

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.6339 of 2013

Gandhi Aided Elementary School
Rep. by its Manager, A.Subramanian
T.Kunathur, Thirukovillur
Villupuram District.

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary,
School Education Department,
Fort St. George, Chennai - 9.

2.The Director of Elementary Education,
DPI Building, Chennai - 6.

3.The District Elementary Educational Officer,
Villupuram.

4.The Assistant Elementary Education Officer,
Thirukovillur, Villupuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in Letter No.3040/B1/2010-12, dated 12.01.2012, to quash the same and further direct the first respondent to approve the appointment of S.Dinesh, Secondary Teacher in the petitioner school with effect from 01.12.2008 with all necessary attendant benefits like salary, arrears and all other emoluments.

For Petitioner : Mr.K.H.Ravikumar

For Respondents: Mr.R.Govindasamy
Special Government Pleader

ORDER

Aggrieved by the proceedings of the first respondent dated 12.1.2012, the petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to quash the said proceedings and to direct the first respondent to approve the appointment of S.Dinesh, Secondary Grade Teacher, in the petitioner/school with effect from 1.12.2008 with all attendant benefits.

2.The facts in a nutshell are as under:

The petitioner/school, which is an aided school, consists of one Headmaster and four teachers. On 4.8.2008, one post of Secondary Grade Teacher fell vacant. To fill up the said post, the petitioner/school sought permission from the third respondent, who, by proceedings dated 24.11.2008, granted permission to fill up the post subject to certain conditions stated in the said proceedings. It is averred that the petitioner/school strictly adhered to the conditions stipulated in the proceedings dated 24.11.2008 and appointed one S.Dinesh as Secondary Grade Teacher on 1.12.2008. His appointment was also approved by the School Committee Council.

3.The petitioner/school sought approval from the third respondent in respect of the appointment of the Secondary Grade Teacher, referred supra. However, the third respondent, by proceedings dated 6.7.2009, referring to various government orders, rejected the request of the petitioner/school on the ground that as a male teacher (Headmaster) was already in service in the petitioner school, appointment of another male teacher is not acceptable and that only a female teacher ought to have been appointed by the petitioner/school.

4.Assailing the said order, the petitioner/school preferred an appeal before the second respondent on 22.07.2009, stating that since already two female teachers are working and one male teacher is an Headmaster, the remaining one post was filled up by one male teacher; that all rules and regulations have been strictly adhered to by the petitioner/school, and that under similar circumstances, the respondent/authorities had granted approval in respect appointment made by another school, but the said appeal was rejected by the second respondent on 30.8.2010.

5.The revision preferred by the petitioner/school before the first respondent was also dismissed by proceedings dated 12.1.2012 on the ground that there is no provision in the existing government orders for the approval of appointment of the said S.Dinesh, which was made without following the ratio fixed for male and female teachers in elementary schools.

6.Calling into question the said proceedings dated

12.1.2012, the present writ petition is filed for the relief stated supra.

7.The main thrust of the arguments advanced by the learned counsel for the writ petition is as under:

- a) While rejecting the request of the petitioner/school seeking approval of the appointment of one S.Dinesh, the respondent authorities relied on G.O.Ms.No.237, dated 5.9.2000, which prescribed the ratio of 1:3 amongst male and female teachers, without taking note of the Government Letter No.267, School Education Department, dated 19.10.2000, which modified the ratio to 1:1. In support of this pleading, the petitioner/school relied on a decision of this Court in S.Elamparithi v. The Director of Elementary Education and others, [Order dated 18.11.2010 made in W.P.No.3355 of 2010]; and
- b) The strength of the school has increased manifold and one more teacher would be required apart from the said S.Dinesh and, therefore, it is submitted that the appointment of S.Dinesh may be approved as such and the next vacancy will be filled up with a female teacher.

8.On the other hand, the learned Special Government Pleader appearing on behalf of the respondents submits that the said government letter dated 19.10.2000 relates only to the year 2000-2001 and not for subsequent years and merely states about the policy of the Government and it cannot be treated as a standing order to be implemented as claimed by the petitioner/school.

9.This Court gave its anxious consideration to the submissions made on either side and perused the documents filed.

10.The dispute revolves around the appointment of S.Dinesh as a Secondary Grade Teacher in a vacancy, which according to the petitioner/school is to be filled by a male teacher, whereas according to the respondents it should be filled by a female teacher.

11.The main plank of the argument of the learned Special Government Pleader is that the ratio of 1:3 has not been followed in the appointment of S.Dinesh. However, it is not in dispute that vide Government Letter No.267, dated 19.10.2000, the ratio has been fixed as 1:1 between male and female teachers and the same is maintained as such.

