



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.01.2017
Delivered on : 24.01.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.628 of 2014
and
M.P. (MD) No.2 of 2014

Meada : Appellant

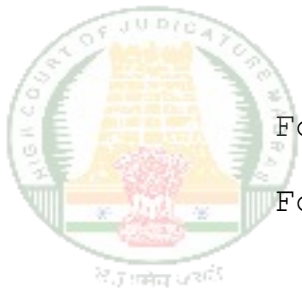
Vs.

- 1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.
 - 2.The Joint Director of Elementary Education,
College Road, DPI Campus,
Chennai-600 006.
 - 3.The District Elementary Educational Officer,
Sethuramanpillai Colony,
Tiruchirappalli.
 - 4.The Assistant Elementary Educational Officer,
Tiruchirappalli.
 - 5.The Correspondent,
Holy Redeemer's Primary School,
Palakarai,
Tiruchirappalli-620 008.
- : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of a learned Single Judge of this Court dated 11.09.2013, in W.P. (MD) No.14776 of 2013.

Prayer in WP (MD). 14776/ 2013 :

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of the 2nd respondent passed in his Proceedings Na.Ka.No.10858/PG2/2013 dated 21.06.2013.



For Respondents 1to4 : Mr.S.Chandrasekar,
Government Advocate
For Respondent No.5 : Mr.T.Antony Arulraj

JUDGMENT

R. SUBBIAH, J

This Writ Appeal has been filed as against the order of Writ Court dated 11.09.2013, in W.P.(MD)No.14776 of 2013, whereby and whereunder, the learned Single Judge dismissed the Writ Petition filed by the appellant to quash the order passed by the second respondent in his proceedings in Na.Ka.No.10858/PG2/2013, dated 21.06.2013.

2. The brief facts which are necessary for disposal of the Writ Appeal are as follows:

The appellant has completed her Diploma in Teacher Education Course in the year 2010 and she was appointed as a Secondary Grade Teacher on 15.06.2011 in a vacant post arising due to retirement of one Mrs.P.Lilly Mary, Secondary Grade Assistant on 31.05.2011, in the fifth respondent School. At the time of joining service in the School, the pupil strength was 735. The fourth respondent visited the School on 30.08.2011 and on that day, the pupil strength was 776. The fourth respondent again visited the School on 14.09.2011 and 19.09.2011 and on those days also, the pupil strength was 776. As on 01.09.2012, the pupil strength of the School was 714. The School has five standards, viz., I, II, III, IV and V. Standards I to IV have four sections, viz., A, B, C and D each. Standard V has five sections, viz., A, B, C, D and E. Totally, the School has 21 classes. There are 21 teachers working in the School including the Headmistress.

3. While so, on 13.08.2011, the first standard has 128 students, second standard has 142 students, third standard has 151 students, fourth standard has 173 students and fifth standard has 182 students. But, the appellant was not paid salary from the date of appointment, viz., 15.06.2011. She requested the fifth respondent to pay salary, who, in turn, has given an assurance that as soon as the salary was released by the fourth respondent, the salary would be paid to her. Subsequently, she came to know that the fifth respondent has not sent any proposal to the fourth respondent in respect of payment of salary to the petitioner. While so, her father received a communication from the third respondent stating that the post which she is holding is a surplus one. Challenging the same, the appellant preferred an appeal before the second respondent. However, the second respondent, by impugned proceedings dated 21.06.2013, rejected the appeal, confirming the order of the third respondent. Hence, the Writ Petition. However, the learned Single Judge dismissed the Writ Petition holding that as of now, there is no controversy before this Court that during the academic year 2010-2011, the post of Secondary Grade Teacher held by Mrs.Lilly Mary was declared as surplus and, therefore, on her retirement, there was no



vacancy available for filling up the same and in such circumstances, the Management ought not to have appointed the appellant.

4. Assailing the finding of the learned Single Judge, the learned counsel for the appellant submits that the post of Secondary Grade Teacher was declared as surplus only by staff fixation order dated 12.01.2012, which is an erroneous one, whereas the appellant was appointed much earlier to that, viz., on 15.06.2011. The learned counsel has also invited our attention to the Full Bench decision of this Court reported in **2006(5) CTC 385 [Director of Elementary Education v. S.Vigila]**, wherein it has been held that the ratio of students-teacher strength as indicated in G.O.Ms.No.525, should be primarily considered by taking each individual standard/section as a unit and 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. Thus, the learned counsel contended that insofar as the present case is concerned, totally there are 21 classes, for which, 21 teachers are required including the Headmistress. The learned Single Judge, without considering these aspects, dismissed the Writ Petition, which needs to be interfered with.

5. The learned Government Advocate appearing for the respondents 1 to 4 and the learned counsel appearing for the fifth respondent would submit that having regard to the fact that the post of Secondary Grade Teacher held by Mrs.Lilly Mary was declared as surplus, the Management ought not to have appointed the appellant to the said post, on the retirement of the said Mrs.Lilly Mary and hence, the learned Single Judge has correctly dismissed the Writ Petition. Thus, there is no reason made out to interfere with the said order.

6. Keeping in mind the above submissions made on either side, we have perused the materials available on record.

7. It is a well settled legal principle that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval for the post, the said teacher along with post could be transferred/deployed to a needy school.

8. In the instant case, the post of Secondary Grade Teacher was declared as surplus on 12.01.2012, whereas the appellant was appointed in the sanctioned post as early as on 15.06.2011. Furthermore, from the materials placed before this Court, it is found that there are 21 classes, for which, 21 teachers are working including the appellant and the Headmistress. Therefore, we are of the view that the appellant is entitled for the reliefs as sought for in the Writ Petition.

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9. In the result, the Writ Appeal is allowed and the order of



the learned Single Judge dated 11.09.2013, in W.P.(MD)No.14776 of 2013, is set aside. Consequently, the order impugned in the Writ Petition dated 21.06.2013 is also set aside and the respondents are directed to pass appropriate orders granting approval for the appointment of the appellant as Secondary Grade Teacher, as expeditiously as possible. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.
- 2.The Joint Director of Elementary Education,
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- 3.The District Elementary Educational Officer,
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Tiruchirappalli.
- 4.The Assistant Elementary Educational Officer,
Tiruchirappalli.

+1cc to Mr.M.Joseph Thatheus Jerome, Advocate sR.No.3882

+1cc to special Government Pleader SR.No.4151

+1cc to Mr.V.John Kennedy, Advocate sR.No.4008

sml

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Judgment made in
W.A.(MD)No.628 of 2014
Delivered on:
24.01.2017