



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A. (MD) .No.1494 of 2017

and

C.M.P. (MD) No.11921 of 2017

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.
2. The Director of School Education,
College Road,
Chennai 600 006.
3. The Joint Director (Vocational),
College Road,
Chennai 600 006.
4. The Chief Educational Officer,
Madurai 625 002,
Madurai District.
5. The District Educational Officer,
Madurai 625 002,
Madurai District.

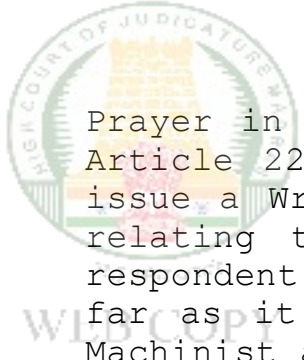
... Appellants

Vs.

The Secretary/Correspondent,
Setupati Higher Secondary School,
No.2, North Veli Street,
Madurai District.

... Respondent

PRAYER: This appeal is filed under Clause 15 of the Letters Patent,
<https://hcservices.ecourts.gov.in/hcservices/>
to set aside the order on 01.12.2016 made in W.P. (MD) No.13965 of
2015.



Prayer in W.P.(MD)No.13965 of 2015: 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 relating to the impugned staff fixation settled by the fourth respondent CEO in Na.Ka.No.8587/Aa1/2014, dated 07.11.2014, in so far as it renders one post of Vocational Instructor in General Machinist as surplus without staff is concerned and the sequential proceedings issued by the fifth respondent DEO in O.Mu.No.5714/A5/2014, dated 10.11.2014, refusing approval to the appointment of Thiru R.Kannan, as vocational instructor in General Machinist, quash the same and further direct the 4th and 5th respondents herein to approve forthwith the appointment of Thiru.R.Kannan as Vocational Instructor in General Machinist with effect from the date of his appointment, viz., 10.06.2013 with salary and all attendant benefits.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent : Mr.Isaac Mohanlal
learned Senior Counsel
for Mr.T.Cibi Chakraborty

JUDGMENT

(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J**)

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.Isaac Mohanlal, learned Senior counsel appearing for the respondent.

2.This appeal filed by the State is directed against the order passed by the learned Single Judge in W.P.(MD)No.13965 of 2015 dated 01.12.2016. The said writ petition was filed by the respondent/Secretary/Correspondent of Setupati Higher Secondary School, Madurai. In the said writ petition, the respondent challenged the proceedings of the fourth appellant dated 07.11.2014 in so far as rendering one post of Vocational instructor in General Machinist as surplus without staff and consequential proceedings of the fifth respondent dated 10.11.2014, refusing approval to the appointment of Thiru. R.Kannan as Vocational Instructor in General Machinist and to direct the appellants 4 and 5 to approve his appointment with effect from the date of appointment, viz., 10.06.2013 with salary and all attendant benefits.

3.The dispute in the instant case lies in a narrow campus. The staff fixation for the year 2013-2014 was made by the proceedings dated 29.10.2013. From perusal of the said order, it is seen that in the respondent School, the vocational course of



General Machinist is concerned, the students' strength in 11th standard is 40 and 12th standard is 45, the number of sanctioned Vocational Instructor is one as fixed on 01.08.2013. Apart from the said vocational course of General Machinist, there is one another vocational course with which we are not concerned.

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4.Thiru.T.S.Natarajamoorthy was working as Vocational Instructor for the General Machinist course and he attained the age of superannuation on 31.12.2012 and permitted to continue till the end of the academic year 31.05.2013. In the said vacancy, Thiru R.Kannan was appointed by the respondent/Management on 10.06.2013. However, this matter was brought to the notice of the appellants 4 and 5 and when the respondent/management sought approval of the appointment, the same was rejected by an order dated 10.11.2014. Subsequently, the staff fixation for the year 2014-2015 was made and an order was passed on 07.11.2014 in which, one post of Vocational Instructor was shown as surplus. However, it is to be noted that the student strength in the Vocational Course in 11th Standard is 46 and in 12th standard, it was 39. Therefore, the course was continued. Nevertheless, the appellants 4 and 5 declared one post of Vocational Instructor as surplus. Thus, the order rejecting the request of the Management to approve the appointment of Thiru. R.Kannan and staff fixation for the year 2014-2015 were impugned. The learned Single Judge has allowed the writ petition. Against which, the State has preferred this appeal.

