



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2018

CORAM:

WEB COPY

THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.A.[MD].No.872 of 2018

and

C.M.P.(MD).No.5454 of 2018

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort.St.George, Chennai 9..
2. The Director of Elementary Education,
College Road, Chennai.
3. The District Elementary Educational Officer,
R.M.S.Road, Madurai.
4. The Assistant Elementary Educational Officer,
Usilampatti, Madurai District. : Appellants

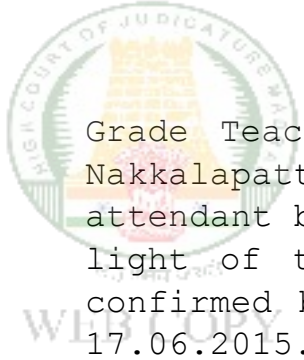
Vs.

1. M.Anbalagan
2. The Correspondent,
T.E.L.C.Primary School,
Nakkalapatti, Madurai District. : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 05.02.2018 made in W.P.(MD).No.16910 of 2017, on the file of this Court.

Prayer in WP(MD). 16910/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order in Na.Ka.No.0688/Aa3/2016 dated 03.03.2016 passed by the 3rd respondent and consequently direct the 3rd respondent to approve forthwith the appointment of the petitioner as Secondary



Grade Teacher in the 5th respondent school, TELC Primary School, Nakkalapatti, Madurai District with effect from 01.07.2010 with all attendant benefits including arrears of salary and allowances in the light of the order in WP(MD).10484 & 10485/2015 dated 24.03.2015 confirmed by the Division Bench in WA. 639/2015 and batch dated 17.06.2015.

For Appellants : Mr.VR.Shanmuganathan
Special Government Pleader

JUDGMENT

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

This appeal is against an order dated 5th February 2018 passed by the learned Single Bench allowing the writ petition filed by the first respondent/writ petitioner and directing the appellant authorities to approve the appointment of the first respondent/writ petitioner as a Secondary Grade Teacher of TELC Primary School, Nakkallapatti, Madurai District. The appellant authorities had been refusing to approve the appointment of the first respondent/writ petitioner on the ground that there were surplus teachers in other institutions run by the same management.

2. The question of whether a Government Aided Minority school run by a body of persons having more than one school, could recruit teachers when there were surplus teachers in other schools under the same management, was answered in favour of the first respondent/writ petitioner and against the appellant authorities in **Director of Elementary Education Vs. The Correspondent, St.Joseph's RC Primary School**, reported in (2018) 1 WLR 421.

3. A Division Bench of this Court, following the Judgment of the Supreme Court in **Secretary, Malankara Syrian Catholic College Vs. T.Jose and others**, reported in (2007) 1 SCC 386, where the Supreme Court had reaffirmed that the right of minority educational institutions to establish and administer educational institutions of their choice included the right to appoint teaching staff as also non-teaching staff, held that Regulations could only be made for the welfare of the students and the teachers and to prevent oppression of employees.

<https://hcservices.courts.gov.in/hcservices>
The Division Bench held that the prohibition to appointment of teachers in one school when there was a surplus in other schools



run by the same management did not come within the parameters laid down by the Supreme Court in its Judgment in **T.M.A.Pai Foundation Vs State of Karnataka**, reported in (2002) 8 SCC 481.

5. It is true that when aid is granted to a particular school and the salary burden of the teachers is borne by the State, the State might refuse to regularize teachers appointed beyond the sanctioned strength and withhold financial assistance to facilitate payment of the salary and emoluments of teachers appointed in excess of the sanctioned strength of that school. There can be no question of adjustment of excess in one school with another school, unless the minority management decides to reallocate the teachers by transfer from one school to the other.

6. As a Bench of co-ordinate strength, judicial discipline demands that we follow the judgment in **Director of Elementary Education Vs. The Correspondent, St. Joseph's RC Primary School**, (supra). We find no reason to interfere with the order under appeal. The Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Department of School Education,
Fort.St.George, Chennai 9..
2. The Director of Elementary Education,
College Road, Chennai.
3. The District Elementary Educational Officer,
R.M.S.Road, Madurai.
4. The Assistant Elementary Educational Officer,
Usilampatti, Madurai District.

+1 CC to the Special Government Pleader, SR.No.70550

NB/RSB

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