



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.12168 of 2011 and 16758 of 2013

and

M.P(MD)Nos.1 and 2 of 2011 and 1 and 2 of 2013

W.P(MD)No.12168 of 2011

The Correspondent,  
St. Mary RC Middle School,  
Pudhukadai-629 171  
Kanyakumari District.

... Petitioner

vs.

1)The District Elementary Educational Officer,  
Nagercoil-629 001,  
Kanyakumari District.

2)The Assistant Elementary Educational Officer,  
Munchirai, Kanyakumari District.

3)G.Justeen

(R3 is impleaded vide Court order  
dated 28.04.2014 in M.P.1/14)

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1<sup>st</sup> respondent District Elementary Educational Officer in O.Mu.No.448/Aa3/011 dated 12.03.2011, quash the same and further direct him to approve forthwith the appointment of G.Justin as Secondary Grade Teacher in the petitioner school w.e.f. 19.01.2009 with all attendant benefits including the arrears of salary and allowances.

For Petitioner

: Ms.A.Amala for M/s.Isaac Chambers

For R1 & R2

: Mrs.S.Srimathy Spl.G.P.

For R3

: No appearance

W.P(MD)No.16758 of 2013

G.Justeen

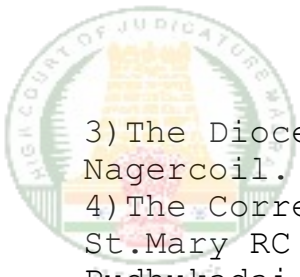
... Petitioner

vs.

1)The District Elementary Educational Officer,  
Nagercoil-629 001,  
Kanyakumari District.

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

2)The Assistant Elementary Educational Officer,  
Munchirai, Kanyakumari District.



3)The Diocese of Roman Catholic of Kottar,  
Nagercoil.

4)The Correspondent,  
St.Mary RC Middle School,  
Pudhukadai-629 171,  
Kanyakumari District.

5)Josephin Mary

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1<sup>st</sup> respondent dated 06.07.2011 vide Pa.Mu.1654/A2/011 and quash the same and direct the 1<sup>st</sup> respondent to post the petitioner in the retirement vacancy of T.Rosemary in St.Francis Primary School or in any other vacancy in the school in the administration of 3<sup>rd</sup> respondent with effect from 19.1.09 and grant all monetary benefits to the petitioner within a time fixed by this Hon'ble Court.

|                |                                     |
|----------------|-------------------------------------|
| For Petitioner | : No appearance                     |
| For R1 & R2    | : Mrs.S.Srimathy, Spl.G.P.          |
| For R3         | : Ms.A.Amala for M/s.Isaac Chambers |

#### COMMON ORDER

W.P(MD)Nos.12168 of 2011 has been filed by the Correspondent, St. Mary RC Middle School, Pudhukadai, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1<sup>st</sup> respondent District Elementary Educational Officer in O.Mu.No.448/Aa3/011, dated 12.03.2011, quash the same and further direct the 1<sup>st</sup> respondent to approve the appointment of G.Justin as Secondary Grade Teacher in the petitioner school w.e.f. 19.01.2009 with all attendant benefits including the arrears of salary and allowances.

#### Facts in W.P(MD)No.12168 of 2011:-

2.Learned counsel for the petitioner would aver among other things that the petitioner school is one among the 109 recognised private schools run by the Roman Catholic Diocese of Kottar, Nagercoil. The petitioner school is offering education from Standards I to VIII and the medium of instruction is Tamil. The Government gives financial aid towards staff salary and there are 9 teachers in the school - one Headmistress, 3 B.T Assistants and 5 Secondary Grade Teachers and the total student strength of the school is 235.

