

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 19.04.2018

CORAM:**THE HON'BLE MR.JUSTICE R.SURESH KUMAR****W.P. (MD) No.7966 of 2018****and****W.M.P (MD) Nos.7575 & 7576 of 2018**

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The Correspondent,
Arockia Annai Primary School,
Arockiapuram,
Kanya Kumari District.

...Petitioner

Vs.

1) The Director of Elementary Education,
College Road, Chennai 600 006.

2) The District Elementary Educational Officer,
Nagercoil -629 001,
Kanya Kumari District.

3) The Assistant Elementary Educational Officer,
Suchindram, Kanyakumari District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent Assistant Elementary Educational Officer in A.Thi.Mu.No.573/16 dated 05.03.2018 and quash the same and further direct the 2nd respondent District Elementary Educational Officer to approve forthwith the appointment of A.Joyce as Secondary Grade Teacher in the petitioner's School namely, Arockia Annai Primary School, Arockiapuram, w.e.f., 01.06.2016 and disburse the grant-in-aid towards her salary and allowances w.e.f., the said dated with all attendant benefits.

For Petitioner : Ms.A.Amala

For M/s Isaac Chambers

For Respondents : Mr.K.Saravanan,

Government Advocate.

ORDER

The prayer sought for in this Writ Petition is to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent/Assistant Elementary Educational Officer in A.Thi.Mu.No.573/16 dated 05.03.2018 and quash the same and further issue a direction to the 2nd respondent/District Elementary Educational Officer to approve forthwith the appointment of A.Joyce, as Secondary Grade Teacher in the petitioner's School namely, Arockia Annai Primary School, Arockiapuram, w.e.f., 01.06.2016 and disburse the grant-in-aid



towards her salary and allowances w.e.f., the said date with all attendant benefits.

2. Heard Ms.A.Amala, learned counsel appearing for the petitioner and Mr.K.Saravanan, learned Government Advocate appearing for the respondents.

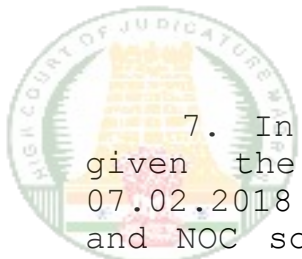
3. The short facts, which are required to be noticed for the disposal of the writ petition, are as follows:

The petitioner's School viz., Arockia Annai Primary School, Arockiapuram is one among the 109 recognised Minority Educational Institutions established and administered by the Roman Catholic Diocese of Kottar, (in short R.C.D., Kottar). The petitioner's School was established as a Primary School in the year 1979. It is a recognised and aided School. The petitioner's School is offering education for standards I to V. Since the entire staff grant is given by the State Government for every academic year, the staff strength is fixed by the Authorities concerned. Accordingly, the staff strength for the Academic Year 2015 - 2016 was fixed by the respondent Department by its proceedings dated 04.02.2016, wherein, three posts of Secondary Grade Teacher was sanctioned to the petitioner's School.

4. In the year 2016, due to the promotion of one Mariaselvi on 31.05.2016, the said post became vacant, wherein one A.Joyce as Secondary Grade Teacher w.e.f., 01.06.2016 was appointed.

5. In the subsequent year also (i.e.,) for the year 2016-17, the teaching staff strength of the petitioner's School was fixed, wherein also, the three Secondary Grade Teachers already sanctioned to the petitioner's School was retained. In such circumstances, the said appointment made in one of the Secondary Grade Teacher post, which was made vacant, as the erstwhile incumbent was promoted as stated above, the approval proposal has been forwarded to the second respondent through the third respondent on 03.08.2017 by the petitioner's School, with all relevant documents.

6. However, the third respondent, by proceedings dated 11.09.2017 returned the said proposal giving four reasons. According to the said written memo / order passed by the third respondent, the first reason for such a rejection/ returning of proposal was that, the petitioner's School did not get No Objection Certificate(NOC) from the Bishop of the Roman Catholic Diocese of Kottar, as under the said Management, number of Schools were functioning including the petitioner's School, to that effect that, in any of such School there is no excess staff. The further reason of the third respondent is that, the incumbent appointed was not qualified with TET (i.e.,) Teacher's Eligibility Test. The third and fourth reasons are that, certain documents, such as, the stability certificate, fire service certificate etc., were not annexed and also the said incumbent namely A.Joyce was not working under the petitioner's School.



7. In response to the said written memo, the petitioner had given the rectified proposal and resubmitted the same dated 07.02.2018 stating that the documents sought for have been annexed and NOC sought for, from the R.C.D., Kottar is not required to be annexed as the Teacher's strength sanctioned for the petitioner School concerned and the Teacher appointed need not have the qualification of TET, as the petitioner's School is a minority institution.

