



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P (MD) No.4081 of 2011

and

M.P. (MD) Nos.1 & 2 of 2011

Kamrunisa Begum

...Petitioner

Vs

1.The District Elementary Education Officer,
Tirunelveli.

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

3.The Secretary,
Mohaideen Andavar Middle School,
Puliyankudi,
Tirunelveli District.

..Respondents

PRAYER: Writ Petition is filed, under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 1st respondent made in Na.Ka.No.823/A2/11, dated 08.03.2011 and quash the same and consequently direct the 1st respondent to approve the petitioner's appointment in the post of Elementary School Head Master from 14.12.1994.

For Petitioner	: Mr.N.Mohideen Basha
For R1 & R2	: Mr.V.Muruganantham Additional Government Pleader
For R3	: No Appearance

ORDER

The Prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent in Na.Ka.No.823/A2/11, dated 08.03.2011 and quash the same and consequently direct the first respondent to approve the petitioner's appointment in the post of Elementary School Headmistress from 14.12.1994.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The case of the petitioner is that she was appointed as Secondary Grade Teacher on 14.12.1989 at the third respondent



School. Till 1994, she worked in the said capacity. There was no post of Headmistress specifically sanctioned to the third respondent School. Therefore, the third respondent Management after having designated/promoted the petitioner as Headmistress, had sent such appointment/designation of the petitioner as Headmistress of the third respondent School, for approval to the second respondent, who is the immediate Educational Authority, to whom direct correspondences have to be made by the third respondent School. The second respondent, on receipt of such proposal designating the petitioner as Headmistress of the third respondent School, has approved the same vide his proceedings in OM.No.380 A2/95, dated 02.08.1995. From the said date of approval, the petitioner had been working as Headmistress of the third respondent School, for which, salary also has been fixed in the cadre of Headmistress of Elementary School to the petitioner, by the proceedings of the second respondent, dated 02.08.1995 and accordingly, the petitioner had been working as Headmistress of the third respondent school and also receiving the salary for the same, as fixed by the second respondent.

3. Even though the petitioner had been designated as Headmistress of the third respondent School in the year 1994 itself, and the same had also been approved by the second respondent, after long years, in the year 2002, the post of Secondary Grade Teacher at the third respondent School had been upgraded as Elementary School Head Master/Headmistress. In view of the said order giving such upgradation, it became necessitated for the third respondent Management to make a formal appointment of the petitioner as Elementary School Headmistress from 22.11.2002, in spite of the fact that she had already been designated and already been working as Headmistress from the year 1994, and the said designation also been approved by the second respondent as stated supra.

4. The said proposal sent by the third respondent School had been rejected by the first respondent through the impugned order, dated 08.03.2011. In the said rejection order, the first respondent has stated that the Secondary Grade Teacher post of the third respondent School was formally upgraded as Head Master only from 22.11.2002. When that being so, the promotion and designation given to the petitioner from 14.12.1994 as Headmistress of the third respondent was without any sanctioning of the said post and without the approval of the department and therefore, such promotion or designation as Headmistress from 1994 cannot be accepted and if at all any approval can be granted for such promotion or designation from 1994, the same does not have any effect, as second respondent does not have any power to give approval of such appointment. Therefore, the proposal sent by the Management of the third respondent seeking approval of the appointment/promotion given to the petitioner as Headmistress at the third respondent school was rejected/returned.



5.Challenging the said impugned order, dated 08.03.2011, the petitioner has filed the present writ petition.

6.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 & 2.

7.The learned counsel for the petitioner would submit that the third respondent's School is an approved aided minority institution. It is well settled law that since it is a minority institution, it has got its own privileges under Article 30(1) of the Constitution and in view of certain provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973, as well as the Rules made thereunder would not be made applicable against the minority institution.

