

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.31316 of 2017

The Manager and Correspondent,
Dr.Zahir Hussain Memorial Minority High School,
Tmt. A.M.Sikkandhar Bevi School Campus,
Pillaiyarnatham, Pithalaipatti Post,
Dindigul - 2.

... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by its Secretary,
Education Department,
Fort St. George,
Chennai 600 009.
2. The Director of School Education,
College Road, Chennai - 6.
3. The Chief Educational Officer,
Palani Salai, Dindigul - 10.
4. The District Education Officer,
Karur Salai, Dindigul.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, to call for the entire records connected with the impugned proceedings passed by the 2nd Respondent vide Na.Ka.No.011051/D1/E3/2017, dated 08.08.2017 and consequential order of the 4th Respondent vide Aathimu No.5288/A5/2017, dated 27.09.2017, and Aathimu No.5289/A5/2017, dated 27.09.2017, and quash the same and direct the Respondents to approve the appointment of Tmt.S.Helen Pamila - B.T. Tamil with effect from 01.09.2017 and Tmt. Raveena Banu - B.T. English with effect from 01.09.2017 with all consequential benefits by converting the post of Arabic Pandit as B.T. Tamil and B.T. Assistant History as B.T. English.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.V.Annalakshmi
Government Advocate

O R D E R

The Petitioner/School has come up with the present Writ Petition seeking to quash the impugned proceedings of the 2nd Respondent vide Na.Ka.No.011051/D1/E3/2017, dated 08.08.2017 and the consequential order of the 4th Respondent vide Aathimu No.5288/A5/2017, dated 27.09.2017 and Aathimu No.5289/A5/2017, dated 27.09.2017, and for a direction to the Respondents to approve the appointment of Tmt.S.Helen Pamila - B.T. Tamil with effect from 01.09.2017 and Tmt. Raveena Banu - B.T. English with effect from 01.09.2017 with all consequential benefits, by converting the post of Arabic Pandit as B.T. Tamil and B.T. Assistant History as B.T. English.

2. According to the Petitioner, their School was originally started in the year 1971 as a Primary School and upgraded as a Middle School in the year 1977 and that their School is a religious minority Institution, declared by an order dated 24.09.1976 passed by this Court in W.P.No.3054 of 1975. Though the Petitioner/School was upgraded as a Middle School, in spite of several requests, Respondents did not sanction teaching grant and the 3rd Respondent, by an order dated 18.04.1985 rejected their request. Hence, the Petitioner/School filed W.P.No.2368 of 1986, challenging the said order of the 3rd Respondent, rejecting to release grant with regard to one Secondary Grade Teacher, one Graduate Teacher and one Arabic Teacher. By an order dated 30.06.1986, this Court passed an order in the said Writ Petition, directing the Chief Educational Officer, to inspect the Petitioner/School, after notice to the Petitioner and if there is minimum strength of students for 3 teachers, i.e. one Secondary Grade Teacher, one Graduate Teacher, one Arabic Teacher and depending upon that, to pass suitable orders as to the staff grant on or before 10.08.1986.

3. Pursuant to the interim order, the 3rd Respondent visited the School on 04.08.1986, and found that the Petitioner/School is eligible for three posts, i.e. one Secondary Grade, one B.T. Headmaster and one Arabic Teacher and released grant to the 3 Teachers, subject to the final verdict in the said Writ Petition. Subsequently, by an order dated 23.01.1986, the Writ Petition was allowed.

4. In compliance of the said order of this Court, the 1st Respondent passed G.O.(Ms) No.424, School Education Department, dated 31.10.1997, sanctioning three posts to the Petitioner/School, viz. one Secondary Grade Teacher, one B.T. Headmaster and one Arabic Pandit as supernumerary posts with effect from 01.08.1986. Pursuant to the said Government Order, the 3rd Respondent, by proceedings dated 21.04.1988, granted approval for the appointment of one Elizabeth Mary, B.T. Teacher

with effect from 01.08.1986.

5. In the year 1987-88, the Petitioner/School was upgraded as High School. However, the recognition was granted to the High School only in the year 1999-2000, by an order of the 2nd Respondent dated 31.01.2001, without staff grant for IX and X Standards and both Standards are functioning under self-finance scheme. Thereafter, for administrative convenience, the School was bifurcated as Elementary School and High School and both the Schools are maintained by the same Management. By proceedings of the 3rd Respondent, dated 29.10.2001, the following staff were absorbed and since then they are working in the High School.