8. This time, on receipt of such rectified proposal dated 07.02.2018 from the petitioner's School, the third respondent, by the impugned order, had once again rejected the proposal by stating one reason that, the NOC or a certificate stating that, there is no excess staff in any of the Schools run by the very same Management (i.e.,) R.C.D., Kottar has not been obtained and annexed along with the proposal and unless and until such a certificate is obtained and annexed, the proposal sent by the petitioner shall not be considered and therefore, it is rejected. This order of rejection dated 05.03.2018 passed by the third respondent is impugned herein in the present Writ Petition.

9. Ms.A.Amala, learned counsel appearing for the petitioner, makes a submission that, insofar as the present reason of certificate from the Bishop of the Roman Catholic Diocese of Kottar stating that, there is no excess staff available in any of the School run by the very same R.C.D., Kottar is concerned, that condition itself is unlawful and unjustifiable because, the teaching staff strength is sanctioned by the Competent Authorities for the petitioner's School alone, based on the Teacher-Pupil ratio available at the petitioner's School. In this regard, the learned counsel appearing for the petitioner, very much relied upon the staff fixation made by the Competent Authorities for the Academic Years 2015 - 16 and 2016 -17, by proceedings dated 04.02.2016 and 20.04.2017 respectively. It is the further submission of the learned counsel for the petitioner that, the very same copy of the staff fixation order was in fact sought for by the third respondent at the first time of returning of the proposal dated 11.09.2017.

10. The learned counsel would further submit that insofar as the alleged availability of excess staff in other Schools run by the very same Management is concerned, that issue cannot be resolved by the petitioner's School as, if at all the respondents find any excess staff in any of the Schools run by the Management (i.e.) R.C.D., Kottar, suitable action can be taken only by the authorities concerned. In this regard, the learned counsel for the petitioner would invite the attention of this Court to G.O.Ms.No.525, School Education Department dated 29.12.1997 and relied upon Paragraph No. 8 of the said Government Order which reads as under:

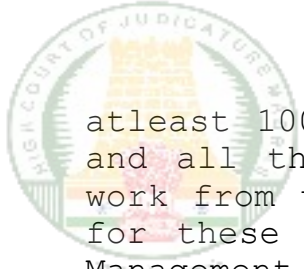
"8. A Fresh assessment of grant for posts as per these orders shall be done on the basis of average attendance. The staff strength shall be fixed by the District



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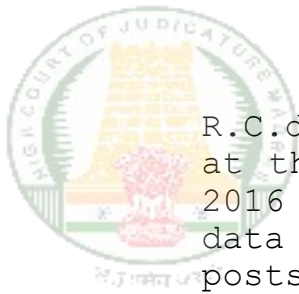


atleast 100 Secondary Grade Teachers posts are found to be surplus and all these Teachers are granted salary, without extracting any work from them. Therefore, the Government Exchequer is being wasted for these excess staff spread over in all 109 Schools, under the Management of the R.C.D., Kottar. Therefore, among the excess Secondary Grade Teachers available in any of the Schools run by the very same Management, such excess Teachers can be deployed to the present petitioner's School without making an appointment from outside candidates as a fresh appointment, thereby, adding one more excess teaching staff under the Management of the petitioner's School. Therefore, only in this context, the said rejection order was passed by the third respondent. In this regard, the learned Government Advocate would rely upon the following averments made in the counter affidavit, which reads as under:-

"6. It is submitted that admittedly, the petitioner School is running under the single management of R.C.Kottar Diocese. Under the Diocese approximately 109 Schools are functioning and in those Schools there are about 100 secondary grade Teacher posts are found surplus and all those Teachers have been granted with absolute salary fit for the respective posts. The 100 Secondary Grade Teachers in some other Schools which are running under the same Diocese were given salary unnecessarily. Hence, the 3rd respondent herein passed the present impugned order directed the Diocese management to absorb those surplus Teachers by re-deployment to the needy Schools such as the petitioner School herein.

7. It is submitted that the Schools which are functioning under the single management namely R.C.Diocese - Kottar shall be treated as a single unit. In the instant case also, it is not disputed that the petitioner School is running under the single management of R.C.Diocese - Kottar. Hence, the Schools which are running under the Diocese management will be considered as a single unit. When surplus Teachers are working in some other Schools and they are receiving salary from the Government and if any vacancy arises in any other School, it is for the management to deploy the surplus Teacher to the needy School. But in the present case, the said A.Joyce is said to be newly appointed in the vacancy arose in the petitioner School, which is totally against the provision of law and wrong committed by the management.

