

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM:

THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.No. 13746 of 2018

and

W.M.P.No.16218 of 2018

Ramalingam Aided Middle School,
Represented by its Manager K.Ravindranath,
Saidapet,
Vellore - 12.

...Petitioner

Vs

1. The Director of Elementary Education,
College Road,
Chennai-6.
2. The District Elementary Educational Officer,
Vellore District.
3. The Assistant Elementary Educational Officer,
Vellore Urban, Konnavattam,
Vellore - 13.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the second respondent in Na.Ka.No.1207/A2/2018, dated 23.04.2018 and to quash the same and consequently to direct the 2nd respondent to upgrade the vacant post of secondary grade as B.T.Assistant (Mathematics) and grant permission to fill up the post on the basis of the proposal submitted by the school dated 03.05.2017.

For Petitioner : Mr.S.N.Ravichandran
For Respondents : Mrs.V.Annalakshmi
(Government Advocate)

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O R D E R

The petitioner has filed this writ petition challenging the impugned order passed by the second respondent/The District Elementary Educational Officer in Na.Ka.No.1207/A2/2018, dated 23.04.2018 and consequently to direct the second respondent to upgrade the vacant post of Secondary Grade as B.T. Assistant (Mathematics) and grant permission to fill up the post on the basis of the proposal submitted by the school, dated 03.05.2017.

2. Brief facts stated in the affidavit filed in support of the petition are as follows:

The petitioner is the Manager of Ramalingam Aided Middle School. The school is receiving grant in aid from the Government and has got permanent recognition. There are 282 students studying in the school. The school has got one Head Master, one B.T. Assistant (English), fifteen secondary grade teachers and two vocational teachers. The Government passed an order in G.O.Ms.No.79, School Education Department, dated 14.06.2002, upgrading the secondary grade post of English, Mathematics and Science in the middle school section as B.T. Assistant posts in all aided middle schools. The Government has also directed the Management to appoint persons with B.Ed., qualification to the post of B.T. Assistant in English, Mathematics and other Science disciplines for the vacancies arising on or after 01.06.2002.

3. It is an admitted fact that one Secondary Grade teaching post fell vacant in 2010. The petitioner school appointed one Mr.R.Seeyalanathan as B.T. Assistant (English Teacher) on 21.04.2011. The petitioner school submitted a proposal, dated 15.09.2011 for approval. The second respondent/The District Elementary Educational Officer refused to approve the said appointment on the ground that the school was in need of B.T. Assistant in Mathematics and conversion of a Secondary Grade Teacher post into one as B.T. Assistant (English), is neither required nor appropriate.

4. However, the petitioner school has filed a writ petition in W.P.No.9928 of 2012, challenging the order passed by the second respondent, dated 06.06.2012 rejecting the petitioner's application to convert the Secondary Grade Teacher post into one as B.T. Assistant (English). This Court passed an order, dated 06.06.2012 in the said writ petition in the following lines:

"5. Here, in this case, the Department has upgraded the Secondary Grade Teacher post to B.T. Assistant post. However, a direction was issued to appoint B.T. Assistant in Mathematics subject. The requirement of the school is B.T. Assistant (English). It is also to be borne in mind that the Management is undertaking to appoint B.T. Assistant (Mathematics) in the future vacancy. The said submission made by the Management is recorded.

6. Following the judgments referred above, the impugned order is set aside and a direction is issued to the second respondent to approve the appointment of R.Seeyalanathan as B.T. Assistant (English) from the date of

appointment 21.04.2011 and necessary order is directed to be passed by the second respondent, within a period of six weeks from the date of receipt of a copy of this order."

5. From the above judgment, it is seen that based on the undertaking that the Management will appoint B.T. Assistant (Mathematics) in the future vacancy, the writ petition was disposed of. The specific stand taken by the respondent that the requirement of the school can only be as per the Roster prescribed in G.O.(Ms).No.100 was disapproved and it is held that fixing subject Roster is not applicable to aided schools. The proceedings of the Directorate of School Education fixing subject Roster was held in applicable to aided schools. Thereafter, there was another vacancy, due to the retirement of another Secondary Grade Teacher by name Tmt.Thara. It was stated that in view of the undertaking given by the petitioner in the previous writ petition, the second respondent ought to have upgraded the Secondary Grade Teacher post as B.T. Assistant (Mathematics), as per the G.O.(Ms).No.79, dated 14.06.2002. However, by the impugned order, the second respondent has informed the petitioner and 3 other schools that the posts of surplus teachers cannot be filled after the retirement of incumbent.

6. It is pertinent to note that the second respondent has found that there are surplus teachers in the school and that those surplus posts without teachers should be surrendered to the Government as per earlier Government Orders. In the impugned order, it is therefore pointed out that surplus teacher posts should be surrendered and no fresh appointment can be allowed to fill up the vacant posts. It is also the factual position that as on the date of impugned order there were 9 surplus teachers and today the number of surplus teacher has increased from 9 to 10. The petitioner is merely relying upon the judgment of this Court in the earlier writ petition, wherein the petitioner has undertaken to fill up the next vacancy by B.T. Assistant in (Mathematics).