3.According to the petitioner, the school is giving the best general and secular education to the children of the surrounding rural masses. The people of the area are mainly downtrodden who are educationally and socially backward and there had been huge student strength in all these years. It is further stated that for grant of recognition to the school, one of the foremost conditions is

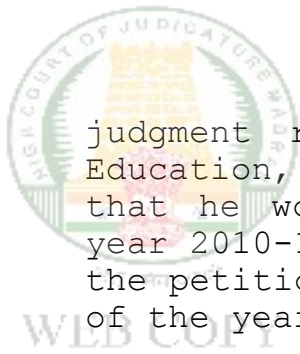


adequacy of qualified staff and the teacher should be appointed in accordance with the teacher-pupil ratio prescribed by the Government.

4. Learned counsel for the petitioner would further state that the 1<sup>st</sup> respondent while settling the annual staff fixation for the year 2008-09 vide his proceedings in Na.Ka.No.3481/A3/2008, dated 27.11.2008, in the guise of applying the new forms under G.O.Ms.No.525, ordered that the school was eligible for 7 teachers and rendered two teachers as surplus without any basis. According to the learned counsel, the said order was passed without any basis and without proper application of the norms and therefore, the petitioner met the DEEO personally on 06.12.2008 and explained about the need of 9 teachers to the school. The DEEO being satisfied with the explanation, gave assurance that he would refix the staff strength for the academic year 2009-10 and based on the representation by the petitioner, the DEEO had not redeployed those two teachers. While this being so, one post of Secondary Grade Teacher fell vacant in the petitioner school on 19.01.2009 due to the transfer of the then incumbent D. John Ruby to another school under the same management namely, St. Francis Primary School, Vencode, Kanyakumari District. In that vacancy, the petitioner school appointed G. Justin as Secondary Grade Teacher with effect from 19.01.2009 Forenoon. His appointment was by way of transfer from another school under the same management namely, St. Francis Primary School, Vencode, Kanyakumari District. G. Justin had been working as Secondary Grade Teacher in various schools under the same management since 16.02.1983 and his appointment had been approved by the 1<sup>st</sup> respondent and grant-in-aid had been disbursed towards his salary upto 18.01.2009.

5. Learned counsel for the petitioner would further submit that after the joining of the said Justin in the petitioner school, the school submitted a proposal to the 2<sup>nd</sup> respondent on 02.04.2009, requesting to approve his appointment and disburse grant-in-aid towards his salary. On 02.05.2009, the 2<sup>nd</sup> respondent returned the proposal directing to enclose some documents. The school re-submitted the proposal to the 1<sup>st</sup> respondent through the 2<sup>nd</sup> respondent with all necessary documents on 09.05.2009 and the 2<sup>nd</sup> respondent/AEEO without forwarding the proposal to the 1<sup>st</sup> respondent/DEEO, returned the same on 19.10.2009, directing to resubmit the proposal after deploying 3 surplus teachers. By that time, the 1<sup>st</sup> respondent while settling the annual staff fixation for the next year 2009-10 in his proceedings Na.Ka.No.3514/A3/2009(9), dated 11.12.2009, ordered that the school was eligible for six teachers and he rendered three teachers as surplus, stating that the school had 9 teachers sanctioned in the previous academic year 2008-09.

6. According to learned counsel for the petitioner, the petitioner personally met the 1<sup>st</sup> respondent on 20.12.2009 and explained the need for at least 8 teachers as per the Full Bench



judgment reported in 2006 (5) CTC 385, Director of Elementary Education, Chennai, vs. S.Vigila, and that the 1<sup>st</sup> respondent assured that he would re-consider the matter in the forthcoming academic year 2010-11 and he did not redeploy those two teachers. Therefore, the petitioner did not choose to challenge the staff fixation orders of the year 2009-10.

