

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2019

CORAM

THE HONOURABLE Mr. JUSTICE M. DHANDAPANI

W.P.No.220 of 2019
and
W.M.P.No.246 of 2019

E.Jansi Rani

... Petitioner

vs

- 1 The Director of Elementary Education,
College Road, Chennai - 600006.
 - 2 The District Elementary Educational Officer,
The District Educational Office,
Collectorate Complex, Tiruppur.
 - 3 The Assistant Elementary Educational Officer,
Assistant Elementary Educational Office,
Kundadam, Tiruppur.
 - 4 The Correspondent,
C.S.I. Primary School,
Kundadam,
Tiruppur District.
 - 5 The Bishop and Manager,
Church of South India Tiruchirapalli-
Thanjvur Diocese Diocese Office, Puthur
Tirucharapalli.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 17.12.2018 made in Na.Ka.No. 2467/ Aa2/ 2018 passed by the 2nd respondent to approve the appointment of the petitioner, namely, Jansi Rani, as Secondary Grade teacher in the 4th respondent school from 25.08.2015 onwards with salary and other attendant benefits.

For Petitioner : Mr. D.R. Arun Kumar

For Respondents : Mrs.V. Annalakshmi,
Government Advocate

ORDER

This petition has been filed to quash the impugned order dated 17.12.2018 passed by the 2nd respondent and to direct the 2nd respondent to approve the appointment of the petitioner as Secondary Grade Teacher in the 4th respondent School from 25.08.2015 onwards with salary and other attendant benefits.

2.It is the case of the petitioner that the petitioner is working as a Secondary Grade Teacher in the School run by the 4th respondent which is a private aided Minority school. The said school is one among the several educational institutions established and administered by the 5th respondent. The said school is imparting education from Standards 1 to 5. All the schools under the CSI Diocese are administered as a single unit under a Corporate set up. The teachers and the other staffs are appointed under the management and posted to various schools according to the need and the availability of the posts. On account of the promotion of the previous incumbent Mr.J.Yovansnankan to CSI Aided Elementary School, T. Venkatapuram, on 25.08.2015, one of the Secondary Grade Teachers fell vacant among the sanctioned posts in the 4th respondent School. Hence, the petitioner was appointed on 18.08.2015 as Secondary Grade Teacher in the abovesaid post and joined duty on 25.08.2015 itself. The petitioner has possessed the required qualifications to the post of Secondary Grade Teacher and has cleared Teacher's Eligibility Test with 96 marks.

3.The learned counsel for the petitioner would submit that the school has submitted necessary proposal to the 2nd and 3rd respondents seeking approval to the petitioner's appointment and disbursement of grant-in-aid towards her salary. However, the proposal was still kept pending by the 2nd and 3rd respondents. Hence, the petitioner has filed W.P.No.26575 of 2017 before this Court and this Court vide order dated 27.09.2019 disposed of the Writ Petition directing the 2nd respondent to take an informed and considered decision on the proposal submitted for approval of appointment of the petitioner as Secondary Grade Teacher by the 4th respondent in accordance with law within a period of six weeks from the date of receipt of a copy of that order. Subsequent to the same, the 2nd respondent has passed the impugned order dated 17.12.2018 rejecting the approval of the petitioner's appointment on the ground that there were surplus teachers available in some other schools run by the same Management. Hence, this Writ petition has been filed.

4.The learned Government Advocate appearing for the respondent would submit that the appointment of the petitioner cannot be approved for the reasons that there are already surplus teachers working in the School run by the 5th respondent, particularly, there were two Secondary Grade Teachers available and the 5th respondent ought to have deploy the surplus teachers in the 4th respondent School. Further, she would submit that consequent to the introduction of Right to Children to Free and Compulsory Education Act, pupil teacher ratio has been fixed and hence, no fresh appointment will be permitted unless and until all the surplus teachers are deployed in needy schools. The learned Government Advocate would submit that the Accountant General, Chennai, has already raised Audit Objections stating that there is huge loss of revenue to the Government due to allowing the surplus teachers to continue in service with full salary payment which is against the pupil-teacher ratio prescribed under the Right of Children to Compulsory Education Act.

5.The learned counsel for the petitioner would submit that one Mr.J.YovanSnanakan, who was working as Secondary Grade Teacher in the 4th respondent School, was promoted as Head Master and in the consequential vacancy, the petitioner was appointed as Secondary School Teacher. Subsequent to the same, the 2nd respondent rejected the approval of appointment stating that there are surplus teachers available in the other schools coming under the same Management. The very same issue was considered not only on the basis of following the Full Bench Judgment but also on the basis of the decision made in W.P.No.4572 of 2006 dated 01.09.2006, wherein this Court repelled such a stand taken by the respondents and ultimately, the Writ Petition was allowed. The learned counsel for the petitioner would also submit that the said order passed by this Court on 08.12.2006 is implemented and no appeal has been filed. The learned counsel also cited similar other orders passed by this Court in W.P.No.3026 of 2004, etc., dated 03.10.2007 by holding that excess teachers available in other Schools run by the same management cannot be a ground to deny approval of the appointment of teachers appointed in the sanctioned post.