- (i) Elizabeth Mary, B.T. H.M.,
- (ii) Chandra, Secondary Grade Teacher
- (iii) M.Mary Ambrose, Full-Time PVI Teacher
- (iv) Khadar Mohideen, Arabic Pandit
- (v) A.Basker Visvasam, Secondary Grade Teacher

6. With a view to provide Higher Secondary Course to the poor and needy students, the Management of the Petitioner/School submitted a proposal for upgradation of High School as Higher Secondary School, as early as 27.05.2005. The same was returned on the ground that the School did not have 3 acres of land as per G.O.Ms.No.49, dated 01.03.2007. Against the order of rejection of proposal, dated 03.05.2008, by the 2nd Respondent, the Petitioner/School filed W.P.No.26437 of 2008. Pending the said Writ Petition, the 3rd Respondent had recommended the proposal of the School, by Letters dated 03.04.2009 and 13.04.2009 and by an order dated 30.04.2009, this Court disposed of the said Writ Petition.

7. In the meantime, a vacancy to the post of Arabic Pandit arose, due to the retirement of R.Khadar Mohideen, Arabic Pandit, on 30.06.2015 and a vacancy arose for the post of B.T. History, due to the retirement of A.Elizabeth Mary, B.T. History, on 20.09.2015. However, on extension of service, both of them continued in employment till the end of the academic year, i.e. till 31.05.2016. From 01.06.2016 onwards, the post of Arabic Pandit and B.T. Assistant (History) fell vacant.

8. The grievance of the Petitioner is that the students of their School hail from most downtrodden and Most Backward Class and in the absence of language teachers in their School, education of students is affected. Hence, the Petitioner/School made a representation, dated 16.11.2016 to the 2nd Respondent requesting for conversion of Arabic Pandit post as B.T. Tamil and by further representation dated 23.12.2016, requested conversion of B.T. History post as B.T. English, since both posts are vacant from 01.06.2016. In this regard, the

Petitioner/School sent a reminder dated 17.01.2017 to the 3rd Respondent/Chief Education Officer, Dindigul, through the 4th Respondent/District Education Officer, Dindigul, requesting conversion of two Teaching Posts. However, the 3rd Respondent, by impugned proceedings, dated 23.01.2017, rejected the Petitioner's request for conversion of Arabic Pandit post as B.T. Tamil on the ground that the said Post was sanctioned as supernumerary post with effect from 01.08.1986 as per G.O.(Ms) No.424, School Education, dated 03.10.1997 in compliance of the order of this Court.

9. Aggrieved by the same, the Petitioner/School made a representation dated 12.05.2017 to the 2nd Respondent requesting conversion of Arabic Pandit post as B.T. Tamil and B.T. History post as B.T. English. However, the 2nd Respondent, by impugned proceedings dated 08.08.2017, rejected the request of the Petitioner on the ground that both posts viz. Arabic Pandit and B.T. History, were sanctioned as supernumerary posts by G.O.(Ms) No.424, School Education, dated 03.10.1997.

10. It is the case of the Petitioner that their School is a religious linguistic minority School and no permission is required for conversion of post. In the interest of education of the children, the Petitioner/School made appointment of one S.Helen Pamila, M.A., B.Ed., as B.T. Tamil Teacher on 01.09.2017 in the vacancy caused due to the retirement of Khader Mohideen, Arabic Pandit, on 30.06.2015. Further, one K.Raveena Banu, M.A., B.Ed., M.Phil., was appointed as B.T. English Teacher on 01.09.2017 in the vacancy caused due to the retirement of A.Elizabeth Mary, on 20.09.2015. The Petitioner/School submitted its proposal dated 14.09.2017 to the 4th Respondent for approval of appointment of both Teachers. However, the 4th Respondent, by an order dated 27.09.2017, rejected the proposal on the ground that already the 3rd Respondent rejected the proposal for conversion of post, on 23.01.2017. Hence, challenging the rejection orders passed by the 2nd Respondent and the 4th Respondent, the Petitioner/School is before this Court by way of the present Writ Petition.

11. The 4th Respondent has filed counter affidavit, wherein, it is stated that the Petitioner/School is getting staff grant upto 8th Standard and in the Middle School, five teachers are working viz. one B.T. Science, one B.T. Mathematics, one B.T. Social Science, one Arabic Pandit and one Pre-vocational Instructor and that there is no teacher for languages, English and Tamil. Due to need, the Petitioner/School made a representation to the 2nd Respondent on 16.11.2016, requesting for conversion of Arabic Pandit post as B.T. Tamil and by further representation, dated 23.12.2016,

requested conversion of B.T. History as B.T. English. The District Education Officer, the 4th Respondent herein, by letter dated 14.12.2016, had recommended the proposal for conversion of Arabic Pandit post as B.T. Tamil and for conversion of B.T. History as B.T. English, to the 3rd Respondent, by letter dated 02.03.2017. The 3rd Respondent, by an order dated 23.01.2017, rejected the request for conversion of both posts as B.T. Tamil and B.T. English, on the ground that Arabic Pandit post and B.T. History post were sanctioned as supernumerary posts with effect from 01.09.1986, as per G.O.(Ms) No.424, School Education, dated 03.10.1997, in compliance of the order dated 23.01.1996 passed in W.P.No.2368 of 1986.