8. It is submitted that there were more than 100 surplus secondary grade Teacher posts are available in the 3rd respondent Diocese Schools. In specific, within the Suchindram Union/Block, there are 5 Primary Schools are functioning which is also under the Management of



R.C.diocese - Kottar. The authorities ascertained that at the time of appointment of A.Joyce I.e., during June 2016 there were 11 surplus posts. As per the current data also, there are 11 posts are identified as surplus posts with the Suchindram Block. All those 11 Teachers are paid full salary unnecessarily. Under those circumstances, in order to avoid to put the exchequer under financial burden, it is for the management concerned to deploy those surplus Teachers in the needy Schools such as the petitioner School. In the present case, no such exercise has been carried out, which is nothing but illegal and in such cases the management alone is responsible for illegal appointment and if any payment to be paid to such Teachers."

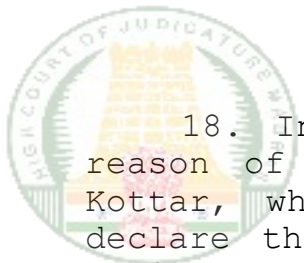
13. In the counter affidavit, it is further stated that under Rule 15(4) of the Tamil Nadu Private School (Regulation) Rules, 1974, prior approval shall be obtained for appointment in the post of teaching staff. Such a prior approval in this case, since has not been obtained, that is also one of the reason for which, the present impugned order was passed.

14. I have considered the rival submissions made by both the counsel on either sides and also perused the materials placed before this Court.

15. It is a fact that, the petitioner School is a recognised minority aided School. The staff strength has been fixed by the Competent Authority for the Academic year 2015 - 16 on 04.02.2016. According to the staff fixation, three posts of Secondary Grade Teachers have been sanctioned to the petitioner School. Out of the three, one incumbent was promoted. Therefore, in the vacancy arisen due to the said promotion, the petitioner School appointed the present Teacher namely A.Joyce on 01.06.2016 and the proposal was sent on 30.08.2017 to the second respondent through the third respondent.

16. It is also an incontrovertible fact that, for the academic year 2016-17 also, by order dated 20.04.2017, staff fixation was made according to which three nos., of Secondary Grade Teacher posts sanctioned for the petitioner's School, have been retained. Therefore, there can be no quarrel that the petitioner School is having three sanctioned post of secondary grade Teacher for the Academic Years 2015 - 16 and 2016 - 17 also. Since the admission was made during the Academic Years 2015 - 16 and 2016 -17, the date of appointment according to the petitioner is on 01.06.2016, at any rate, the said appointment was made only within the sanctioned staff strength of the secondary grade Teacher of the petitioner School.

17. Initially, the proposal was rejected for four queries. Out of the four, requirement of Teacher Eligibility Test (T.E.T.) is not required for the Teacher, appointed in the petitioner's School, as it is a minority institution.



18. Insofar as, the other reasons are concerned, except the reason of demanding the certificate or NOC from the Diocese of Kottar, which is the Management of the petitioner's School, to declare that there is no surplus secondary grade Teacher posting available in any one of the 109 Schools run by the petitioner Management, all other defects pointed out in the order dated 11.09.2017 of the third respondent has been rectified and the proposal with rectification was resubmitted on 07.02.2018.

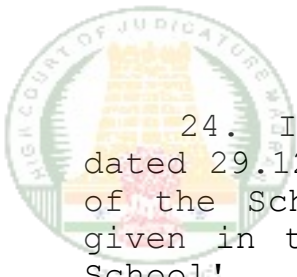
19. Having considered the resubmitted proposal, now by impugned order dated 05.03.2018, the third respondent has given only one reason for the rejection of the proposal in the second time. According to the third respondent, the Bishop of RCD, Kottar Diocese shall give a certificate that, there is no excess secondary grade Teacher posting available in any of the Schools run by the Diocese. The said certificate as required by the impugned order, according to the petitioner, is not required to be obtained or to be produced for the purpose of getting approval of the secondary grade Teacher appointment at the petitioner's School in a sanctioned vacancy.

20. The reason for such demand made by the third respondent as supported in the counter affidavit filed by the second respondent is that, the Diocese is running more than 100 Schools including the petitioner's School. In all these Schools, there are more than 100 teaching posts, which are found to be excess and among the said posts, one of the secondary grade Teacher can be re-deployed to the petitioners School instead of filling the secondary grade Teacher post available at the petitioner School from the open market candidates.

21. In this regard, it is the stand of the official respondents that the entire Management (i.e.,) RCD, Kottar shall be treated as a single Unit. This reasoning given by the respondent to treat the Management (i.e.,) RCD, Kottar as a single Unit for the purpose of sanctioning of teaching staff, cannot be accepted for this simple reason. The procedures, which are followed by the respondents to sanction the teaching post is not on the basis of the Management but only on the basis of the School.

22. Though a particular Management can run several educational institutions, it is a common knowledge that each and every educational institution run by the same Management, will be a separate entity in the eye of law. For instance, if a Management runs Schools and a College of Engineering and College of Education and Polytechnic etc., one cannot say that all these institutions are run by the same Management and therefore, wherever the Teachers recruitment is made, the same can be adjusted among themselves of the said Schools under the same Management by way of deployment/ re-deployment.

