



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No1018 OF 2017

and

W.M.P (MD)No.849 of 2017

Muthu Merina

... Petitioner

vs.

- 1.The Director of Elementary School Education,
D.P.I.Compound, College road, Chennai.
- 2.The District Elementary Educational Officer,
Tirunelveli District, Tirunelveli.
- 3.The Addl.Assistant Elementary Educational Officer,
Nanguneri Range,
Tirunelveli District.
- 4.The Correspondent,
T.D.T.A. Primary School,
Melachetti kulam,
Nanguneri Range,
Tirunelveli.

... Respondents

Prayer: Writ 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 third respondent in his proceedings Athi.Mu.No.1752/A4/2016, dated 13.10.2016 and to quash the same and further to direct the respondents to approve the appointment of the Petitioner from the date of appointment from 23.12.2014 and confer all the consequential benefits.

For Petitioner : Mr.S.Chellapandian

For RR - 1 to 3 : Mr.M.Rajarajan

Government Advocate

ORDER

The impugned order has been passed by the third respondent declining to approve the appointment of the petitioner, on the ground that when there are excess teachers available in the school Management; they could be redeployed to the needy schools, instead of resorting to fresh appointment. This order is under challenge in the present Writ Petition.

2.The petitioner was appointed as Secondary Grade Teacher in the 4th respondent school and when proposal was submitted by the 4th respondent, the same was returned by the respondents 2 and 3 on the ground that there are surplus teachers in other schools run by the same Management and that approval for new appointment will be granted, only after adjusting the surplus posts. The justifiability of the above-said order, is under challenge in the present Writ Petition.



3. The learned counsel for the petitioner would submit that the issue raised in this case, 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 above-said Division Bench judgement. It is relevant to extract below paragraphs 5, 6 and 8, of the Division Bench judgment:-

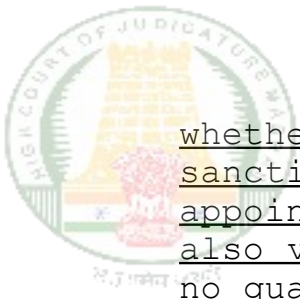
'5. Indisputably, the posts, in which, the writ petitioners have been appointed, are sanctioned by the Education Department, after assessment, in terms of G.O.Ms.No.525, School Education(D1) Department, dated 29.12.1997. Eligibility of the writ petitioners, is not disputed. Dates of appointment of the 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 Certiorarified 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



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 3rd respondent is 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 and that is the settled law as per the decision cited supra. There is no dispute with regard to this legal position. Hence, the claim of the petitioner is in accordance with law.

5. In the result, this Writ Petition is allowed. The impugned order passed by the third respondent in Athi.Mu.No.1752/A4/2016, dated 13.10.2016 stands quashed. The 3rd respondent is directed to consider the proposal sent by the 4th respondent school, 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 two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(RTI)



To

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

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

3.The Addl.Assistant Elementary Educational Officer,
Nanguneri Range,
Tirunelveli District.

+1 cc to Mr.S.Chellapandian,ADVOCATE, SR NO:4309

W.P (MD) No.1018 of 2017
and

W.M.P (MD) No.849 of 2017
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VSN

SVA/CM/MSA/07.02.2017/5P/5C