12. The said order of rejection, dated 23.01.2017 was communicated to the Petitioner/ School, by letter dated 08.03.2017. The 2nd Respondent, by proceedings dated 08.08.2017, rejected the request of the Petitioner/School for conversion, on the reason that both the posts were sanctioned as supernumerary posts by G.O.(Ms) No.424, School Education, dated 03.10.1997, as per court order. Therefore, according to the 4th Respondent, the order passed by the 2nd Respondent is correct. The three posts were sanctioned by the Government and only after getting order for conversion of the posts, the Petitioner/School can fill up the same. Further, the post of Arabic Pandit was found surplus in the Petitioner/School for the academic year 2017-2018 by proceedings of the 4th Respondent, dated 04.10.2017. Therefore, according to the 4th Respondent, appointments made by the Petitioner/School in the vacant posts of Arabic Pandit and B.T. History, without getting orders for conversion, is illegal and impermissible in law.

13. Learned counsel for the Petitioner contended that sanctioning of Post is to the School and not to the particular person. If a particular person retires, it does not mean that the Post has lapsed. When a Post is sanctioned permanently to a School and the Post is vacant due to retirement/resignation/death, a Minority School is entitled to fill up the vacancy without prior permission. Hence, according to the learned counsel for the Petitioner, the contention of the Respondents that supernumerary post is created for a person, may not be correct.

14. In support of his case, learned counsel for the Petitioner has relied on a decision of the Madurai Bench of this Court, dated 22.06.2017 made in W.P.(MD) No.1853 of 2016, wherein, it is held as under:

"18. Since this Court has already held that the impugned order passed by the third respondent dated 19.05.2014 is invalid and the fifth Respondent is entitled to get conversion of post with effect from the date of application, once it is held that the petitioner is entitled to get conversion of post to enable the fifth respondent to appoint the petitioner in the post of B.T. Assistant (Social Science), it follows that the Petitioner is entitled to succeed to quash the order of fourth respondent rejecting the approval for the appointment of the petitioner with effect from the date of appointment. For all the above reasons, this Writ Petition is allowed. The impugned order of the fifth respondent vide proceedings dated 19.05.2014 in O.Mu.No.1143/A3/2014, and the consequential proceedings of the fourth respondent dated 21.09.2015 in O.Mu.No.4309/AA1/2015, are quashed. Consequently, the respondents 3 and 4 are directed to accord approval to the petitioner's appointment as B.T. Assistant (Social Science) in the fifth respondent school with effect from 12.01.2010 with all service and monetary benefits. The respondents 3 and 4 are directed to complete this exercise within a period of six weeks from the date of receipt of a copy of this order. "

15. Learned counsel for the Petitioner also placed reliance on a Division Bench decision of the Madurai Bench of this Court, dated 14.11.2017 made in W.A.(MD) No.1350 of 2017, wherein, the above order dated 22.06.2017 passed in W.P.(MD) No.1853 of 2016 was challenged. The Division Bench of this Court dismissed the said Writ Appeal, holding as under:

"31. This Court opines that even though the State has the power to regulate Minority Educational Institutions in the interest of 'Efficiency', 'Discipline', 'Health', 'Sanitation', 'Morality', 'Public Order', the impugned proceedings dated 19.05.2014 in O.Mu.No.1143/83/2014, on the file of the Third Appellant and the consequential proceedings dated 21.09.2015 in O.Mu.No.4309/AA1/2015, on the file of the Fourth Appellant, do not come within those parameters and therefore, the

said impugned proceedings interferes with an overall administrative control of the Second Respondent Minority Institution over its staff and abridges/dilutes their right to establish and administer their Educational Institution.

32. Having considered the rival submissions and the order passed by the Learned Single Judge, this Court is of the considered view that there is no infirmity in the order passed by the Learned Single Judge and therefore, the Writ Appeal shall stand dismissed. ..."

16. In reply, learned Government Advocate appearing for the Respondents submitted that firstly, Arabic Pandit post is not a sanctioned post and it is only a supernumerary post and it is found as surplus in the Petitioner/School. She further submitted that though the Petitioner/School, which is a religious minority School, need not get prior permission to fill up the sanctioned post, permission is certainly required for conversion of the post. Hence, according to the learned Government Advocate, the orders passed by the 2nd Respondent and the 3rd Respondent herein, rejecting the request of the Petitioner/School, seeking conversion of post, are legally valid.