23. The reason for such impossibility is concerned, the institution/ School alone is taken as an unit for the purpose of identifying and fixing the Teacher-Pupil ratio.



24. In this regard, the Government Order in G.O.Ms.No.525, dated 29.12.1997 would be relevant, wherein, the Teacher-Pupil ratio of the School concerned would be decided based on the guidelines given in the said Government order under the heading 'Elementary School' , 'Middle School' and 'High School' respectively.

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25. Paragraph No.8 of the said Government Order has been extracted above. It is specifically stated that, the assignment of the grant of post as per the orders shall be done on the basis of the average attendance. Average attendance means, average attendance of the Pupil of that particular School. The Government Order further states that, the staff strength shall be fixed by the District Educational Officer concerned for High School and Higher Secondary School and by District Elementary Educational Officer in respect of Elementary School and Middle School. The Government Order further says that, those, who may be rendered surplus due to application of these norms shall as far as possible be deployed to the needy Schools. The Government Order further states that, the re-deployment of staff in Schools shall be done by the Director of School Education and Director of Elementary Education or the officers to be authorized by them.

26. Therefore, it became abundantly clear that, only based on the attendance of the Pupil in a School, assessment are made to fix the grant of staff strength. Once staff strength is fixed by the Authorities concerned, and if surplus staff is found, they can be re-deployed to the needy Schools and such exercise of re-deployment of staff in Schools shall be done only by the Director of School Education and Director of Elementary Education or the officials to be authorized by them.

27. Here, in the case in hand, the petitioner School is a primary School and therefore, the staff fixation should be done either by the District Elementary Educational Officer and if any excess staff is found, the same shall be re-deployed only by the Director of Elementary Education or officials to be authorised by him.

28. In this context, if at all the respondents find any excess staff in any of the Schools run by the same Diocese, which is the Management of the Petitioner School also, such excess staff can very well be re-deployed either by the Director of School Education or the Director of Elementary Education or by the officials to be authorized by them. Since this is a job specifically entrusted as stated above, the same officials or their subordinates cannot insist upon or expect the petitioner School or its Management to find out and re-deploy the excess Teachers available in other Schools run by the very same Management.

29. As it is set out above, since each of the educational institution is a separate legal entity and each School has to fulfill the norms prescribed in the relevant Act, Rules and Regulations governing the functioning of the said educational institutions and Pupil strength of the particular School and the



staff strength as fixed by the Authorities as set out above, redeployment can be done by the concerned Authority alone, if they find any excess staff in any of the Schools under their jurisdiction.

30. Therefore, that important job, since has been entrusted only to the officials, cannot be passed on or switched over to the Management of the Schools, as has been done in the present case.

31. It is a settled proposition of law that, if a particular thing has to be done in a particular manner as contemplated under the law, the same shall be done only in that manner.

32. Here in the case in hand, redeployment shall be done only by the particular Authority (i.e.,) by the Director of School Education or Director of Elementary Education or by the officials to be authorized by them. Such an exercise is now expected to be done by the School Management as has been indicated in the impugned order. Therefore, the said reason cited in the impugned order by the third respondent, as the only reason for rejecting proposal of the petitioner School for the approval of the appointment to the secondary grade Teacher in the sanctioned vacancy is considered, is totally unjustifiable and unsustainable also.

33. In that view of the matter, this Court has no hesitation to hold that the communication made by the third respondent through the impugned order cannot stand in the legal scrutiny and therefore, it is liable to be quashed and accordingly, it is quashed.

34. In the result, the writ petition is Ordered, with a direction to the petitioner to resubmit the proposal to the third respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the third respondent shall forward the same with or without his recommendations to the second respondent within a period of two weeks thereafter and on receipt of the proposal, the second respondent shall consider the same and pass orders with regard to the grant of approval of the appointment of Secondary Grade Teacher in the sanctioned vacancy, dated 01.06.2016, of the petitioner School, within a period of four weeks thereafter.

35. Once such an approval is granted, it is needless to mention that the incumbent appointed in the said post shall be entitled to claim the salary and attendant benefits from the date of appointment. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS-II)



To

- 1) The Director of Elementary Education,
College Road, Chennai 600 006.
- 2) The District Elementary Educational Officer,
Nagercoil -629 001,
Kanya Kumari District.
- 3) The Assistant Elementary Educational Officer,
Suchindram, Kanyakumari District.

+1cc to M/s Isaac Chambers, Sr.No.62584
+1cc to Spl.Government Pleader Sr.No.62469

Sts

VB/BK/SAR2/06.12.2018/10P/6C

Order in
W.P. (MD) No. 7966 of 2018
19.04.2018