6.On the very same issue, the Division Bench of this Court by order dated 17.06.2015 in W.A.No.(MD).639 to 642 of 2015, etc., batch, dismissed the appeals and held as follows:

"5.Considering the very same issue, this Court was pleased to pass the following order:

"2.The case of the petitioner is that he was appointed as Secondary Grade Teacher in the third respondent school on 01.02.2010 in a vacancy caused on account of voluntary retirement of one A.Sarojini. A proposal was submitted by the third respondent management seeking approval of appointment of the petitioner. The first respondent, by the impugned order dated 30.05.2011, declined to approve the appointment of the petitioner on the ground that there are surplus teachers in the other schools run by the same management, and therefore, the appointment of the petitioner cannot be approved. Challenging the said order, the petitioner has come forward with the present Writ Petition.

3. A similar issue was considered by this Court in W.P.(MD).No.4372 of 2006, dated 01.09.2006, wherein, this Court repelled such stand taken by the respondents. The said order was followed in W.P.Nos. 10350 to 10352 of 2006, by order dated 08.12.2006. The said order passed in W.P.No.10351 of 2006 was challenged in W.A.292 of 2007 and the same was dismissed by a Division Bench of this Court on 02.08.2007. The orders passed in W.P.Nos.10350 & 10352 of 2006 were also confirmed in W.A.No.194 of 2007 and W.A.No.205 of 2007, dated 09.06.2007. The said Judgments were also implemented. In W.P.(MD). No.10256 of 2008, dated 27.03.2013, a similar order of rejection was quashed and the Writ Petition was allowed.

4. In view of the said settled position, there is no justification to deny the approval of appointment as sought for by the petitioner, as the petitioner was appointed in a sanctioned vacancy and the school, in which the petitioner was appointed, is eligible to retain the said post and the petitioner is fully qualified for being appointed in the said post.

5. Applying the said Judgments to the facts of this case, the impugned order dated 30.05.2011 passed by the first respondent is set aside and the Writ Petition is allowed. The respondents are directed to approve the appointment of the petitioner from the date of his appointment with salary and other benefits. The respondents shall pass orders within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected

Miscellaneous Petitions are closed. No costs."

6.The decision rendered by this Court is applicable to the case on hand. Furthermore, the other ground on which the impugned order has been passed also cannot be sustained as other school is bound to have a minimum of two teachers and therefore, in adequacy of student's strength cannot be a ground for not approving the appointment of the petitioner. However, the petitioner cannot seek a direction to third respondent to comply with the direction of the first and second respondents, by transferring the surplus staff available in other schools.

7.In such way of the matter, the writ petition is allowed and the respondents are directed to approve the appointment of the petitioner on the date of her appointment within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs."

4. Considering the same, these Writ Petitions are allowed on the very same terms. No costs. Consequently, connected Miscellaneous Petitions are closed."

Further, at Paragraph 6 of the said Judgment, it is held as follows:

"6.As stated supra, inasmuch as appointments of the writ petitioners were made against sanctioned posts in the respective schools. Observations made in the W.A.No.70 of 2012 dated 13.03.2012, granting permission to the District Elementary Educational Officer, Tirunelveli, to take steps, to deploy excess teachers, from the schools under the same management, cannot be a ground, to deny approval of appointments of the writ petitioners, as Secondary Grade Teachers in the schools, in which, they were appointed. When the school management sends a proposal for approval of the teachers, the educational authorities have to consider, as to whether such teachers have been appointed against sanctioned posts and whether they are qualified for such appointment. Rule of reservation wherever applied is also verified. On the above aspects, there is absolutely no quarrel by the educational authorities.

7.When a specific question was posed to the learned Special Government Pleader, as to whether appointment of Mr.S.AustinJeba Solomon, a teacher in

TDTA Primary and Middle Schools, Devarkulam Pastorate, Tirunelveli District/1st respondent in W.A (MD)No.70 of 2012 was approved or not, notwithstanding the observations made by the Hon'ble Division Bench in the above appeal, filed by the State, the answer was in the affirmative and therefore, it is evident that even after the said observations, the department had chosen to approve the appointment of the said teacher. For another question posed to the learned Special Government Pleader, as to whether the department had taken steps to redeploy the excess teachers, as observed, the answer was in the negative. Thus in the absence of any steps being taken by the department and when appointments of the writ petitioners, are against sanctioned posts, in the respective schools and considering the fact that the department itself, had chosen to approve the appointment of one Mr.S.AustinJeba Solomon, on its own, party respondent in W.A.No.70 of 2012, wherein, the abovesaid observations were made, this Court is of the view that the writ petitioners are entitled for approval of their appointments, as Secondary Grade Teachers. At this juncture, it is also worthwhile to consider the following decisions, as to whether a benefit conferred to a similarly placed person can be denied or not, when facts are similar.

