

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.4714 of 2010
and
M.P.No.1 of 2010

Y.Thangababy

.. Petitioner

Vs.

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

2.The Director of Elementary Education,
College Road, Chennai-6.

3.The Assistant Elementary Education Officer,
Pappagudi.

4.The Correspondent,
T.D.T.A. Primary & Middle School,
Divine Grace Personage,
34/E, Vellodai Street,
Mukkadal.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the Respondents 1 to 3 to consider the claim of the petitioner for approval of her appointment as Sewing Teacher in the 4th respondent's school and to extend all service benefits from the date of her appointment.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Mrs.M.E.Rani Selvam (for R1 to R3)
Additional Government Pleader

No Appearance (for R4)

O R D E R

The petitioner has filed a Writ of Mandamus or any other appropriate writ or order or direction in the nature of a writ directing the respondents 1 to 3 to consider the claim of the petitioner for approval of her appointment as sewing teacher in the 4th respondent's school and to extend all service benefits from the date of appointment.

2.The case of the petitioner is that she qualified in needle work and dress making and embroidery during 1987 and thereafter she also obtained TTC in sewing in 1989, she has registered her craft qualification with the District Employment Office. In the 4th respondent school a full time sewing teacher post fell vacant due to the retirement of Mrs. Julient Dharmakkami. For the said post applications are invited by the 4th respondent school and the petitioner has applied for the said post and participated in the selection process and she was selected on merits by the selection committee and she was appointed as sewing teacher on 11.08.2008 by the 4th respondent school. She was placed for probation for a period of 2 years. The 4th respondent school sent the proposal for approving the petitioner's appointment as sewing teacher to the 3rd respondent and the said proposal was returned on 13.03.2009 by the DEEO stating that the school was having the students' strength less than 150 and therefore the appointment of the petitioner cannot be approved as per the dictum of the Full Bench of this Hon'ble Court. In this regard a clarification was sought for from the Director of Elementary Education and therefore the claim of the petitioner cannot be considered.

3.The further case of the petitioner is that on coming to know about the above said proceedings, the petitioner submitted an appeal memorandum on 16.07.2009 to the 1st respondent with a request to consider her claim of approval of her appointment. The said appeal is pending with the 1st respondent without seeing the light of the day. The further case of the petitioner is that, in similar circumstances this Hon'ble Court in W.P.Nos.3776 & 13841 of 2007 dated 12.02.2008 held that declining approval on the ground of non-availability of minimum strength is without any basis and thereby directed to approve the appointment of the petitioners therein. The petitioner herein is also similarly placed person like that of the petitioners in the above Writ Petition and therefore the petitioner's appointment ought to have been approved by the respondents in the light of the above judgment.

4.It is contented by the petitioner that the 4th respondent school is having sanctioned strength of 5 posts. As per the dictum of the Full Bench of this Hon'ble Court every section/class should have one teacher. As on 10.10.2008 the 4th respondent school was having the total strength of 160 students with 8 classes. Therefore the petitioner contended that the non-approval of her appointment is a clear case of arbitrary exercise of power which violates Article 14, 16 & 21 of the Constitution of India. Hence the petitioner has come up with this Writ Petition seeking to issue a Writ of Mandamus against the respondents 1-3.

5.The 3rd respondent has filed counter affidavit contending that the petitioner's appointment was not in conformity with rules and regulation. The 4th respondent has made illegal appointment and submitted proposal seeking to approve the above said illegal appointment to the DEEO of Tirunelveli. It is pertinent to note that in G.O.Ms.No.525 School Education dated 29.12.1997 norms for craft teacher posts are not covered. Further the 4th respondent school has committed illegality in the appointment of the petitioner by disregarding the norms in G.O.Ms.No.132 School Education Department dated 27.04.1998. The proposal received from the 4th respondent school seeking approval for the irregular appointment of the petitioner was returned by the DEEO, Tirunelveli in his proceedings dated 13.03.2009 by stating that the proposal could be considered on receipt of clarification from the 2nd respondent.

6.It is further submitted by the 3rd respondent that the orders passed in W.P.Nos.3776 and 13841 of 2007 dated 12.02.2008 are required to be reviewed since the policy of the Government is brought out in G.O.Ms.No.132 School Education Department dated 27.04.1998 fixing minimum students strength of 250 girls students for allowing to fill up craft teacher vacancies remains undisputed and it cannot be challenged as it restricts only 2 periods per week to teach craft teacher subjects are allowed. Hence in the middle schools which are having pupil strength below 250 and only one section in each of 6-8 standards. Only 6 periods are available to teach craft subjects which mean mere 4 hours of work for a week.

