



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.04.2018
CORAM:

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

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W.P. (MD) No. 8788 of 2018

J. Ramilatha

... Petitioner

-Vs-

1. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.
2. The Assistant Elementary Educational
Officer, Tiruchendur Union,
Tuticorin District.
3. The Correspondent,
St. Mary's Primary School,
Virapandianpatnam, Tiruchendur Taluk,
Tuticorin District.

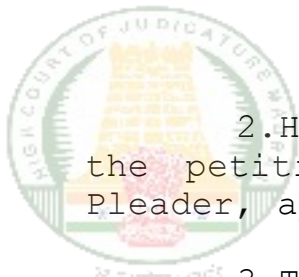
... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd respondent herein vide O.Mu.No.1473 / A2/2017 dated 10.01.2018, quash the same and further direct the 1st respondent herein to approve the appointment of the petitioner as Secondary Grade Teacher in the 3rd respondent school w.e.f., 16.06.2017 and disburse grant-in-aid towards salary and other attendant benefits.

For Petitioner	: Mr.A.Ajith Geethan
For R1 and R2	: Mrs.S.Srimathy
	Special Government Pleader

ORDER

The prayer sought for in this Writ Petition is for a writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent herein vide O.Mu.No.1473 / A2/2017, dated 10.01.2018 and to quash the same and further to direct the first respondent herein to approve the appointment of the petitioner as Secondary Grade Teacher in the third respondent school with effect from 16.06.2017 and to disburse the grant-in-aid towards salary and other attendant



2. Heard Mr.A.Ajith Geethan, learned counsel, appearing for the petitioner, and Mrs.S.Srimathy, learned Special Government Pleader, appearing for the respondents 1 and 2.

3. The short facts, which are required to be noticed for the disposal of this writ petition is that in the third respondent school, a sanctioned Secondary Grade Teacher post fell vacant, due to the retirement of one Ms.Jessi Juliet Joe, on 30.04.2017. The petitioner being a qualified person was appointed with effect from 16.06.2017 in the vacancy arose out of the retirement of the erstwhile incumbent. The petitioner is having the qualification of Diploma in Teacher Education. On such appointment, a proposal, for approval of the petitioner's appointment, dated 22.08.2017 was forwarded to the first respondent through the second respondent with relevant documents. However, the same has been rejected by the order of the second respondent, dated 10.01.2018. Challenging the same, the present writ petition has been filed.

4. I have heard the learned counsel for the petitioner, who would submit that the reason for rejection of the petitioner's appointment, stated in the impugned order is that, 73 excess staffs are working in Tuticorin District and therefore, unless the excess staffs are deployed, no fresh appointment shall be made. Therefore, the appointment now made to the petitioner cannot be accepted, accordingly, it was rejected, he submitted.

5. In this regard, the learned counsel for the petitioner would submit that the post of Secondary Grade Teacher in the third respondent School for the academic year 2016-17 is a sanctioned post and according to which, as on 09.01.2017, one post of Secondary Grade Teacher is vacant and the same can be filled up. Therefore, the appointment made to the petitioner is only in the sanctioned vacant post as Secondary Grade Teacher and it arose due to the retirement of the erstwhile incumbent, who retired on 30.04.2017 and therefore, the appointment made to the petitioner shall be considered by the respondent only on the basis of the staffs strength sanctioned to the third respondent school alone.

6. I have heard the learned Special Government Pleader appearing for the respondents in this regard, who would submit that since 73 excess staffs are available in number of schools under the same management, it is for the management to redeploy one excess Teacher to the third respondent school. Without doing the same, if new appointment is made, the same shall not be accepted and the rejection order was passed through the impugned order dated 10.01.2018. Hence, no interference is required in this matter.

<https://hcservices.ecourts.gov.in/hcservice/> 7. I have heard the learned counsel appearing on both sides.

8. The only reason cited in the impugned order passed by



the second respondent dated 10.01.2018 is that the excess Teachers are available in other schools run by the same management, shall be redeployed and without doing such process, new appointment now has been made. Insofar as the appointment of the petitioner is concerned, the same shall not be accepted.