8.The learned counsel appearing for the petitioner would submit that the third respondent school being an Elementary School consisting of Standard 1 to 5, the school requires certainly one Head Master/Headmistress. Even though two Secondary Grade Teacher post were sanctioned for the third respondent school, there was no expressed sanction of one such Secondary Grade teacher as Headmaster/Headmistress of the school. The fact reveal that since the school had to be run only under the supervision of Head Master/Headmistress, without whom an Elementary School cannot be run, the third respondent management having designated the petitioner as Headmistress of the school, had sent a proposal for necessary approval to the second respondent. The second respondent also, after having considered the request made by the Secretary of the third respondent, dated 25.12.1994, had accorded approval by proceedings, dated 02.08.1995, by and under which, the designation of the petitioner as Headmistress of the third respondent School from 14.12.1994 had been approved. On the very same date, the second respondent issued further proceedings by which, the salary of the petitioner also was fixed in the cadre of Headmistress of the Elementary School.

9.The learned counsel for the petitioner would also submit that on the basis of the approval given by the second respondent and also on the basis of the salary having been fixed by the orders of the second respondent as stated supra, the respondents department also had been continuously sanctioning salary for the petitioner as Headmistress of the third respondent school and the petitioner also had been receiving the same.

10.Subsequently, in the year 1997, the Government had come forward to issue G.O.No.525 School Education (D1), Department, dated 29.12.1997, according to which, the teacher-pupil ratio of 1:40 will be followed. It is relevant to extract below paragraph

<https://hcservices.education.tn.gov.in/services/>

"5.In the light of discussions and deliberations hold the High Power Official Norms Committee has suggested the



following recommendations for sanction of posts in Schools:

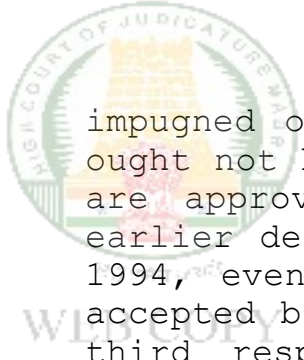
I. Elementary Schools (Standards I to V)

a. The teacher-pupil ratio of 1:40 will be followed. Minimum of 2 Secondary Grade Teachers upto a strength of 80 will be sanctioned. In respect of new schools, first post will be created in the first year and second post in the second year. One of the two posts will be in the grade of Headmaster."

11. By fixing teacher-pupil ratio as 1:40 in Elementary School, the minimum teachers posts of Secondary Grade Teacher to be sanctioned to the Elementary School was fixed as 2. Out of the 2, one post shall be in the grade of Head Master/Headmistress. Therefore, what has been done in the case of the third respondent, where one out of the 2 Secondary Grade Teachers, had been designated with the grade of Headmistress in the year 1994 and the same has been approved. Exact position has been reiterated in the said G.O., whereby in all such schools which are having Standards from 1 to 5, atleast there shall be two teachers. Out of the two, one shall be in the grade of Head Master/Headmistress. Therefore, the Government Policy itself is in support of the designation of the petitioner as Headmistress of the third respondent School and therefore, there can be no further impediment for continuing the petitioner as Headmistress of the third respondent school.

12. The learned counsel for the petitioner would also submit that while such being the situation, only in the year 2002, the respondents department had given expressed sanction of Head Master post by upgrading one out of two Secondary Grade Teachers working in the third respondent school as Head Master/Headmistress from 22.11.2002. Therefore, it became a necessity to make a formal request on behalf of the third respondent to the respondents department to approve the appointment or designation of the petitioner as Headmistress. In view of the fresh sanction having been given by the department for the post of Headmistress at the third respondent school, only in that context, a request was sent by the third respondent school management and the said request alone was considered and rejected or returned through the impugned order, dated 08.03.2011 of the first respondent and the reasons adduced therein are totally unjust, because, it is not in dispute that the petitioner had been working from 1994 as Headmistress and the said designation had been approved by the second respondent and for the said post, salary also has been fixed and paid to the petitioner periodically without any break.