7.However, as per the lient norms to take pupils strength combining all the standards which have low pupils strength as prescribed in G.O.Ms.No.525 School Education dated 29.12.1997 the 4th respondent school is allowed one headmaster post and three teacher posts. The fixation of one craft teacher post

would be utilized only when the combined pupils strength in 6 to 8 standards exceeds 250. Therefore the filling up the craft teacher post that is fixed to the school is subject to the fulfillment of condition stipulated in G.O.Ms.No.132 School Education Dated 27.04.98. Therefore non approval of illegal appointment of the petitioner by the fourth respondent by violating G.O.Ms.No.132 School Education Dated 27.04.98 for the personal gains is legal and valid and the claim to approve the illegal appointment is against law.

8.I heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the respondents 1 to 3 and perused the entire records. There is no representation on behalf of the 4th respondent.

9.I have carefully considered the case of the petitioner and the respondents. In this case, according to the petitioner she was appointed as Sewing Teacher in the permanent vacancy arose due to the retirement of Mrs. Juliati Dharmakkani in the 4th respondent school on 11.08.2008. The petitioner's appointment was sent for approval to the official respondent which was returned by the DEEO, Tirunelveli on the ground saying that the 4th respondent school is having the student strength less than 150. Therefore they have sought clarification from the Director of Elementary Education, Chennai. But there is no progress in approving the appointment of the petitioner.

10.The Learned Counsel for the petitioner would contend that in identical circumstances this Hon'ble Court by its order made in W.P.No.1603 of 2011 dated 08.06.2017 in the case of C. Jebasingh -Vs- The Additional Assistant Elementary Educational Officer and 2 Others, held as follows:

"3. The refusal to approve the appointment on the ground of lack of students strength cannot be sustained in view of the judgment of the Division Bench of this Court in W.A(MD).No.703 of 2009 dated 01.02.2011 wherein it was made clear that the approval sought for to a sanctioned post cannot be refused on the ground of fall in students strength. The Division Bench in the said decision has followed the earlier decision of this Court in W.A(MD).No.1263 of 2001.

4. Insofar as the other grounds on which the application seems to have been returned, Mr.S.Chellapandian, learned counsel for the petitioner would submit that even assuming the promotion is not

approved, the respondents cannot reject the approval for the appointment of the petitioner as the post of vocational instructor (sewing) has fallen in vacant and it should be allowed to fill up the sanctioned post. I am in entire agreement with the submission of the learned counsel for the petitioner. Once it is admitted that the post of vocational instructor (sewing) is a sanctioned post and the same is borne out by the staff fixation report for the years 2008-2009, 2009-2010 and 2010-2011, the authorities cannot refuse to approve the appointment.

5. In the counter affidavit, it is claimed that as per G.O.Ms.No.132, dated 27.04.1998 a minimum of 250 students is required for the purpose of appointment of vocational instructor. The said Government order would apply only to Government schools. In G.O.Ms.No.104, dated 12.07.2002, it is made clear that the Government aided schools can fill up the posts which fell vacant after the date of the said Government order.

6. From the records, it could be seen that the post became vacant only during the year 2000 and the petitioner was appointed to a sanctioned post which fell vacant after issuance of G.O.Ms.No.104 dated 12.07.2002.

7. In the light of the above, this writ petition is allowed and the respondents are directed to approve the appointment of the petitioner with effect from 11.12.2008 namely, the date on which he was appointed and pay the arrears of salary and other service and monetary benefits due and payable to the petitioner. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P(MD).No.1 of 2011 is closed".

11.The learned counsel by placing reliance upon the above judgment of this Court, draw my attention to the principle laid down in the said judgment that the appointment made after issuance of G.O.Ms.No:104 dated 12.07.2002 will have to be approved, since the sanctioned post to which the petitioner was appointed after the said G.O.

12.Per contra, the Learned Counsel for the respondents 1 to 3 would contend that since the petitioner school is not having the required students strength as per G.O.Ms.No.525 School Educational dated 29.12.1997, the petitioner's appointment cannot be approved to the post of craft teacher/sewing teacher.

Further, the learned counsel for the official respondents argued that the above said judgment is liable to be reviewed. But to substantiate their contention they have not produced any records to show that they have taken steps to review the above Judgment. As on today the said judgment is hold good.