7. The learned counsel for the petitioner submitted that the order passed by the second respondent directing the school to surrender the surplus post is only to circumvent the order passed in W.P.No.16888 of 2007. The learned counsel further submitted that the petitioner school is entitled for 5 B.T. Assistant posts and that now there is shortage of one such post and hence the petitioner school made a proposal to fill up the vacant post. It is further submitted that the respondent has not considered the genuine request of the school and passed an order, which will affect the educational standard of the students studying in the institution. Accordingly, learned counsel submitted that conversion of post is necessary.

Therefore, the learned counsel prays that the writ petition may be allowed and the impugned order may be set aside.

8. The learned counsel for the respondent, on the other hand, would contend that the school management is misusing the power again to appoint teachers. The learned counsel brought to the notice of this Court that one of the sons of the correspondent of this school was appointed as B.T. Assistant (English).

9. The earlier writ petition in W.P.No.16888 of 2017 was indeed filed only under the pretext that there was a need for B.T. Assistant (English). In reality, it was only to appoint the son of the Correspondent.

10. Heard both sides and perused the materials available on record.

11. It is seen from the records that the school has surplus teachers. At present there are 20 teachers working in the school. The petitioner's school is entitled to only 10. Therefore, there are 10 teachers in surplus in the school. Admittedly, the school is only a middle school. The teachers appointed are all graduates and post graduates. The subject of Science and Mathematics are part of curriculum for every teacher. Therefore, they would be in a position to teach the students the basic Science and Mathematics at Middle School level, and if the impugned order is set aside, the number of surplus teachers would only increase. Admittedly, the school is an aided school and the teachers are paid salary from the public funds. The Court cannot close its eyes and entertain writ petition of this nature. The petitioner has not made out any case for entertaining this writ petition. The respondents are directed to take steps to deploy surplus teachers in other school where there is need.

12. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

msm

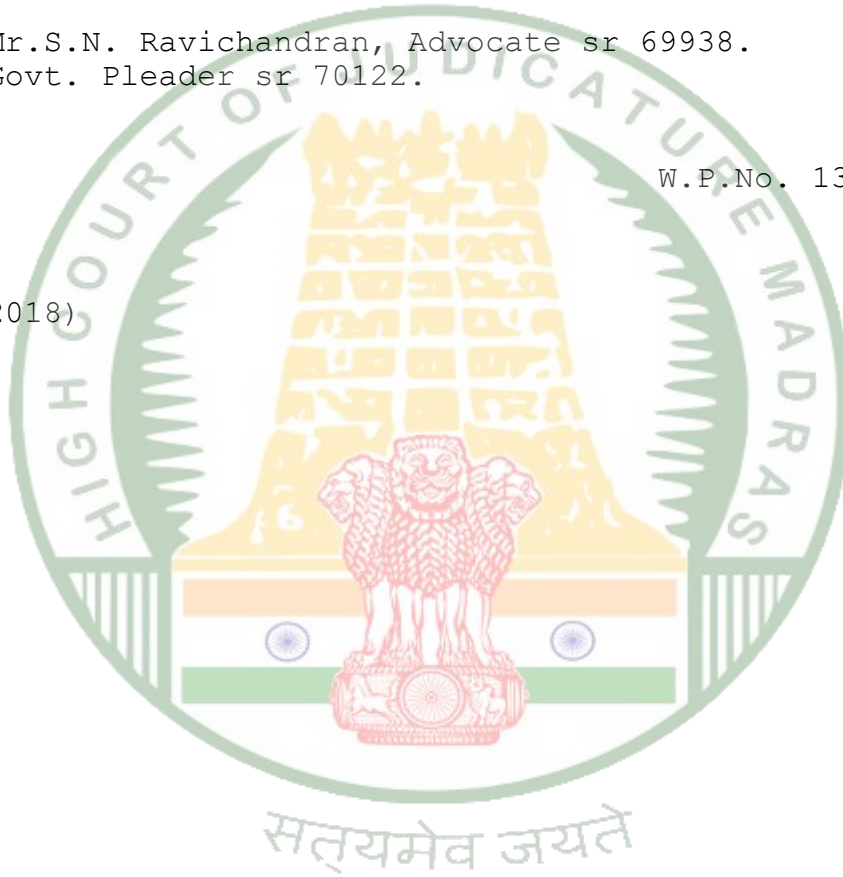
To

1. The Director of Elementary Education,
College Road, Chennai-6.
2. The District Elementary Educational Officer,
Vellore District.
3. The Assistant Elementary Educational Officer,
Vellore Urban, Konnavattam, Vellore - 13.

+1 CC to Mr.S.N. Ravichandran, Advocate sr 69938.
+1 CC to Govt. Pleader sr 70122.

W.P.No. 13746 of 2018

RSK(CO)
SP(08/11/2018)



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