

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 23.08.2018

CORAM
THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.14810 of 2017 and
W.M.P.No.16052 of 2017

S.Balamurugan

....Petitioner

Vs

1. The District Elementary Educational Officer,
Thiruvarur
2. The Assistant Elementary Educational Officer,
Nannilam, Thiruvarur District
3. The Secretary,
Thangam Aided Middle School,
Nallamangudi,
Thiruvarur District

..Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the entire records connected with the impugned order passed by the first respondent in A.Thi.Mu.No/450/A1/2017, dated 22.03.2017, signed on 06.04.2017 and QUASH the same and consequently DIRECT the respondents to approve the appointment of the petitioner as Secondary Grade Teacher w.e.f. 10.10.2014 in the third respondent school with all consequential benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.P.Kavitha,
Government Advocate for RR1 & 2

: No Appearance for R3

ORDER

The case of the petitioner is that in the third respondent school when a post of Secondary Grade Teacher became vacant consequent upon the promotion of Tmt.V.Jayanthi working in the said post to BT Assistant, an advertisement was made for appointment to the said post pending disposal of permission sought for from the first respondent, to fill up the post. Accordingly, through a due process of selection, the petitioner was appointed on 10.10.2014, but permission was granted on

14.10.2014. Thereafter when the proposal for approval of such appointment of the petitioner was submitted, the first respondent refused to approve the same vide order dated 22.03.2017 on the ground that there was a depleted student strength not justifying such post. Hence, the petitioner came to challenge the impugned order in this writ petition to be illegal and arbitrary with a prayer to direct to accord approval to the appointment of the petitioner.

2. In the counter affidavit filed, the impugned order has been justified on the ground that there being depleted student strength since the year 2016-2017, there was no justification of the post, hence proposal was refused. The learned counsel for the petitioner submits that in the counter affidavit filed, it is not disputed that the petitioner was appointed against a sanctioned post which was vacant on the date of his appointment and there was no depleted student strength. But, the ground for refusal of approval of his appointment is for depleted student strength accordingly in the year 2016-2017. Hence, the learned counsel appearing for the petitioner submits that when the petitioner was appointed against a sanctioned post, when there was justification for his continuance in the said post and undisputably the petitioner's appointment was duly made against the said post, refusal of approval of his appointment by the first respondent on the reasons assigned therefore is illegal and arbitrary. Hence the same be quashed and the first respondent be directed to approve such appointment of the petitioner.

3. The learned Government Advocate appearing for the first and second respondents fairly submits that the rejection of the prayer is for depleted student strength in the year 2016-2017 that is subsequent to the order of petitioner's appointment. Therefore, the same is not a sustainable ground to justify the impugned order.

4. No relief being sought for against the third respondent, no notice was issued to the third respondent.

5. Needless to say that when there is a depleted student strength and persons have already been appointed in a school, Section 26 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 speaks that "where any retrenchment of any teacher or other person employed in any private school is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter (or consequent on the reduction in strength of the pupils studying in any such private school) it shall be competent for the Government or the school committee of any private school to appoint such teacher or other person in any school or

institution maintained by the government or in such private school, as the case may be". In such view of the matter, the petitioner's appointment which was prior to the depleted student strength and regular one being against a sanctioned post, which was vacant then, and the student strength then justifying continuance of the said post, the rejection of the approval of the appointment of the petitioner therefore on the ground of depleted student strength of subsequent year is illegal, arbitrary and therefore cannot be sustained.

6. This Court, therefore quash the impugned order with a direction to the third respondent to resubmit the proposal for approval of the petitioner's appointment to the first respondent, who shall within six weeks of receipt of such proposal accord approval to the appointment of the petitioner, if the papers are in order, but the respondents are at liberty to redeploy the petitioner in any other place. However if presently the student strength of the school is justifying the continuance of the post, the petitioner shall also be allowed to continue in the same place.

7. With the aforesaid order, this writ petition stands disposed of being allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Elementary Educational Officer,
Thiruvarur
2. The Assistant Elementary Educational Officer,
Nannilam, Thiruvarur District
3. The Secretary,
Thangam Aided Middle School,
Nallamangudi, Thiruvarur District.

+1cc to Mr.S.N.Ravichandran, Advocate, SR.No.57720
+1cc to The Government Pleader, SR.No.57907

MR(CO)
rrs(16/10/2018)

W.P.No.14810 of 2017