13. All these facts would go to show that the designation of the petitioner as Headmistress of the third respondent school had been sanctioned and approved by the department, that is why, salary has been sanctioned to the petitioner. When that being so, now the first respondent after long years, has passed the present

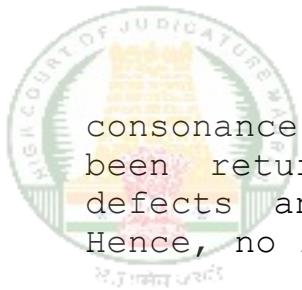


impugned order stating that the re-designation of the petitioner ought not have been made in the year 1994, against the posts which are approved or sanctioned in the year 2002. Therefore, the earlier designation of the petitioner as Headmistress in the year 1994, even though approved by the second respondent, can not be accepted by the department and therefore, the request made by the third respondent school management had to be rejected. These reasons adduced by the first respondent in the impugned order, are totally unsustainable, especially, in the context of policy decision that had been made by the Government through G.O.Ms.No.525 referred to above in the year 1997. Therefore, the counsel for the petitioner would submit that the impugned order is liable to be quashed.

14.Per contra, the learned Additional Government Pleader appearing for the official respondents would submit that even though the third respondent is an aided approved minority institution and has been conferred certain privileges under Article 30(1) of the Constitution of India, the management of the third respondent school cannot, on their own, upgrade or appoint the petitioner as Headmistress of the third respondent school, in the absence of the said post having been sanctioned to the school. It is an admitted fact that the post was sanctioned or upgraded as Head Master only from 22.11.2002. When that being so, the question of upgradation in the year 1994 would not at all arise.

15.In this context, the learned Additional Government Pleader would also submit that the alleged approval is said to have been given by the second respondent, who is only a recommending or forwarding officer of any proposal submitted by the third respondent school and the first respondent is competent authority to give approval for sanctioning of posts as well as the approval to the appointment to the sanctioned post. Therefore, on the strength of the alleged approval given by the second respondent, neither the third respondent nor the petitioner can claim right that the post of Headmistress was upgraded one and therefore, working of the petitioner in the said post from 1994 onwards ought to have been approved, retrospectively by the department, cannot be accepted by the department.

16.The learned Additional Government Pleader would also submit that even though the Government Order has been issued in G.O.Ms.No.525, dated 29.12.1997, wherein the policy of the Government has been clearly mentioned, the import of the said G.O., cannot give any retrospective benefit to the schools like the third respondent from 1994 and there is no retrospective application of the said GO. Therefore, under the shelter of G.O.Ms.No.525, the petitioner or the third respondent cannot claim that the post of Headmistress has to be approved from 1994. In <https://hcservices.ecourt.gov.in/hcservices> the learned Additional Government Pleader would submit that the impugned order passed by the first respondent is only based on the relevant rules as well as in



consonance with the said G.O., and therefore, the proposal now has been returned or rejected by the first respondent for these defects and reasons, are fully justifiable and sustainable. Hence, no interference is called for by this Court.

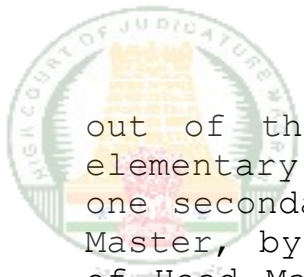
17. This Court has considered the said rival submissions made by both sides.