7.It is further contended that the petitioner school had resubmitted the proposal on 03.03.2010 through the 2<sup>nd</sup> respondent and the 2<sup>nd</sup> respondent forwarded the proposal to the 1<sup>st</sup> respondent, who directed the 2<sup>nd</sup> respondent to forward the proposal only after the issuance of staff fixation order for the year 2010-11 and while settling the annual staff fixation for the year 2010-11, on 20.12.2010, the 1<sup>st</sup> respondent ordered that the school was eligible for 8 teachers and therefore, the petitioner school re-submitted the proposal seeking approval of the appointment of G.Justin which was returned by the 1<sup>st</sup> respondent, by impugned proceedings dated 12.03.2011, stating that under the staff fixation order for the academic year 2009-10, he had rendered two teachers as surplus (one post with teacher and another without teacher) and that the one without teacher had already been surrendered to the Director and that the school had appointed G.Justin in that surrendered post and hence, his appointment could not be approved. The petitioner again re-submitted the proposal to the 1<sup>st</sup> respondent on 16.06.2011 and no orders were passed by the 1<sup>st</sup> respondent.

8.According to the petitioner, G.Justin had been working as an approved Secondary Grade Teacher in various schools under the same management ever since 16.02.1983 and the DEEO had been disbursing grant-in-aid towards his salary till 18.01.2009 and the DEEO redeployed one F.Stella Mary who was working as Secondary Grade Teacher in RC Primary School, Palliyadi, to the petitioner school as per the need to the school in view of G.O.Ms.No.231 dated 11.08.2010. The refusal of approval to the appointment of G.Justin as Secondary Grade Teacher is arbitrary and illegal and therefore, prayed for approval of appointment of G.Justin as Secondary Grade Teacher with effect from 19.01.2009.

9.W.P(MD)No.16758 of 2013 has been filed by G.Justeen for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1<sup>st</sup> respondent dated 06.07.2011, vide Pa.Mu.1654/A2/011 and quash the same and direct the 1<sup>st</sup> respondent to post the petitioner in the retirement vacancy of T.Rosemary in St.Francis Primary School or in any other vacancy in the school in the administration of 3<sup>rd</sup> respondent with effect from 19.1.09 and grant all monetary benefits to the petitioner within a time fixed by this Court.

Facts in W.P(MD)No.16758 of 2013:-

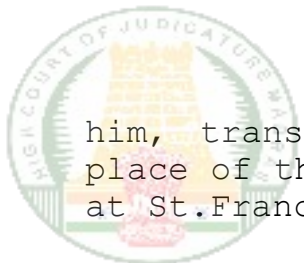
10.Learned counsel for the petitioner would aver among other things that the petitioner was appointed as a Secondary Grade Teacher in Sacred Heard Middle School, Kadayal, kaliyal, Kanyakumari



District, on 16.02.1983 and the said school is one of the recognised private aided minority educational institutions under the administration of the 3<sup>rd</sup> respondent. After 23 years of service on 05.06.2006, the petitioner was transferred to St.Francis Primary School which is also under the management of the 3<sup>rd</sup> respondent. Thereafter, on 19.01.2009, the petitioner was transferred to St.Mary's Middle School, Puthukadai, on mutual basis, by which, one John Ruby was transferred from St.Mary's Middle School, Puthukadai, to St.Francis Primary School.

11. According to the petitioner, from the date of his transfer namely, 19.01.2009, he was not paid salary. Though vacancies arose subsequently, the petitioner was not posted therein and in the meantime, the said John Ruby who was transferred to the petitioner's original place also retired and having waited for more than 3 years, the petitioner approached the present counsel and only thereafter, he came to know that his place in the 4<sup>th</sup> respondent school has been treated as a fresh appointment and was not treated as a transferee to the said school. Therefore, the learned counsel would state that having completed 23 years of unblemished service till the date of transfer and service of 4 years thereafter without salary, the respondents 3 and 4 cannot treat him as fresh appointee on 19.01.2009. If the official respondents consider the petitioner's transfer in the surplus place, they should have at least accommodated him in the sanctioned post in any one of the schools under the same management and failure to do so can be considered only as a mala fide. He would further state that the management on a vacancy arose on the retirement of a Secondary Grade Teacher Mrs. Rose Mary on 13.12.2009, ought to have considered the petitioner's appointment, but in the said place, one Mrs. Josephine Mary was appointed on 01.06.2010 and her appointment was also approved by the 2<sup>nd</sup> respondent by impugned proceedings dated 06.07.2011. Likewise, the 2<sup>nd</sup> respondent's approval of Mrs. Stella Mary as Secondary Grade Teacher in St. Mary's Middle School, Puthukadai, on her being declared as surplus in R.C Primary School, Palliyadi without considering the petitioner's approval is also liable to be interfered with. The petitioner's queries to his salary were shut out citing pendency of W.P(MD) No.12168 of 2011 and therefore, the petitioner is before this Court for appropriate orders.

