



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2018

CORAM:

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**THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE M.SUNDAR**

W.A.[MD].No.866 of 2018
against W.P.(MD).No.4118 of 2018

J.Kulandai Therese : Appellant/Petitioner

Vs.

1. The District Elementary Educational Officer,
Ramanathapuram District.
2. The Additional Assistant Elementary Educational Officer,
Thiruvadanai, Ramanathapuram District.
3. The Correspondent,
Little Flower Primary School,
Andavoorani,
Ramanathapuram District. : Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 04.06.2018 made in W.P.(MD).No.4118 of 2018, on the file of this Court.

Prayer in WP(MD)No.4118 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in his proceedings in Athi.Mu.No..4028/A3/17 dated 26/12/2017 quash the same and direct the respondents to approve the appointment order of the petitioner as secondary grade teacher from the date of appointment i.e.from 15/06/2017 with all consequential benefits.

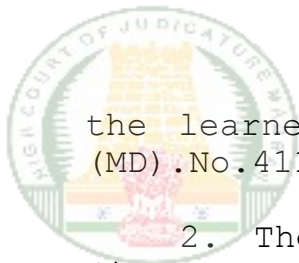
For Appellant : Mr.V.Panneer Selvam
For Respondent Nos.1& 2 : Mr.A.K.Baskarapandian
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by The Hon'ble Chief Justice]

<https://hcseiwcoecourtsgov.in/hcservices/>

This appeal is against an order dated 04th June 2018, passed by



the learned Single Bench dismissing the Writ Petition being W.P. (MD).No.4118 of 2018.

2. The Writ Petition was filed challenging an order of the first respondent dated 26th December 2017. By the impugned order, the first respondent returned the proposal for approval of appointment of the writ petitioner as a teacher citing the following reasons:-

- i) sanitary certificate was not enclosed;
- ii) teacher name was not mentioned in the appointment order; and
- iii) the relieving order of the transferred teacher was not enclosed.

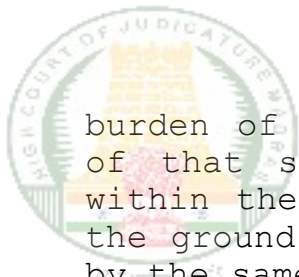
3. All the three documents have been enclosed in the typed set of papers filed before us. It is for the first respondent to take a fresh decision on the basis of the said documents. Possibly, the Writ Petition was premature, in that, no decision had actually been taken by the first respondent. The first respondent had only called for documents. In our considered opinion, the learned Single Bench erred in considering the merits of whether the appointment of the writ petitioner should be approved or not and expressing a view in this regard.

4. We are unable to agree with the finding of the learned Single Bench that the vacancy was not a regular vacancy, because, the same did not arise by reason of death or retirement of a teacher working in a sanctioned post. It is difficult to accept the argument on behalf of the State that a regular vacancy does not arise, in case of a transfer.

5. There are sanctioned posts in different schools run by the diocese. When a teacher is transferred from one school to another, a vacancy arises in the school, from which the teacher has been transferred. There is no reason why such vacancy should not be filled up by fresh appointment. There is also no reason why fresh appointment to a post that has fallen vacant by reason of transfer should not be approved, if the appointment is otherwise in order.

6. Different schools may be run by the same group of persons and/or the same management. However, each school is separate. No school can possibly run without adequate number of teachers. Posts necessarily have to be sanctioned school-wise considering the requirements of the school. Excess teachers in some other school run by the same management is, therefore, inconsequential. To cite an example, there might be excess History teachers or may be Science teachers in School 'A', but no History teachers or Science teachers in School 'B' run by the same management. School 'B' cannot possibly function without a History teacher or without a Science teacher. Adjustment by transfer may not always be feasible.

7. If there are teachers in any one school in excess of the sanctioned quota, the Government might refuse to bear the salary



burden of excess teachers appointed beyond the sanctioned strength of that school. However, approval of appointment of a teacher within the sanctioned strength of the school cannot be withheld on the ground of existence of excess teachers in some other school run by the same management.

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8. When a teacher is transferred from one school to another school run by the same management and the teacher accepts the transfer and joins that school, her post in the school from which she is transferred would obviously fall vacant and that vacancy might be filled up in accordance with law either by a fresh appointment or by transfer.

9. The observations/findings of the learned Single Bench in Paragraph Nos.4 to 7 of the order impugned are set aside.

10. The first respondent shall take a decision in accordance with law, without being swayed in any manner by the observations/findings in the order of the learned Single Bench. The second respondent shall re-submit the application for approval along with the requisite documents called for by the order impugned. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Ramanathapuram District.
2. The Additional Assistant Elementary Educational Officer,
Thiruvadanai, Ramanathapuram District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 70563
+ 1 CC TO Mr.V.PANNEER SELVAM, ADVOCATE IN SR No. 70450

NB/RSB
TE/SKN-RSK/SAR-2 : 17/07/2018 : 3P/5C

JUDGMENT MADE IN
W.A.[MD].No.866 of 2018
28.06.2018