17. Heard the learned counsel on either side and perused the materials placed on record.

18. Admittedly, the 3rd Respondent/Chief Education Officer, Dindigul visited the Petitioner/School on 04.08.1986 and found that the Petitioner/School is eligible for 3 posts viz. one Secondary Grade Teacher, one B.T. Headmaster and one Arabic Language Teacher. Pursuant to the order dated 23.01.1986 passed by this Court in W.P.No.2368 of 1986, the 1st Respondent sanctioned the said three posts as 'Supernumerary' Posts with effect from 01.08.1986. सत्यमेव जयते

19. Rule 30-B of the Fundamental Rules of the Government of Tamil Nadu defines 'supernumerary Post' as under:

"(30-B) Supernumerary Post means a person oriented post created for a limited period and for a limited purpose to accommodate a person in certain contingencies."

20. From the records, it is clear that Teachers are required based on the strength of the students. In the case on hand, three posts are sanctioned to the Petitioner/School as 'Supernumerary' Posts. From the material documents, it is seen that one Kavitha, B.T. (Science) Teacher has been appointed in

the Petitioner/School on 12.12.2007 vide the sanctioned post as per G.O.No.424. Though the said Teacher has been appointed in the post of B.T. Science, admittedly, the said Post is not a sanctioned one. That apart, as long as a Post is not a sanctioned one, the Petitioner/School, as a matter of right, cannot seek for conversion. Hence, I find there is no flaw in the orders impugned in this Writ Petition.

21. However, this Court makes it clear that if any request/proposal is made by the Petitioner/School for sanction of the Posts, viz. B.T. Tamil and B.T. English, without being influenced by the orders impugned in the present Writ Petition, the Respondents, taking into account the interest of the students, shall consider the request/proposal of the Petitioner/School and pass appropriate orders.

22. It is further made clear that the Teachers appointed in the Petitioner/School in the post of B.T. Tamil and B.T. English, on 01.09.2017 in the retirement vacancies, shall not be disturbed from their existing post for a period of two months.

The Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected W.M.P.No.34401 of 2017 is closed.

Sd/-
Deputy Registrar(CS)

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Sub Assistant Registrar

(aeb)

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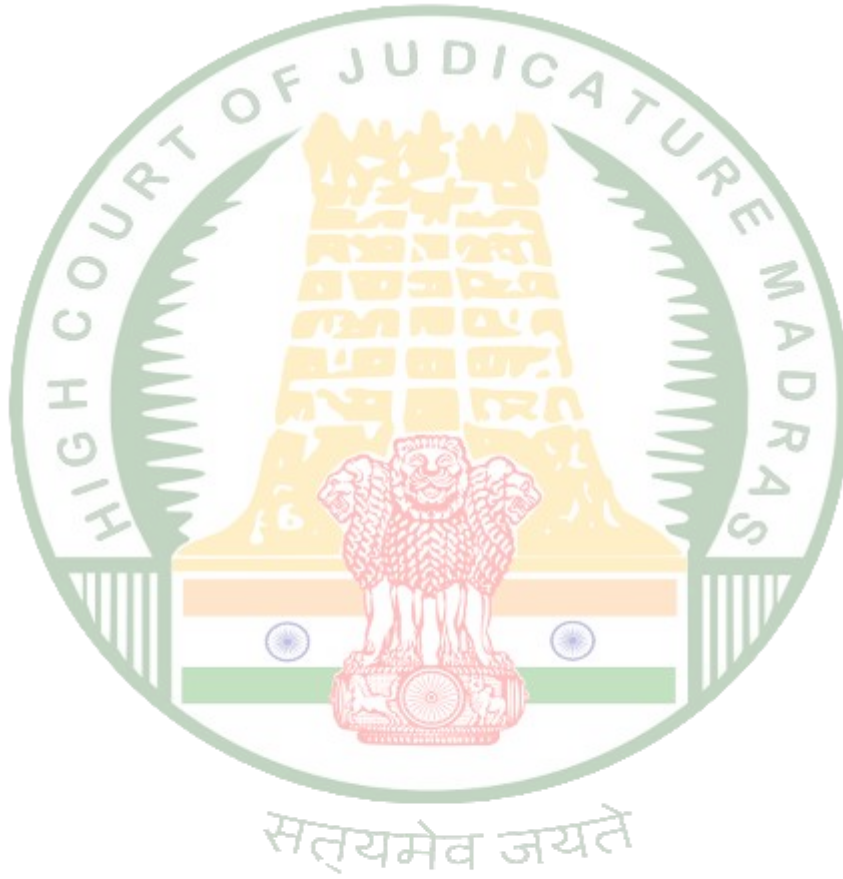
1. The Secretary,
State of Tamil Nadu, Education Department,
Fort St. George, Chennai 600 009.
2. The Director of School Education,
College Road, Chennai - 6.
3. The Chief Educational Officer,
Palani Salai, Dindigul - 10.

4. The District Education Officer,
Karur Salai, Dindigul.

+1cc to Mr.S.N.RAVICHANDRAN, Advocate, S.R.No. 26478

Order in
W.P.No.31316 of 2017

TR(07/05/2018)



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