



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.03.2017

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

W.P. (MD) .No.1388 of 2017
and
WMP (MD) No. 1141 of 2017

The Correspondent,
R.C. Primary School,
Soosaipandiapuram,
Pudukottai Range,
Tuticorin District - 628 103.

...Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of Elementary Education
College Road, Chennai - 600 006.

3.The District Elementary Educational Officer
Tuticorin, Tuticorin District.

4.The Additional Assistant Elementary
Educational Officer,
Tuticorin Rural @ Pudukottai
Tuticorin District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 4th respondent herein vide O.Mu.No.700/Aa1/2016 dated 28.11.2016, quash the same and further direct the respondents herein to approve the appointment of N.Felix Aqualia as Secondary Grade Teacher in the petitioner school w.e.f., 22.02.2016 and disburse grant-in-aid towards salary and other attendant benefits.

For Petitioner

: Mr.A.Ajith Geethan

For Respondents

: Mr. N.S.Karthikeyan,

Additional Government Pleader.

**O R D E R**

This writ petition has been filed by the petitioner challenging the proceedings of the 4th respondent dated 28.11.2016. Thereby the proposal submitted by the petitioner seeking approval for the appointment of teacher, is turned out.

2. Heard Mr.A.Ajith Geethan, learned counsel appearing for the petitioner and Mr.N.S.Karthikeyan, learned Additional Government Pleader.

3. The petitioner's school is a recognised aided minority institution. Being a primary school, the petitioner is offering education from standard 1 to 5 and the medium of instruction is Tamil. According to the petitioner, one post of Secondary Grade teacher in the school fell vacant on 13.06.2013 due to the promotion of the previous incumbent. It is in the vacancy, one N.Felix Aquila was appointed as Secondary Grade teacher with effect from 22.02.2016. The teacher appointed, possess the qualification required. It is stated that newly appointed person has also passed the Teachers Eligibility Test. However, when the proposal for the appointment approval was submitted, the same was rejected by the impugned order on the following two grounds:

a) since the other schools run by the same management has got surplus teachers, as per the order of DEEO, fresh appointment cannot be made by the petitioner management.

b) Since the students strength of the school is below 60, the petitioners school is entitled only for 2 teachers. Hence, there cannot be a further appointment to the 3rd post.

4. This Court has repeatedly allowed similar writ petitions following the Full Bench judgment of this Court reported in **2006 (5) CTC 385** (Director of Elementary Education vs. S.Vigila). The Full Bench of this Court has categorically 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."



5. Thus, the minimum strength of teachers required cannot fall below the number of standards in a school. In the present case, it is not in dispute that the petitioner has got five standards. The petitioner's school is entitled to five teachers. However, the petitioner has sought approval only if the appointment of the 3rd post, even this was negative by the respondent on the ground that the sanction strength for this school is only two, by stating that the students strength is below 60. As it has been clarified by the full bench of this Court, the petitioner's school is entitled for five teachers and the appointment of the third teacher to the school cannot be halted and the reason assigned by the 4th respondent for rejecting the proposal is contradictory to law. The second reason stated by the respondent is that the other school run by the petitioner's management have surplus teachers and therefore, the petitioner is not entitled to appoint a new teacher to the post which fell vacant in the present school. This aspect has also been considered by the learned Single Judge of this Court, in the case of the Correspondent, R.C. Middle School vs the State of Tamil Nadu and Others in WP. (MD). No. 16841 of 2014.

6. This Court has set aside the similar order passed by the educational authority refusing to admit the appointment of the teacher on the ground that there are surplus teachers in the other school run by the same management. The learned Single Judge of this Court has followed the judgment of Division Bench of this Court by order dated 09.06.2007 in W.A.(MD) No.194 of 2007.

7. After referring to the Judgment dated 17.06.2015 in W.A.(MD) No.638 of 2015, this Court has confirmed the judgment of the learned Single Judge allowing a similar writ petition where the approval was rejected on the ground that there are surplus teachers in the other schools of the same management.

8. Considering the law laid down by this Court in the judgment above referred to, this Court finds merit that the petitioner is entitled for the relief sought for. Accordingly, the writ petition is allowed and the impugned order passed by the 4th respondent is set aside. The 3rd respondent is directed to approve the appointment of N.Felix Aquila with effect from the date of appointment within a period of 6 weeks from the date of receipt of a copy of this order and the teacher is entitled to get all the monitory benefits and service benefits in accordance with law.

9. Accordingly, the Writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To

1.The Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of Elementary Education
College Road, Chennai - 600 006.

3.The District Elementary Education Officer
Tuticorin, Tuticorin District.

4.The Additional Assistant Elementary
Educational Officer,
Tuticorin Rural @ Pudukottai
Tuticorin District.

+1cc to Mr.A.Ajith Geethan,Advocate,SR.17861

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO.18173

W.P. (MD) .No.1388 of 2017
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KM/MR

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