



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

WEB COPY

Writ Petition (MD) No.5841 of 2011andM.P(MD)Nos.1 and 2 of 2011

Rahim Brothers Middle School,
Vadagarai, Periyakulam,
Theni District Rep by its
Correspondent,
A.Musthafa

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... Petitioner

Vs.

1.The District Elementary Educational Officer,
District Elementary Educational Office,
Theni District.

2.The Additional Assistant Elementary Educational
Officer, Periyakulam, Theni District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his Proc. Na.Ka.No.295/A2/11 dated 26-05-2011 and quash the same as illegal and consequently, to direct the 1st respondent to release salary grant and other monetary benefits without any interruption.

For Petitioner

: Mr.H.Mohammed Imran

for M/s.Ajmal Associates

For Respondents

: Mr.T.R.Janarthanam,

Additional Government Pleader.

ORDER

The petitioner school was sanctioned with 14 teaching staff including one full time craft teacher (sewing). One Ms.Rachel Persis Abi Israel who was employed as craft teacher in the petitioner's school retired from service on 31.12.2010. When the approval for appointment of Ms.Rachel Persis Abi Israel was made, there was a condition imposed by the first respondent whereby the petitioner school was directed to surrender the said post in case, the said teacher retired or resigned or died. However, after Ms.Rachel's retirement, the petitioner had appointed one K.Saranya to the post of Craft Teacher (sewing) on 03.01.2011. When the petitioner had sought for approval of the appointment of K.Saranya to the post of Craft Teacher (Sewing) the first respondent by an order dated 26.05.2011, rejected their request quoting the condition imposed in the approval of the appointment made on 17.09.1997. Aggrieved against the same, the petitioner is before this Court.



2. Though the learned counsel for the petitioner admitted that there was such a condition, he submitted that the Government by G.O.Ms.No.39, School Education Department, 21.03.2003, had clarified that the ban that was imposed for filling up the vacancy in the post of Craft Teacher has been lifted. Consequently, the Craft Teacher (sewing) and Craft Teacher (Music) could be filled up in view of the lifting of the ban.

3. The learned Additional Government Pleader submitted that in view of the condition in the original approval order, the petitioner school is bound to surrender the post due to the retirement of Ms. Rachel Persis Abi Israel and therefore, the subsequent appointment without approval of the first respondent is illegal.

4. On a perusal of G.O.Ms.No.39, School Education Department, dated 21.03.2003, it is seen that after 12.07.2002, the appointment of Craft Teacher (sewing) and Craft Teacher (Music) has been permitted. Admittedly, the petitioner school had appointed K. Saranya on 03.01.2011 as a Craft Teacher (sewing). In view of the subsequent clarification of the Government vide G.O.Ms.No.39, dated 21.03.2003, the impugned order rejecting the petitioner's request for approval of the appointment cannot be sustained.

5. Accordingly, the writ petition stands allowed. The order dated 26.05.2011 passed by the first respondent is set aside. Consequently, it would be open to the petitioner's school to seek for disbursement of salaries through a separate representation to the first respondent, which when made, shall be disposed of within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P(MD)Nos.1 and 2 of 2011 are closed.

Sd/-
Assistant Registrar(Writs)

/TRUE COPY/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
District Elementary Educational Office,
Theni District.
2. The Additional Assistant Elementary Educational
Officer, Periyakulam, Theni District.

+1 cc to AJMAL ASSOCIATES, SR NO:12041

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO:11964

Sms

sva/pm/pn/09.03.2017/2p/5C

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