13.Now this Court has to consider the case of the petitioner in the light of the judgment relied on by the Learned Counsel for the petitioner. This Court has carefully perused the above said judgment wherein this Court after referring the judgment of the Division Bench of this Court rendered in W.A.No.703 of 2009 and W.A.No.1263 of 2001, has clearly held that a minimum students strength is required for the purpose of appointment of vocational instructor as per G.O.Ms.No.132 School Education Dated 27.04.98 will be applicable only to Government Schools. In view of G.O.Ms.No.104 dated 12.07.2002, the Government aided schools can fill up the post which fell vacant after the date of the said Government order. In the present case on hand the post of sewing teacher fell vacant only in the year 2008 i.e. much after the date of the above said Government Order and therefore the above said judgment of this Court is squarely applicable to the facts and circumstances of the present case on hand.

14.In view of the above, this Court has no hesitation to hold that the petitioner's appointment to the post of sewing teacher is perfectly valid and the same is also a sanctioned post and therefore the respondents are bound to approve the appointment of the petitioner from the date of her appointment.

15.In the result:

(a) this writ petition is allowed;

(b) this Court issue a direction to the respondents 2 and 3 herein to approve the appointment of the petitioner as Sewing Teacher with effect from 12.08.2008 and to pay all attendance and monetary benefits to the petitioner;

(c) the said exercise has to be carried out by the respondents 2 and 3 within a period of four weeks from the date of receipt of a copy of this order. There is no order as to cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

vs

To

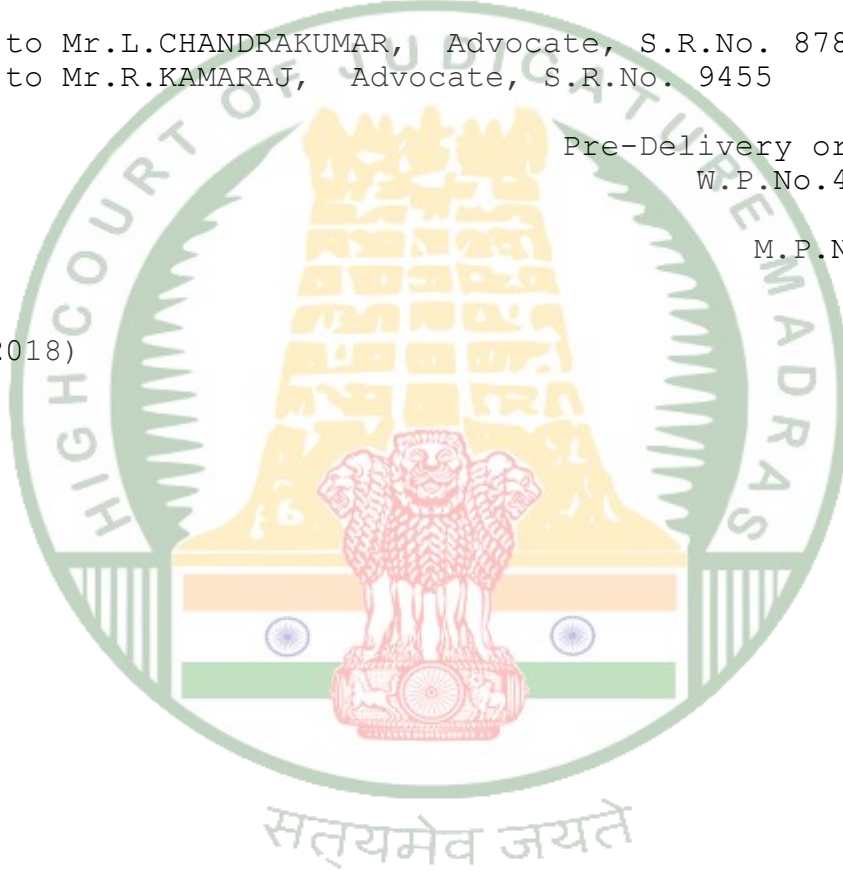
- 1.The Secretary to Government,
Education Department,
Fort St. George, Chennai-600 009.
- 2.The Director of Elementary Education,
College Road, Chennai-6.
- 3.The Assistant Elementary Education Officer,
Pappagudi.

+1cc to Mr.L.CHANDRAKUMAR, Advocate, S.R.No. 8783

+1cc to Mr.R.KAMARAJ, Advocate, S.R.No. 9455

Pre-Delivery order made in
W.P.No.4714 of 2010
and
M.P.No.1 of 2010

RJ(CO)
TR(01/03/2018)



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