(i) In the decision in State of Karnataka vs. N.Parameshwarappa reported in 2003(12) SCC 192, at paragraph 8, it is held thus:

"8. As indicated earlier, the learned Judges in the Division Bench confined the relief granted to the period w.e.f. 1-4-1990. A faint challenge has also been made to this part of the order, but not of any substance or merit, for acceptance. Relief in this regard has been so confined to more than one relevant and justifying reason and one such was the absence of the Union of India and the University Grants Commission before the Court as party to the proceedings. Even that apart some of the facts of the submission made by MrV.R.Reddy, learned Senior Counsel appearing for the respondent teachers, which found favour of our acceptance and dissuaded us from interfering with the judgment under challenge in these appeals, if persuaded to their logical extent only fortifies the said conclusion arrived at by the Division Bench of the High Court. One such contention was that it was permissible for the Government, independently of the Central Government assistance

also to extend the benefits to the teachers beyond that which has been provided for by the Government of India. Such responsibility, even under the government order dated 30-3-1990 has been undertaken from 1-4-1990 onwards by the State Government to implement the scheme in entirety. Therefore, for such added reasons too we are in entire agreement with the judgment of the Division Bench that the relief accorded should be confined to the period w.e.f. 1-4-1990 only. At the same time we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30-3-1990, as raised in the proceedings."

(ii) In *Govind Ram Purohit vs. Jagjiwan Chandra*, reported in 1999 SCC (L & S) 788, at paragraph 3, it has been held thus:

"3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned. The above referred Supreme Court decisions were followed by me in 2006(2) MLJ 572 (*N.S.BALASUBRMANIAN V. FOOD CORPORATION OF INDIA*). The said order was challenged in W.A.No. 956/2006 and the same was dismissed on 30.10.2006 and S.L.P.(C) No.677/2007 filed against the Division Bench order was also dismissed by the Supreme Court on 23.04.2007. In the decision reported in 2011 (5) SCC 553 (*RATHY SHYAM V. STATE OF UTTARPRADESH*) the Supreme Court held that

the policy of pick and choose in acquiring some parcels of land while leaving many other parcels of lands under Land Acquisition Act is discriminatory and violation of Article 14 of the Constitution of India. The Division Bench of this Court in the decision reported in 2011 (5) CTC 503 (TAMIL NADU HOUSING BOARD V. UMA MAHESWARI RAMASWAMY) held that there must not be discrimination in land acquisition proceedings. In the decision reported in 2010 (2) CTC 336 (SC) (HARI RAM V. STATE OF HARIYANA) the Supreme Court held that if the Courts are not correcting the wrong action of the Government it may leave citizen with the belief that citizen is right in contacting right persons in the Government as if judicial proceedings are not efficacious. Thus similarly placed persons are bound to be treated equally without discrimination is a fundamental right guaranteed under Article 14 of the Constitution of India."

8.It is now more than four years, since the observations were made in W.A(MD)No.70 of 2012 dated 13.03.2012. It is also be noted that every year as per G.O.MS.NA.525, School Education(DI) Department, dated 29.12.1997, staff fixation is done, in each school, by educational authorities, on the basis of teacher-pupil ratio. No materials have been placed before this Court, as to the staff fixation done in the subsequent years, from 2012 onwards, in the schools, in which, surplus was noticed. If the existence of surplus staff continued in the subsequent years, the department ought to have taken action only, as against the said schools and redeployment could have been done then and there. But from the submission of the learned Special Government Pleader, it is evident that no steps were taken, for all these four years. If in the subsequent years, staff fixation in the schools, in which excess was noticed, had already been approved, then the educational authorities are bound by such orders."

9.In the light of the discussion and decisions, stated supra, we do not find any valid reason, to interfere with the order made the writ petitions. Accordingly, the Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

In view of the Judgment of the Division Bench of this Court in W.A.(MD).No.639 to 642 of 2015 dated 17.06.2015, this

Writ Petition is allowed. The respondents are directed to approve the appointment of the petitioner on the date of her appointment within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mps

- 1 The Director of Elementary Education,
College Road, Chennai - 600006.
- 2 The District Elementary Educational Officer,
The District Educational Office,
Collectorate Complex, Tiruppur.
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Tirucharapalli.

+1cc to Mr.D.R. Arun Kumar, Advocate SR.No.79445

+1cc to Government Pleader SR.No.80228

W.P.No.220 of 2019
and
W.M.P.No.246 of 2019

PP (CO)
GMY (30/01/2020)