5.The learned Special Government Pleader appearing for the appellant would submit that the post of Vocational Instructor stood lapsed on the retirement of the teacher who was working in said post since the respondent School was having diversified course at Higher Secondary School level. When the School was upgraded as Higher Secondary School, there was no necessity for a teacher working in diversified course. However, in order to protect the teacher it was decided to start a vocational course and to provide the teacher already working in diversified course, and hence, this arrangement was person oriented. The Course has been discontinued when such teacher resigned/retired. This was specifically mentioned in the staff fixation order dated 07.11.2014. He would further submit that the management had only one post and it could not have appointed Thiru R.Kannan, after the earlier incumbent retired from the service and the appointment is not sustainable as the post stood lapsed. On account of this position, the staff fixation order for the year 2014-15 is correct. The said post would lapse and it may be another matter for the Management to apply for a post afresh based on the students strength.

6.The learned senior counsel appearing for the respondent <https://hccse.courts.gov.in/hccse> submit that the stand taken by the Department is wholly untenable as the Department does not want the course to continue by stating that the post has become surplus. It is



submitted that respondent School is a very reputed institution and consistently of the said teacher viz., Thiru. R.Kannan had produced excellent results in the vocational subject and when there is a need for the post, the department cannot take an arbitrary stand by mentioning as if the post was a person oriented post.

7.After elaborate and careful perusal of the materials on record, we find from the staff fixation year 2013-14 dated 29.10.2017 as on 01.08.2013 there was one post of Vocational Instructor for the subject General Machinist and on the date when Thiru. R.Kannan was appointed, I.e., 10.06.2013, the school had one post of Vocational Instructor and therefore, to state that the appointment itself is not sustainable is a stand which has to be rejected.

8.Next we come to staff fixation done by the Department for the year 2014 vide order dated 07.11.2014. It is interesting to note that in the said order the appellant department records the fact that there are 46 students in the 11th standard and 39 students in the 12th standard in spite of the same stated in the fixation order that one post is surplus. In our considered view, the Department cannot take such a technical plea. When it is admitted fact that there exists sufficient students strength, the course has to continue. Thus the order of the fifth respondent showing one post of Vocational Instructor as surplus, he has virtually closed down the said course as there would be no teacher. We cannot lose sight of the fact when there is full students strength and course is in demand, the Department cannot take such a stand and render one post as surplus. In the Government order in G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997, in Paragraph No.IV, the number of post eligible for Higher secondary School is mentioned in the clause (d) of the said order which states that for vocational stream, 2 posts of teachers (full time) will be sanctioned irrespective of the number of courses. Therefore, even while passing the order dated 29.10.2013 and fixing the staff strength for the year 2013-14, the respondent/Management was entitled to two post of Vocational Instructor. Thus, we find the reason for rejection of approval of the Vocational Instructor, Thiru.R.Kannan as well as staff fixation for the year 2014-2015 is completely flawed.

9.In the result, we dismiss the writ appeal for the reasons stated above and issue the following directions:

(i)The respondents 4 and 5 shall approve the appointment of Thiru. R.Kannan, Vocational Instructor, which appointment was made on 10.06.2013, as the post was very much available in terms of staff fixation order dated 29.10.2013.

<https://hcservices.ecourts.gov.in/hcservices> far the Academic year 2014-2015 is concerned, the respondents 4 and 5 are directed to take note of the factual aspects which is admitted in the fixation order itself, namely,



students strength and sanction one post with effect from the year 2014-2015 onwards in the category Vocational Instructor and the petitioner is entitled to be paid salary in the said post.

10. The above direction should be complied with within a period of 12 weeks from the date of receipt of copy of this order. Accordingly, the writ appeal fails and stands dismissed. No Costs. Consequently, C.M.P. (MD) No. 11921 of 2017 is also closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.
2. The Director of School Education,
College Road,
Chennai 600 006.
3. The Joint Director (Vocational),
College Road,
Chennai 600 006.
4. The Chief Educational Officer,
Madurai 625 002,
Madurai District.
5. The District Educational Officer,
Madurai 625 002,
Madurai District.

+ 1 cc TO Mr. T. Cibi Chakraborty , Advocate in SR No. 52676
+ 1 cc TO The Special Government Pleader in SR No. 52915

Mrn

AE/SKN RSK/SAR4/03.04.2018/5P/8C

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