12. Under identical circumstances, when one S.Elamparithi, a Secondary Grade Teacher, challenged the rejection of approval of his appointment, this Court in S.Elamparithi v. The Director of Elementary Education and others, [Order dated 18.11.2010 made in W.P.No.3355 of 2010], after detailed analysis of the government order and the government letter dated 19.10.2000, passed the following order:

"8. Further the learned counsel also brought to the notice of the Hon'ble Court the order passed by this Hon'ble Court in W.P.No.14587 of 2009 in the case of K.Munisubrayan v. The Director of Elementary Education and others which clearly shows that the Government has taken a clear stand that the filling up of the vacancy ratio is 1:1. Similarly, in W.P.No.4966 of 1995, dated 20.09.2002 in the case of Ulagappar Primary School v. Director of Elementary Education and two others, this Hon'ble Court has also established the ratio. The relevant portion reads as follows:

'3. The claim of the school for retaining the male teachers for appointing the male teachers is therefore, required to be considered by the Government in the light of its own subsequent Government orders and the letter. The respondents are directed to take note of those order of the Government and give effect to the same with regard to the appointment of male teachers or retention of those already appointing in the petitioner school. It is submitted by the counsel that there is only one male teacher in the school and that the other five are women and therefore, the ratio as between male and women teacher is well within the limit prescribed by the Government. The respondent shall verify this assertion and if it is found that the number of male teachers is within the ratio prescribed by the Government, the teachers concerned shall be paid their salary pending consideration which is directed to be carried out by this order.'

9. This Hon'ble Court has time and again followed the G.O. which has also been accepted by the Government in the recent case also. Therefore, once when the petitioner was able to establish that 1:1 ratio has been maintained then the appointment is valid. Therefore, the impugned order of rejection dated 28.01.2009 is not maintainable. Hence, the order is set aside remitting the matter back to the

authority to pass orders for approval taking into consideration, the 1:1 ratio is allowed as per the list submitted by the petitioner within a period of two months from the date of receipt of a copy of this order. Taking into consideration the various rulings of this Hon'ble Court including the order dated 6.9.2006 passed by this Court in W.P.(MD) No.6694 of 2006 in the case of T.RaviRajan v. The Director of Elementary Education and two others. This writ petition is allowed."

13. In yet another decision of this Court in G.Ragunath vs. The Director of Elementary Education, MANU/TN/1088/2014, a learned Single Judge, following the decision in S.Elamparithi v. The Director of Elementary Education and others, supra, held as under:

"4. At the time of final hearing of the writ petition the learned counsel appearing for the petitioner would submit that the issue involved in the writ petition is squarely covered by the number of orders passed by this Court wherein this Court allowed the writ petitions similar in nature and ultimately directed the respondent to approve the appointment of Secondary Grade Teacher made by the aided schools. He also made a reference to the few judgments namely W.P.No.3355 of 2010 dated 18.11.2010, in the case of S.Elamparithi vs. The Director of Elementary Education and three others, and another order of this Court made in W.P.No.19473 of 2012 dated 03.08.2012 in the case of G.Manimegalai vs. The Director of Elementary Education, Chennai and two others. Therefore, according to the learned counsel for the petitioner in the light of the orders passed by this Court the petitioner is entitled for the benefit of that orders thereby the appointment of Mr. R. SaravanaBabu, made by the petitioner should be approved by the second respondent.

5. The learned Additional Government Pleader would also admit that there are orders passed by this Court wherein direction was issued to the respondent to approve the appointment made by the aided schools as that of the petitioner.

6. For easy 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 the learned single Judge of this Court has passed the following order:

'7. 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 reported to the duty on 24.02.2012 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 also similar to that of the case already decided by this Court, the direction issued by this Court also squarely applied to the respondent for due approval of appointment of Mr.R.Saravana Babu, made by the petitioner.

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.Saravanan 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. Therefore, his appointment should be approved retrospectively from the date of his appointment i.e. on 20.02.2012."

14. In view of the law enunciated in the decisions referred supra, I am of the firm opinion that the writ petitioner is entitled to the relief as sought in this writ petition, as the said ratio of 1:1 has been accepted by the Government all along and similarly placed persons have been granted such relief in the decisions referred supra. That apart, it is not the case of

the respondent authorities that the said S.Dinesh is disqualified or appointed in violation of any other guidelines. Moreover, the fact that the student strength has increased manifold and there is requirement of one more Secondary Grade Teacher is not disputed by the respondents.

15.For the foregoing reasons, this Court passes the following order:

a) this writ petition is allowed and the order dated 12.1.2012 passed by the first respondent is set aside;

b) the first respondent is directed to approve the appointment of S.Dinesh, Secondary Grade Teacher in the petitioner/school with effect from 1.12.2008 with all necessary attendant benefits like salary and all other benefits; and

c) the first respondent is directed to complete the said exercise within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai - 9.
- 2.The Director of Elementary Education,
DPI Building, Chennai - 6.
- 3.The District Elementary Educational Officer,
Villupuram.
- 4.The Assistant Elementary Education Officer,
Thirukovillur, Villupuram District.

+1cc to Mr.K.M.Ravikumar, Advocate, SR.No.67129

W.P.No.6339 of 2013

MR(CO)
GN(25/10/2017)