



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2018

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs. JUSTICE R.THARANI

W.A. (MD) .No.1295 of 2016
and

C.M.P. (MD) No.8914 of 2016

1. The Directorate of Elementary Education,
College Road, Chennai - 600 006.
2. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.
3. The Assistant Elementary Educational Officer,
Alwarthirunagari at Thenthirupperai,
Tuticorin District. ... Appellants

Vs.

The Correspondent,
St. Xavier's Middle School,
Sethukkuvaithan,
Tuticorin District. ... Respondent

PRAYER: This appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 22.06.2016 and passed in W.P.(MD) No.14547 of 2010.

Prayer in WP(MD). 14547/ 2010 :

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 proceedings issued by the 2nd respondent District Elementary Educational Officer in O.Mu.No.1804/A5/10 dated 24/06/2010 and the consequential proceedings issued by the 3rd respondent, Additional Assistant Elementary Educational Officer vide Na.Ka.No. 312/Aa1/10 dated 21/04/2010 (signed on 22/07/2010) QUASH THE SAME and further DIRECT the respondents to approve forthwith the appointment of Tmt. M. Kokila as Sewing Mistress in the petitioner school and sanction and disburse the salary, allowances and other attendant benefits w.e.f the date of her appointment on 01/06/2009.



For Appellants

: Mr.D.Murugesan, AGP

For Respondent

: Mr.K.Prabhu

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JUDGMENT

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

Heard Mr.D.Murugesan, learned Additional Government Pleader appearing for the appellants and Mr.K.Prabhu, learned counsel appearing for the respondent.

2.This appeal is directed against the order passed by the learned Single Judge dated 22.06.2016 made in W.P.(MD)No.14547 of 2010.

3.The respondent Institution filed the writ petition challenging the order dated 24.06.2010 and the consequential order of the third respondent dated 21.04.2010 signed on 22.07.2010 refusing to approve the appointment of Tmt.M.Kokila as Sewing Mistress in the respondent school and sanction and to disburse salary, allowances and other attendant benefits. The learned Single Judge allowed the writ petition following the decision of the Division Bench in W.A.(MD) No.16 of 2011 dated 28.01.2011. The educational department is on appeal as against the said order.

4.The issue involved in this writ petition was as to whether the respondents/appellants were justified in refusing to approve the appointment of the respondent Tmt.Kokila as Sewing Mistress in the respondent school. The reason for rejection of the application is by placing reliance on G.O.Ms.No.168 School Department dated 13.09.2006. In the said Government Order, a direction was issued that while sanctioning the post of full time Craft Instructors, the Government had specifically mentioned that there should be atleast 5 sections in 6-8 classes having workload of not less than 18 periods in the higher elementary schools. Pre-vocational instructors, who were working during 1960-63 were allowed to continue without reference to the work periods. Similarly, the teachers appointed as Pre-vocational instructors during 1963 - 64 to 1973 - 74 were permitted to continue, when the schools had less than 5 sections in 6-8 classes. However, this exemption appears to have not been extended for appointments made after the year 1973-74. By referring to the said Government order, it was contended that the said Tmt.Kokila was appointed in a retirement vacancy in the year 2009 and the same cannot be approved as there were no 5 sections in 6-8 classes in the respondent school.



5. The fact remains that the said teacher was appointed in a post, which is a single post, which has been sanctioned to the school much prior to 1991. However, from the Government order, it appears that the exemption was not granted for appointments made after the year 1973-74. It is not clear as to whether the incumbent, who functioned prior to the appointment of Tmt.Kokila was appointed prior to 1973-74 or subsequently. However, the fact remains that she continued to work and receive salary. An identical issue was considered by this Court in the case of N.Regii Mallika Vs. The Director of Elementary Education in W.P.(MD) No.9137 of 2008 dated 20.08.2010. This Court allowed the writ petition taking note of paragraph 5 of the said Government order in G.O.Ms.No.168, School Education (B21) dated 13.09.2006. In paragraph 5, the Government observed that not only 10 Middle schools, who had done appointments after the year 1973-74 without considering the workload may be granted exemption, the said benefit was also directed to be extended to all similar cases as a special case.

6. Therefore, we opined that the stipulations of 5 sections in 6 - 8 classes was considered to be directory and not mandatory and that is why the Government took such a stand not only in respect of 10 middle schools, but also other similar cases. The Government order came to be issued in 2006 and the appointment of Tmt.Kokila was in the year 2009. Above all, there is only one post and therefore, the department cannot insist upon the course being conducted and simultaneously not sanction the post. Apart from that, increasing the number of sections in a class is not at the sole discretion of the management of the institution. Be it an aided non-minority institution or minority institution or for that matter a government institution, it has to abide by the Rules and Regulations, which stipulate a students strength of minimum 40 and that strength has to be assessed in August every year for the purpose of assessing the staff strength.

7. Therefore, the Government order in G.O.Ms.No.168 dated 13.09.2006, if read in tandem with the guidelines stipulated for increasing the number of sections, then, this stipulation of having 5 sections in 6-8 classes can at best be read as directory and not mandatory. Further, it is relevant to point out that the decision in the case of N.Regii Mallika referred supra has been affirmed by the Hon'ble Division Bench in W.A.(MD) No.16 of 2011 dated 25.01.2011. In the said appeal, the Division Bench referred to an earlier order in W.P.(MD) No.7218 of 2008 dated 04.08.2009, which was implemented by the department. However, the learned counsel appearing for the respondent pointed out that there is another judgment of the Division Bench in the case of State Vs. S.Renganayaki (W.A.(MD) No.1207 of 2016), wherein, identical issue was considered by the Division Bench in respect of high school and the appeal was dismissed and the same was implemented in G.O.Ms.No.132 dated 27.04.1998.



8. Thus, for all above reasons, we find no grounds have been made out by the appellants to interfere with the order passed by the Writ Court. Accordingly, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Directorate of Elementary Education,
College Road, Chennai - 600 006.
2. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.
3. The Assistant Elementary Educational Officer,
Alwarthirunagari at Thenthirupperai,
Tuticorin District.

+ 1 cc TO Mr. T. Cibi Chakraborty, Advocate in SR No. 53253

+ 1 cc TO The Special Government Pleader in SR No. 53295

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AE/CVC/SAR2/19.03.2018/4P/6C

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