

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP No.23670 of 2008 and MP.2 of 2008
and WP No.28713 of 2008

WP No.23670 of 2008

R.Sankar,
Secondary Grade Teacher,
Ghouthia Higher Secondary School,
Thaikal Street, Nagore 611 002
NagapattinamPetitioner

Vs.

- 1.The Director of School Education,
(Secondary Education),
College Road, Chennai - 6
2. The Joint Director of School Education,
(Secondary Education),
College Road, Chennai 6
3. The Chief Educational Officer,
Nagapattinam,
Nagapattinam District.
4. Ghouthia Higher Secondary School,
Education Administrative Committee,
Rep. By its Secretary,
Thaikal Street,
Nagore 611 002,
Nagapattinam

... Respondents

WP No.28713 of 2008

Ghouthia Higher Secondary School,
Education Administrative Committee,
Rep. By its Member,
Mr.Abu Talha, Thaikal Street,
Nagore 611 002
Nagapattinam

....Petitioner

Vs.

- 1.The Director of School Education,
(Secondary Education),
College Road, Chennai - 6
2. The Joint Director of Shool Education,
(Secondary Education),
College Road, Chennai 6
3. The Chief Educational Officer,
Nagapattinam,
Nagapattinam District.
4. R.Sankar,
Secondary Grade Teacher,
Ghouthia Higher Secondary School,
Thaikal Street, Nagore 611 002
Nagapattinam ...Respondents

Prayer in WP No.23670 of 2008:-
Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Na.Ka.No.29061/G1/E3/2008 dated 18.04.2008, and quash the same and direct the 1st respondent to approve the petitioner's appointment as Secondary Grade Teacher in the 4th respondent school.

Prayer in WP No.28713 of 2008:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Na.Ka.No.29061/G1/E3/2002 dated 18.04.2008 and quash the same and direct the 1st respondent to approve the appointment of MR.R.Sankar/4th Respondent herein as Secondary Grade Teacher in the 4th Respondent School.

For petitioner in 28713 of 2008: Mr.J.Vepparasu
For Petitioner in 23670 of 2008 : Mr.N.Jothi,

For Respondents
in WP.No.28713 of 2008 : Mr.P.Raja,
Senior Counsel
for M.C.Govindan
Government Advocate
for R1 to R3
Mr.N.Jothi, SC
for M/s.M.C.Govindan
for R4

For Respondents
in WP.No.23670 of 2008 : Mr.P.Raja,
Government Advocate
for R1 to R3

COMMON ORDER

Both the writ petitions, one, i.e., W.P.No.23670 of 2008 is at the instance of the employee and the other, i.e., W.P. No.28713 of 2008 is at the instance of the School Management, are heard together and are disposed of by this common order. For convenience, Management (writ petitioner in W.P. No.28713 of 2008) hereinafter referred to as the Respondent No.4.

2. It appears that the Ghouthia Higher Secondary School is a Minority Aided Government Educational Institution approved under the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. The School had eight sanctioned post of teachers. It is the case of the petitioner in W.P. No.23670 of 2008 that he was appointed by the Administrative Committee against a sanctioned post as a Secondary Grade Teacher on 16.03.1998 and a proposal was sent through the 3rd respondent to the 1st respondent for approval of such appointment. However, pending disposal of such proposal, on the allegation that the School has reduced strength, 3 posts were surrendered vide G.O. No.523 in the year 2000. Though in the meanwhile due to increase of student strength, three posts were revived, but teachers were deployed against such post. Withholding the approval of the writ petitioner, the Respondent No.4-Management as such challenged the surrender of such posts, non-approval of the writ petitioner as well as the re-deployment of 3 teachers from another High School against the said post by the Respondent No.4-Management in W.P. No.28713 of 2008.

3. The stand of the Respondent No.1 in the writ petition is that since there was reduced strength of students, the posts were surrendered vide the aforesaid G.O. Before such surrender, there was no proposal pending with the Government appointing the writ petitioner against any sanctioned post. It is only after surrender of the post, such proposal was received. Therefore, the writ petitioner's appointment prior to surrender being a disputed one and also after surrender of the post the proposal for approval of his appointment could not have been accorded, the writ petitioner, as such, has no case. So far as redeployment of teachers, after revival of the post due to subsequent increase of the strength is concerned, the Government being competent to re-deploy against the said post from among the surplus teachers from any other institutions, the case of the Respondent No.4-Management challenging the same is without

any substance. Otherwise also, there being no material indicating the petitioner's appointment, the writ petitioner have no case.