18. It is an admitted fact that the third respondent school is an aided minority school and it is an Elementary School having Standards from 1 to 5. The Elementary School since having Standards from 1 to 5 had been sanctioned with at least 2 Secondary Grade Teacher posts. Even though two Secondary Grade Teacher posts were sanctioned to the third respondent, there was no specific designation of Head Master or Headmistress. It is a common knowledge that no school that too having Standards from 1 to 5 can be effectively run without a Head Master/Headmistress. A Head Master of the school is not only a academic head, but also an administrative head and who should be in-charge of both academic as well as the administrative activities of the school concerned, apart from day to day affairs. Therefore, at the time of sanctioning two Secondary Grade Teachers to the third respondent school, the department ought to have given clearance to appoint or designate one out of the two Secondary Grade Teachers as Head Master or Headmistress of the School concerned. In the absence of the same, in view of the requirement, the Senior most Secondary Grade Teacher among the two i.e., the petitioner herein, can be appointed or re-designated as Headmistress of the School and such proposal has been duly forwarded to the second respondent, who is the immediate authority of the school management. The second respondent after having considered the said request has given a clear approval by his proceedings and on the same date also, the pay of the petitioner in the cadre of the Head Master of the elementary school had been fixed.

19. After the said development took place, several years have gone by. In the meanwhile, the Government Order was also issued by the Government as pointed out by the learned counsel for the petitioner and at paragraph 5(1) of the said G.O., the teacher-pupil ratio as well as the number of teachers to be employed in the Elementary Schools had been clearly mentioned. According to the said G.O., any Elementary School with Standards 1 to 5, the teachers pupil ratio is fixed as 1: 40, where the requirement is minimum of 2 Secondary Grade Teachers i.e., up to the strength of 80 students, that means if the strength goes beyond 80, three Secondary Grade Teacher would be sanctioned. Therefore, out of the two minimum sanctioned Secondary Grade Teacher, one shall be in the grade of Head Master/Headmistress.

<https://hcservices.ecourts.gov.in/hcservices/>

20. The words used at para 5(1) of G.O. Ms.No.525 i.e., "one out of the two posts will be in the grade of Head Master" say that one



out of the two minimum sanctioned secondary grade teachers of elementary school will be in the grade of Head Master, that means, one secondary grade teacher should be working in the grade of Head Master, by thus, such senior secondary grade teacher in the grade of Head Master would be functioning as Head master of the school by doing both academic as well as administrative activity of the school. This policy has come into effect only from December 1997 as the said GO was issued on 29.12.1997. When the said G.O was put to challenge, a Full Bench of this Court in reported decision 2006(5) CTC 385 (*Director of Elementary Education, Chennai-6 and others Vs. S.Vigila and another*), after having analysed the issue in detail, has given the following mandatory guidelines with regard to the teachers-pupil ratio as well as the number of teachers to be employed in school. The relevant portion of the said judgment of the Full Bench is at para 23 which reads thus:-

"23. 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.

(3) If the students' strength in a particular Standard exceeds 60, at that stage, an additional section is required to be created requiring the sanction of a second teacher and the strength reaches 100, the post of a third teacher is required.

(4) Even after maintaining the aforesaid ratio by taking into account the students' strength of each individual standard and additional section, as the case may be, by keeping in view the teacher-students ratio 1:40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers' strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities of the school should create additional section in respect of any particular Standard according to the need and convenience keeping in view the standard of education. This requirement is not only in respect of Aided Schools or Government Schools, but also in respect of any Private Recognised School. In other words, this ratio is to be maintained for any school which requires recognition.

(5) It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the Constitution."



