



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.5319 of 2014

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S.A.Arul Kitherial

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Tirunelveli.

2.The Assistant Elementary Educational Officer,
Radhapuram,
Tirunelveli District.

3.The Correspondent,
St.Joseph's Primary School,
Kuthenkuly,
Tirunelveli District.

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying for issue of a Writ of Mandamus, directing the respondents to approve the appointment of the petitioner from the date of appointment i.e.,24.07.2009 and confer all the consequential benefits.

For Petitioner

: Mr.V.Panneer Selvem

For Respondents

: Mr.N.S.Karthikeyan,

Additional Government Pleader.

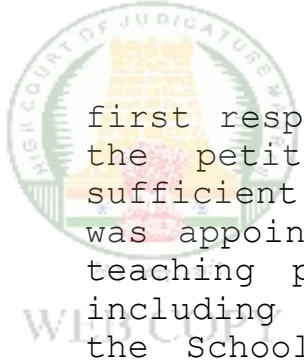
O R D E R

This Writ Petition has been filed by the petitioner for issuance of a Writ of Mandamus, to direct the respondents to approve the appointment of the petitioner from the date of appointment i.e.,24.07.2009, and to confer all the consequential benefits.

2.Heard Mr.V.Panneer Selvem, learned Counsel appearing for the petitioner and Mr.N.S.Karthikeyan, learned Additional Government Pleader, appearing for the respondents.

3. The petitioner was selected and appointed as Secondary Grade Teacher on 24.07.2009, in the third respondent School. The post in which the petitioner was appointed is a sanctioned post and the appointment was due to the vacancy, that arose because of the retirement of one Mrs.A.Arockiya Vinnarasi on 15.07.2009.

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner submitted that she joined the third respondent School. However, the proposal submitted by the third respondent with the recommendation of the second respondent to the



first respondent is pending for consideration. It is the case of the petitioner that the third respondent School is having sufficient strength for the year 2009-2010, when the petitioner was appointed. It is further submitted that the School has five teaching posts duly sanctioned. There are only three teachers including the petitioner were working and there is no surplus in the School. Despite several representations being made by the petitioner and the third respondent School Management, the approval is not granted by the first respondent.

5. The learned Counsel for the petitioner submitted that the approval of the petitioner's appointment is denied on the ground of availability of surplus teachers in other Schools run by the same Management. The learned counsel for the petitioner also pointed out that the first respondent has filed a counter affidavit and the only reason stated by the first respondent for not approving the petitioner's appointment is the availability of surplus teachers in other Schools run by the same Management, namely, R.C.Schools, Tuticorin Diocese.

6.As pointed out by the learned counsel for the petitioner, the only reason that is stated by the first respondent for not considering the approval of the petitioner's appointment, is that the Management, R.C.Schools, Tuticorin Diocese, can transfer the surplus teachers in various R.C.Schools to all other Schools where there are vacancies in sanctioned posts. The specific contention of the respondents is that only after transferring the surplus teachers to all other Schools, which are having sanctioned post, the Management can make direct recruitment.

7.Having regard to the stand taken by the first respondent in the counter affidavit, this Court finds that the issue is no more *res integra* and this Court has in several judgments allowed the Writ Petition filed by the individual teacher or by the Management of the School by directing the approval of such appointment, despite an objection or rejection of approval on the ground that the sanctioned post should be filled up by the surplus Teachers who are available in other Schools of the same Management. In the case of **G.Sahaya Santhi Selvi v. The District Elementary Educational Officer, Tirunelveli, in W.P.(MD). No.1013 of 2014**, by judgment dated 26.02.2014, this Court has followed the previous judgment of a learned Single Judge of this Court in W.P.(MD).No.5872 of 2012 dated 13.12.2013, where in, after referring to the previous judgments, this Court has categorically held that the approval for appointment cannot be rejected on the ground that the Management has to transfer the surplus staff available in other Schools owned by them to the <https://hcservicescourts.gov.in/twoservices/> the appointment is made and approval is denied. The Hon'ble Division Bench of this Court in the case of the District Elementary Educational Officer and another v. D.Alphonse

in W.A(MD).Nos.798 and 799 of 2015 by judgment dated 22.07.2015, has held as follows:-

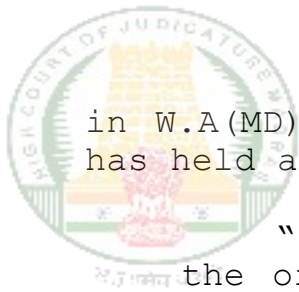
"2.W.P.(MD).No.799 of 2015 has been directed against the order, dated 02.08.2013, passed in W.P.(MD).No.16164 of 2012, allowing the Writ Petition filed by the 1st respondent herein and quashing the proceedings of the District Elementary Educational Officer, Tirunelveli District, the 2nd appellant herein, in Na.Ka.No.649/A4/2009, dated 09.07.2012, whereby, the request of the Management of the 2nd respondent School to approve the appointment of the 1st respondent/Writ Petitioner in the post of Secondary Grade Teacher has been rejected, and for a consequential direction to the appellants to approve the appointment of the 1st respondent /Writ Petitioner as Secondary Grade Teacher from 09.07.2001 and pay salary to her up to 19.10.2014 and to confer all the consequential benefits.

3.According to the 1st respondents/Writ Petitioners, they were appointed as Secondary Grade Teachers, based on their qualifications in the 2nd respondent Schools, against permanently sanctioned posts and therefore their appointments ought to have been approved by the educational authorities. However, it is the contention of the appellants that already there are surplus Teachers in the 2nd respondent Schools. However, rejecting the contention of the appellants, the Writ Court has allowed the Writ Petitions filed by the 1st respondents/ Writ Petitioners.

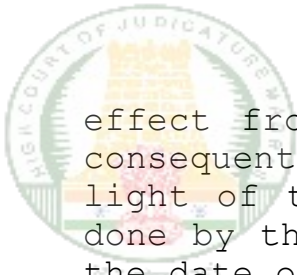
4.Mr.V.Panneerselvam, learned counsel for the contesting first respondent, submitted that the issues raised in these Writ Appeals are already covered by a decision of this Court in W.A.(MD)Nos.639 to 642 of 2015,etc.,batch, dated 17.06.2015. Mr.A.K.Baskara Pandian, learned Special Government Pleader, appearing for the appellants, accepts the same.

5.Recording the submissions of the learned counsel for the parties that the issues raised in these Writ Appeals are already covered by the above said decision, both the Writ Appeals are dismissed in the light of the common order, dated 17.06.2015 passed in W.A.(MD)Nos.639 to 642 of 2015,etc., batch. No order as to costs. Connected miscellaneous petitions are also dismissed."

8.Having regard to the consistent view taken by this Court in several judgments indicated above, this Court has no other option, but to allow the Writ Petition by directing the first respondent to approve the appointment of the petitioner with



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effect from the date of appointment, namely, on 24.07.2009, and consequently, to confer all the consequential benefits in the light of the judgments referred to above. This exercise shall be done by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No Costs.

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Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The District Elementary Educational Officer,
Tirunelveli.

2.The Assistant Elementary Educational Officer,
Radhapuram,
Tirunelveli District.

3.The Correspondent,
St.Joseph's Primary School,
Kuthenkuly,
Tirunelveli District.

+1cc TO M/S.V.PANNEERSELVAM,ADVOCATE IN SR.No. 53806

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO. 53949

W.P. (MD) No.5319 of 2014
24.04.2017

CMR/GSP

kk/MMS/SAR3-16.05.2017-4P-6C