4. Learned counsel appearing for the writ petitioner would submit that there being no materials on record indicating his appointment prior to surrender against a sanctioned post, the prior sanction of the authority being not required for appointment against such post in view of the settled position of law in this regard, the Authority could not have sat over the proposal of approval of his appointment against the sanctioned post on the ground that the post has already been surrendered. If at all due to the reduced strength, the posts were surrendered, he could have been adjusted in any of the Schools in view of Section 26 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 after approving his post. Furthermore, it is also his submission that since he is continuing in the said School by virtue of an interim order and in the meantime the vacancy exists there still in that School, the proposal for his appointment be approved even if not from the date of his appointment but from a subsequent date, i.e., the day when vacancy occurred after retirement of person or transfer of any person posted against such post or he be re-deployed in any other School in view of the provisions contained in Section 26 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 approving his appointment. The Respondent No.4-Management also supports such stand of the writ petitioner.

5. Per contra, learned counsel appearing for the Respondent Nos.1 to 3, however, seriously disputes that the petitioners could have been appointed against any sanctioned vacancy prior to surrender of the said post vide said G.R.O. It is the specific case of the petitioners that no such proposal was sent to the Respondent to accord approval to such appointment of the petitioner against any sanctioned post. It is only after surrender of the post, such proposal was received. There being no post and also the School is not justified any appointment of such teacher in view of the decreased student strength, the same was not approved. However, when subsequently student strength increased, three posts were revived and teachers from other Institutions were redeployed to the respondent school. In such circumstances, the petitioner's be continuing by virtue of an interim order, being illegally appointed, has no case to be approved against any sanctioned post, even if in the meanwhile vacancy has occurred from a prospective date also. So also, for that reasons he is not entitled to re-deployment, under Section 26 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 prescribes the same.

6. Needless to say that before appreciating the contention of the learned counsel for the petitioner, it would be apposite to mention here that no prior approval of the respondent is required, especially in an Aided Minority Educational Institution like the respondents school to appoint a secondary grade teacher against a sanctioned post is well settled in law. However, Section 26 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 reads as thus :

"Section 26 : Absorption of Teachers or other persons on retrenchment - 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 pupil's 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".

7. Drawing notice of this Court to the provision of law, it has been submitted that since the appointment of the petitioner against sanctioned post, even if the same was declared to be surplus and surrendered, his appointment should have been approved and he should have been granted the benefit of Section 26 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 by redeploying him in any other school, but the same was illegally not granted to him. However, when the post was subsequently revived at least at that point of time, his appointment should have been approved, but the Respondent, according to the petitioner, illegally redeployed teachers from any other School and did not approve the petitioner in the meanwhile. However, vacancy having been created, the service of the petitioner be approved from the date of vacancy occurred. The same has also been submitted by the Management. As stated earlier, the same has been disputed to be without any substance as there is no proof that the petitioner was appointed against a sanctioned post inasmuch as no proposal was received for approval of his appointment before the surrender of the post and it is only after surrender of the post, such a proposal was received as such the petitioner appears to have no case.

8. Considering the fact that there is a serious dispute with regard to appointment of the petitioner against any sanctioned post and no specific material is produced before this Court indicating the appointment of the petitioner prior to the aforesaid surrender and also the proposal for approval was received prior to the post, but the petitioner appears to be continuing in the said School and the Management has taken a

stand that he was appointed prior to surrender, so also, the post having been revised and the petitioner submits for a prospective approval when the vacancy occurred, this Court dispose of both the writ petitions with a direction to the 1st Respondent to make an enquiry examining the materials available on record and if it finds that the petitioner was in fact appointed against any sanctioned post prior to surrender of the same, to approve his appointment by re-deploying him in any other School if the post was not available in the School concerned and release the benefit or approved prospectively from a date the vacancy occurred in the Respondent No.3-School as the petitioner is ready and willing for the same. However, it is made clear that the direction in this regard should not be construed as an expression of any opinion of this Court on the merit of the writ petition with regard to approval of appointment. The aforesaid decision shall be taken by the 1st respondent within a period of two months from the date of receipt of copy of this order.

9. Accordingly, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Director of School Education,
(Secondary Education),
College Road, Chennai - 6
2. The Joint Director of Shool Education,
(Secondary Education),
College Road, Chennai 6
3. The Chief Educational Officer,
Nagapattinam,
Nagapattinam District.

+2cc to Mr.M/s.M.C.Govindan, Advocate, S.R.No.13195
+1cc to the Government Pleader, S.R.No.14065

WP No.23670 of 2008
and
WP No.28713 of 2008

nr 17/05/2018