplus posts. The justifiability of the abovesaid orders, is under challenge in this writ petition.

3. The learned counsel for the petitioners would submit that the issue raised in these cases, is squarely covered by a Division Bench judgment in Director of Elementary Education, Chennai and two others vs. B. Infanse and another (W.A(MD)Nos.639 of 2015 etc., dated 17.06.2015) and which in turn, is based upon a Full Bench judgment of this Court. Before the Full Bench, G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997 was challenged and the Full Bench has interpreted the said G.O, which has been considered in the abovesaid Division Bench judgement. It is relevant to extract below paragraphs 5, 6 and 8, of the Division Bench judgment:-

'5. Indisputably, the posts, in which, the writ petitioners have been appointed, are sanctioned by the Education Department, after assessment, in terms of G.O.Ms.No.525, School Education(D1) Department, dated 29.12.1997. Eligibility of the writ petitioners, is not disputed. Dates of appointment of the teachers, is also not disputed. Earlier, when the request of the teachers working in TDTA Primary and Middle Schools, Puliangudi, Tirunelveli District, for approval, was denied, on the ground that they were redeployed by the District Elementary Educational Officer, Tirunelveli, Writ Petitions have been filed. Vide common order in W.P.No.10352, 10350 and 10351 of 2006, dated 08.12.2006, they were allowed. The District Elementary Educational Officer, Tirunelveli, has filed Writ Appeals as against the common order dated 08.12.2006 and that the same were dismissed, by separate orders in W.A(MD)No.205 of 2007 dated 09.06.2007, W.A(MD)No.194 of 2007 dated 09.06.2007 and W.A(MD)No.292 of 2007 dated 02.08.2007, respectively. As the orders made in the abovesaid Writ Appeals are similar in nature, suffice to extract one such order, which is as follows:-

Order made in W.A(MD)No.205 of 2007 dated 09.06.2007

'This writ appeal is filed against the order dated 08.12.2006 made in W.P.Nos.10350 to 10352 of 2006, wherein the relief of issuance of a writ of Mandamus calling for the records pertaining to the order passed by the District Elementary Educational Officer, Tirunelveli in passing redeployment



order by construing that there are certain excess teachers with reference to G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997. The said G.O. was the subject matter of the Full Bench decision in the case of Director of Elementary Education v. S.Vigila reported in [2006(5) CTC 385], wherein it was held as follows:.

"Keeping in view the various relevant aspects, we feel that G.O.Ms.No.525 dated 29.12.1997 should be interpreted in the following manner:

(1) The ratio of students-teacher strength as indicated in the G.O. should be primarily considered by taking each individual standard/section as a unit.

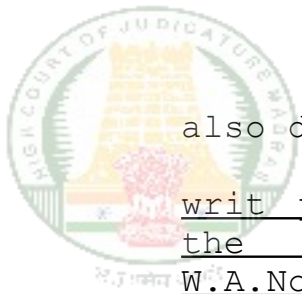
(2) The minimum strength of teachers required obviously should not fall below the number of Standards/Section in a school. In other words, if there are five standards, obviously the minimum number of teachers should be five, out of which one would be the Headmaster.

(3) If the students' strength in a particular Standard exceeds 60, at that stage, an additional section is required to be created requiring the sanction of a second teacher and the strength reaches 100, the post of a third teacher is required.

(4) Even after maintaining the aforesaid ratio by taking into account the students' strength of each individual standard and additional section, as the case may be, by keeping in view the teacher-students ratio 1:40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers' strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities of the school should create additional section in respect of any particular Standard according to the need and convenience keeping in view the standard of education. This requirement is not only in respect of Aided Schools or Government Schools, but also in respect of any Private Recognised School. In other words, this ratio is to be maintained for any school which requires recognition.

(5) It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the Constitution."

That Full Bench decision has been followed by the learned Single Judge, incidentally, who was also a party to the Full Bench and the redeployment order has been set aside. In the above stated factual matrix of the issue, when the law is settled by the Full Bench, we are of the opinion that the filing of an appeal by the Authority is nothing but an exercise in futility. Hence this Writ Appeal is dismissed. Consequently, connected M.P.No.3 of 2007 is



also dismissed. No costs."

6.As stated supra, inasmuch as appointments of the writ petitioners were made against sanctioned posts in the respective schools, observations made in the W.A.No.70 of 2012 dated 13.03.2012, granting permission to the District Elementary Educational Officer, Tirunelveli, to take steps, to deploy excess teachers, from the schools under the same management, cannot be a ground, to deny approval of appointments of the writ petitioners, as Secondary Grade Teachers in the schools, in which, they were appointed. When the school management sends a proposal for approval of the teachers, the educational authorities have to consider, as to whether such teachers have been appointed against sanctioned posts and whether they are qualified for such appointment. Rule of reservation wherever applied is also verified. On the above aspects, there is absolutely no quarrel by the educational authorities.

8.It is now more than four years, since the observations were made in W.A(MD)No.70 of 2012 dated 13.03.2012. It is also be noted that every year as per G.O.MS.NA.525, School Education(D1) Department, dated 29.12.1997, staff fixation is done, in each school, by educational authorities, on the basis of teacher-pupil ratio. No materials have been placed before this Court, as to the staff fixation done in the subsequent years, from 2012 onwards, in the schools, in which, surplus was noticed. If the existence of surplus staff continued in the subsequent years, the department ought to have taken action only, as against the said schools and redeployment could have been done then and there. But from the submission of the learned Special Government Pleader, it is evident that no steps were taken, for all these four years. If in the subsequent years, staff fixation in the schools, in which excess was noticed, had already been approved, then the educational authorities are bound by such orders.'

4.The learned counsel for the petitioner would vehemently contend that there are no excess teachers in any one of the schools under the same Management, for the purpose of being redeployed to the needy schools and therefore, the impugned order passed by the second respondent and the consequential order passed by the third respondent are liable to be set aside. It is also submitted that even assuming that there are excess teachers, that cannot be a ground for declining approval of the appointment of the petitioner and that is the settled law. There is no dispute with regard to this legal position. Hence, the claim of the petitioner is in accordance with law.

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5.In the result, the impugned orders are set aside and the Writ Petition is allowed. A direction is issued to the second



and third respondents to consider the proposals sent by the 4th respondent schools, seeking to approve the appointment of the petitioner as Secondary Grade Teacher, in the light of the Division Bench Judgment in W.A(MD)Nos.639 of 2015 etc., dated 17.06.2015 and to pass order of approval, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P(MD)Nos.16756 and 16757 of 2016 are closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

- 1.The Director of Elementary School Education,
D.P.I Compound, College Road,
Chennai.
 - 2.The District Elementary Educational Officer,
Tirunelveli District.
 - 3.The Addl.Assistant Elementary Educational Officer,
Valliyoor - 627 117,
Tirunelveli District.
 - 4.The Correspondent,
TDTA Primary & Middle School,
Kannanallur,
Tirunelveli District.
- +1cc to Mr.Special Government Pleader in SR. No.79467

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