12. The District Elementary Educational Officer, Kanyakumari District, and the Assistant Elementary Educational Officer, Munchirai, Kanyakumari District, respondents 1 and 2 have filed counter affidavit in W.P(MD) No.16758 of 2013, contending that it is not in dispute that the petitioner had been working in the sanctioned posts. In the academic year 2009-10, the total approved sanctioned posts in the 4<sup>th</sup> respondent school was six and during 2009-10, there were 3 surplus teachers found to be working in the 4<sup>th</sup> respondent school. At that time, one John Ruby was working as a surplus Secondary Grade Teacher in the 4<sup>th</sup> respondent school and since he had committed some malpractice with the students, the management for the reasons best known to them, in order to safeguard



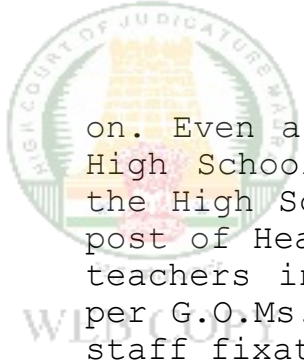
him, transferred John Ruby from the 4<sup>th</sup> respondent school to the place of the petitioner who was working as a Secondary Grade Teacher at St. Francis Primary School, Venkode, Kanyakumari District.

13. The official respondents would further state that there were three surplus posts in the 4<sup>th</sup> respondent school and the management should have deployed the said John Ruby to any other needy schools run by the management, but instead, the school transferred the said John Ruby to the place of the petitioner and consequently, the petitioner was transferred to the surplus post held by the said John Ruby. According to the respondents 1 and 2, the surplus post held by John Ruby became automatically surrendered to the department. But, surprisingly, the petitioner who was working as Secondary Grade Teacher in St. Francis Primary School was transferred to St. Mary's R.C Middle School and the 4<sup>th</sup> respondent approached the 1<sup>st</sup> respondent seeking approval of the appointment of the petitioner with effect from 19.01.2009, the date on which he was transferred to the 4<sup>th</sup> respondent school and the 1<sup>st</sup> respondent vide proceedings dated 12.03.2011, rejected the claim of the management and challenging the same, the 4<sup>th</sup> respondent school filed W.P(MD)No.12168 of 2011 seeking for a prayer to approve the petitioner's appointment. In the meantime, the said John Ruby who was transferred to the petitioner's place sought voluntary retirement on 08.07.2009.

14. The main contention of the official respondents is that the management had absolutely erred in transferring the petitioner from St. Francis Primary School was transferred to St. Mary's R.C Middle School, where there were already three surplus posts and knowing fully well that the post is a surplus post, the management had purposely transferred the petitioner to the 4<sup>th</sup> respondent school and the wrong committed by the management cannot be approved by the Government. It is the 3<sup>rd</sup> respondent management and 4<sup>th</sup> respondent school treated the petitioner as fresh appointee. Even in the subsequent vacancies, the management did not accommodate the petitioner. Therefore, the official respondents submitted that for the wrong committed by the management, the authorities cannot approve the surplus post with effect from 19.01.2009 and prayed for dismissal of the writ petition.

15. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

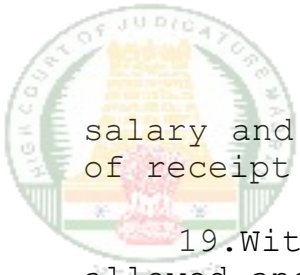
16. Perusal of the staff fixation order for the year 2008-09 would show that in the Primary School, there was totally 186 students and in the Middle School, there were total of 104 students. As per G.O.Ms.No.525, for the Elementary Schools, the teachers-pupil ratio of 1:40 will be followed by minimum of two Secondary Grade Teachers upto the strength of 80 and one of the two posts will be in the grade of Headmaster and for every additional strength of 40, one post of Secondary Grade Teacher will be sanctioned i.e., the third post at 100, the fourth post at 140, the fifth post at 180 and so



on. Even as per G.O.Ms.No.525, when a Middle School is upgraded as High School, the post of School Headmaster will be converted into the High School Headmaster and in respect of Elementary School, one post of Headmaster will be sanctioned. Accordingly, there will be 5 teachers in the Elementary School and 3 in the Middle School. As per G.O.Ms.No.525, the number of teachers should be 8, whereas, the staff fixation was fixed as 7.

17.It is seen from records that the petitioner had approached the authorities and had stated that as per G.O.Ms.No.525 and as per the Full Bench judgment reported in 2006 (5) CTC 385, Director of Elementary Education, Chennai, vs. S.Vigila, as one teacher for one class, the number of teachers required is 9 and considering the same, the surplus teachers were not deployed by the authorities. Therefore, only based on this, the petitioner/G.Justeen, Secondary Grade Teacher had been transferred to St.Francis Primary School, Vencode, Kanyakumari District, in the place of John Ruby and the transfer has been sought approval. Based on certain queries, the proposal was returned and it appears that again, the proposals had been re-submitted on 09.05.2009, but it has been returned stating that the school had three surplus teachers. Again, in the staff fixation order dated 11.10.2009 for the academic year 2009-10, it has been stated that the school had 9 teachers.

18.Perusal of record shows that in the staff fixation order dated 11.12.2009, it is admitted by the authorities that the school had 9 teachers and the sanctioned strength was 9. So, till 11.12.2009, the sanctioned strength was 9 and therefore, as per G.O.Ms.No.525 and as per the Full Bench judgment reported in 2006 (5) CTC 385, Director of Elementary Education, Chennai, vs. S.Vigila, the school ought to have had 9 teachers, but the authorities for some reason or other, without applying their mind, had returned the proposal. Even as per their own order dated 11.12.2009, the sanctioned posts available to the school were 9 and therefore, the said G.Justin has been transferred in the sanctioned post and there is no reason for the authorities to return the proposal and they have misconceived G.O.Ms.No.525 and the Full Bench judgment reported in 2006 (5) CTC 385 has not been considered at all and without any application of mind, they have refused to approve the appointment of G.Justin. It appears that without application of mind and without taking note of the earlier proceedings, the authorities had stated that G.Justin had been appointed in the surplus post. Even as per G.O.Ms.No.525, and the Full Bench judgment reported in 2006 (5) CTC 385, 9 teachers are necessary for the above school and there are no surplus teachers and therefore, the impugned proceedings of the 1<sup>st</sup> respondent District Elementary Educational Officer in O.Mu.No.448/Aa3/011, dated 12.03.2011, challenged in W.P(MD)No.12168 of 2011 is set aside and the respondents 1 and 2 are directed to approve the appointment of G.Justin as Secondary Grade Teacher in the petitioner school w.e.f. 19.01.2009 with all attendant benefits including the arrears of



salary and allowances, within a period of eight weeks from the date of receipt of a copy of this order.

19. With the above directions, W.P(MD)Nos.12168 of 2011 is allowed and 167598 of 2013 is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1) The District Elementary Educational Officer,  
Nagercoil-629 001,  
Kanyakumari District.

2) The Assistant Elementary Educational Officer,  
Munchirai, Kanyakumari District.

• 1 CC TO Mr.Xavier Rajini for Issac Chambers, IN SR No. 87503.  
+1 cc to Special Government Pleader, SR.No.87186.

BALA  
DS SV SAR1 31 10 2018 8P 5C

W.P(MD)Nos.12168 of 2011 and 16758 of 2013  
26.09.2018