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9.The issue of redeployment of excess Teacher by the same management or common management in respect of other school shall not be a reason for refusing or rejecting the proposal for approval of the appointment made to any of the school under the same management has already been decided by this Court in W.P.(MD) No.7072 of 2018. I have elaborately discussed the said issue and negotiated such kind of requirement on the side of the official respondents therein. The relevant portion of the said order reads thus, for better appreciation:-

"5.In the said judgment cited above, this Court has given the following direction at para 29, which reads thus:

"29. For the aforesaid reasons, we allow the various writ petitions by giving the following directions:-

(i)The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.

(ii)If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.

(iii)If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv)The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to

(v)Similarly, in respect of minority institutions, which were receiving aid in respect of some of the



posts and were seeking for approval and payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher- pupil ratio applicable during any particular period.

If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal."

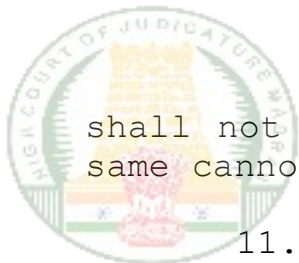
9. In an identical circumstances a writ petition came for consideration before the Madurai Bench of this Court in W.P.No.3206/2007 and this Court by order dated 13.12.2007, considering the facts as well as the law laid down allowed the writ petition by following above referred decisions and directed the approval of the appointment of the petitioner therein making it clear if the post in which, she was found working is found surplus, it is open to the department to deploy, the petitioner therein to a needy school in accordance with G.O.Ms.No.525 dated 29.12.1997 and the arrears of salary was directed to be disbursed. Against the said order, the Department filed W.A.(MD). No.617/2008 before the Hon'ble Division Bench of the Madurai Bench and the Hon'ble Division Bench by Judgment dated 25.09.2008, dismissed the writ appeal and held that the issue raised is already covered by the Judgments reported in The State of Tamilnadu and Ors Vs. Pallivasal Primary School 2004 (2) LW 591 and M.Sundersingh Vs. Government of Tamil Nadu and others (2006) 2 M.L.J. 784.

10. Therefore, for all the above reasons, the petitioner is entitled to succeed and accordingly, the writ petition is allowed as prayed for and the respondents are directed to approve the petitioner's appointment and pay the arrears of salary within a period of eight weeks from the date of receipt a copy of this order. No costs.

6.In view of the said position that the issue raised in this writ petition is covered by the said decision and also there have been a number of decisions of this Court as has been pointed by the learned counsel for the petitioner and endorsed by the learned Special Government Pleader appearing for the respondents, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

<https://hcservices.ecourts.gov.in/hcservices/>

10.In view of the said order passed by this Court, the only reason cited now by the second respondent in the impugned order



shall not be considered to be a lawful reason and therefore, the same cannot stand in the legal scrutiny.

11. In view of the above, this Court is of the considered opinion that the said rejection order passed by the second respondent, is liable to be quashed accordingly, the same is quashed.

12. In the result, the said writ petition is disposed of with the direction that the third respondent shall resubmit the proposal, once again to the first respondent through the second respondent with all other relevant documents within a period of two weeks from the date of receipt of a copy of this order and on receipt of the such proposal from the third respondent through the second respondent, the same shall be considered by the first respondent and order with regard to grant of approval shall be passed within a period of four weeks thereafter.

13. It is made clear that if at all any excess teaching staff is available in other school under the same management, it is open to the official respondents to take appropriate action in the manner known to law regarding redeployment / deployment of those staffs and that process shall not hamper because of this order. No costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.
 2. The Assistant Elementary Educational
Officer, Tiruchendur Union,
Tuticorin District.
 3. The Correspondent,
St. Mary's Primary School,
Virapandianpatnam, Tiruchendur Taluk,
Tuticorin District.
- +1cc to Mr.A.Ajith Geethan, Advocate Sr.No.62578
+1cc to SPECIAL GOVERNMENT PLEADER, Sr.No.62724

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