21. According to para-23(2) of the Full Bench Judgment, the minimum strength of the required teachers in Elementary School with 5 Standards shall be 5, out of which, one would be the Head Master. If this is the position, where the Elementary School, having 5 standards, would be entitled to claim sanctioning of 5 secondary grade teachers out of which, one can be designated as Headmaster and their very policy of the Government is reflected in 5(1)A of the said GO which would state that the elementary school which is having strength up to 80, out of two secondary grade teachers, one can be in the grade of Headmaster. So, certainly, the designation of the petitioner as Headmistress in the third respondent school in the year 1994 itself cannot be found fault with, because, the policy of the Government as reflected in G.O.Ms.No.525 and the mandatory guidelines given in the judgment of this Court in 2006(5) CTC 385, by the order, dated 4.11.2016 would only strengthen the stand of the third respondent school that atleast one out of the two secondary grade teachers sanctioned to the school can be either designated or shall be in the grade of Head Master/Headmistress. So, this is what had been done by the third respondent from 1994 whereby the petitioner had been designated as Headmistress and the same also been approved by the second respondent where the second respondent has also fixed the salary to the petitioner. This arrangement had been continuing for several years. Nothing had come in the negative from the respondents department probably, because of the policy decision in the meanwhile come out by G.O.No.525 and also mandatory Guidelines of this Court referred to above. Subsequently, after several years, only in the year 2002, actual sanction of a Headmaster has been made. Merely because, the respondents department has given a sanction to the Head Master post to the third respondent after a decade or more, that would not take away the right of the third respondent to designate one of the secondary grade teachers as Headmistress of the school, as without a Headmaster, as stated above, no school can be functioning and also rightly the said appointment had been approved by the second respondent.

22. In this regard, the learned Additional Government Pleader has raised an objection that the second respondent does not have any jurisdiction to approve such approval and only the first respondent had to approve, and since the competent authority has not approved the upgradation of the appointment of the petitioner, the petitioner cannot have any right. The said contention cannot be accepted for the simple reason that if at all the second respondent does not have any jurisdiction to approve it, the first respondent could have very well rectified it, in the year 1994 itself. However, the fact remains that from the very date of appointment, the second respondent, the salary necessarily to be paid to the Headmaster has been continuously given by the third respondent, who in-turn has paid to the petitioner all these



years. Subsequently, G.O.Ms.No.525 came into effect from 29.12.1997 and the mandatory instructions have been given by the orders of the Full Bench in W.A.(MD)No.313 of 2006 and all these continuous actions, as has been stated above, definitely would strengthen the case of third respondent and the petitioner. Therefore, the first respondent after 16 long years cannot now come and say that the petitioner ought not have been designated as Headmistress in the year 1994 and the approval given by the second respondent would not be treated as valid approval. Since the department has acted upon based on the said approval given by the second respondent in year 1994, such position has never been disturbed or changed till the actual sanction made in 2002. In fact, such sanction ought to have been made very early i.e., from 1994 onwards. Since the third respondent school had been continuously enjoying the privilege of having two secondary grade teachers out of which one in the grade of Headmaster, due to the belated sanction or upgradation to the post of Headmaster, third respondent school shall not in any way put to hardship, because without the Head Master, the Elementary School cannot run.

23. Therefore, for all these reasons, this Court is of the considered view that the approval given to the petitioner for redesignation as Elementary School Headmistress at the third respondent school from 14.12.1994 is valid and since the department has acted upon for all these years, the present order refusing or rejecting the claim made by the third respondent, to give formal approval of the promotion/redesignation of the petitioner as Headmistress of the third respondent, is unjustifiable and unlawful.

24. In the result, the writ petition is allowed and the impugned order dated 08.03.2011 is set aside. The respondents especially, the first respondent is hereby directed to give a formal approval, since he being the authority to give such approval by way of rectification of approval already been given by the second respondent vide his proceedings, dated 02.08.1995 approving the promotion/redesignation of the petitioner as Elementary School Headmistress of the third respondent school from 14.12.1994. Since the petitioner has already been receiving salary payable to her for the post of Elementary School Headmistress, there is no salary arrears to that effect. The approval order as directed above, has to be passed by the first respondent within four weeks from the date of receipt of a copy of this order.

25. With these directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(P&A)



To

WEB COPY

1.The District Elementary Education Officer,
Tirunelveli.

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

+One cc to Mr.N.Mohideen Basha, Advocate, SR.no.12105

+One cc to The Special Government Pleader, SR.No.12278

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RL/5C/9P/SV/MMS/SAR1/30/6/2017

W.P (MD) No.4081 of 2011

02.03.2017