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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.06.2019

Delivered on : 14.06.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.8588 of 2019 &
W.M.P.Nos.9107, 9110 and 9112 of 2019

D.Ishwarya

..Petitioner

Versus

1. The District Elementary Educational Officer,
Virudhachalam.

2. The Block Development Officer,
Virudhachalam.

3. The Manager,
Panneerselvam Aided Elementary School,
No.22/43, South Street,
Virudhachalam-606 001,
Cuddalore District.

..Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the 1st respondent issued in his proceedings Na.Ka.No.5081/A4/2018 dated 22.02.2019, quash the same and consequently direct the respondent to approve the petitioner's appointment with effect from 07.06.2017 with all consequential benefits.

For Petitioner : Mr.T.Sellapandian

For Respondents : Mr.K.Karthikeyan, GA for R1&R2
Mr.T.Chandrasekaran for R3

ORDER

This Writ Petition has been filed, praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the proceedings Na.Ka.No.5081/A4/2018 dated



22.02.2019 issued by the 1st respondent, quash the same and consequently direct the respondent to approve the petitioner's appointment with effect from 07.06.2017 with all consequential benefits.

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2. The petitioner was appointed as a Secondary Grade Teacher by the 3rd respondent Management, after obtaining prior permission under Rule 15(4) in the vacancy created by promotion of one teacher as Head-master, by order dated 16.5.2017. The appointment of the petitioner was made on the basis of a resolution of the 3rd respondent School Committee dated 31.5.2017 vide order dated 05.06.2017 and the petitioner joined the post in the 3rd respondent school on 07.06.2017. On 14.06.2017, the 3rd school forwarded a proposal for approval of the petitioner's appointment to the 1st respondent through the 2nd respondent. The 2nd respondent in turn, forwarded the proposal to the 1st respondent for approval since the petitioner's appointment is well within the cadre strength of the 3rd respondent school on 16.6.2017. However, despite the proposal being forwarded by the 2nd respondent, no orders were passed by the 1st respondent and therefore, the petitioner was constrained to approach this Court in W.P.No.22197 of 2018, seeking a direction to the 1st respondent to grant approval of the petitioner's appointment with effect from 7.6.2017. This Court, by order dated 29.08.2018, disposed of the Writ Petition by directing the 1st respondent to consider the proposal and pass orders on merits within a period of four weeks from the date of receipt of a copy of the order.

3. In pursuant to the direction of this Court in the above said Writ Petition, the 1st respondent did not pass any orders and in the circumstances, the petitioner once again was constrained to approach this Court by filing a Contempt Application in C.A.No.249 of 2019 and during the pendency of the Contempt Application, the 1st respondent has passed impugned order dated 22.2.2019, rejecting the proposal of the approval of the petitioner's appointment on the ground that the students' strength in respect of the 3rd respondent school has come down and one post of Secondary Grade Teacher became surplus. According to the 1st respondent, while for the year 2017-18 and for the year 2018-19, the student strength is 113 and as per the attendance, 70 students were present. When the 1st respondent visited the school on 22.1.2019, the students' strength on roll was 113 and as per the attendance register, the students' strength was 67 and on 2.2.2019, the students' strength was 81. Therefore, as per G.O.Ms.No.231, dated 11.8.2010, the 3rd respondent school is entitled to have one post of Headmaster and three posts of Secondary Grade Teachers and thereby, one post of Secondary Grade Teacher became surplus and in the circumstances, the proposal for approval of the petitioner's appointment came to be rejected. The order passed by the 1st respondent dated



22.2.2019 rejecting the proposal, is put to challenge in the present Writ Petition.

4. Mr.T.Sellapandian, learned counsel appearing for the petitioner would submit that at the time when the petitioner was appointed, permission was granted vide proceedings of the 1st respondent dated 16.5.2017 and such permission was granted only when there was sanctioned strength in the 3rd respondent school. Once the permission was granted under the relevant provisions and Rules at the time of appointment, the subsequent reduction of staff strength was not material at all and on that basis, the approval cannot be rejected. He would draw the attention of this Court to the students' strength of the school on the date when the petitioner was appointed, wherein, the appointment was well within the cadre strength of the school. He would also draw the attention of this Court to the staff strength of the 3rd respondent school for the year 2017-18, wherein, it was shown that three posts of Secondary Grade Teacher were available and the petitioner was one among them.

5. In support of his contentions, the learned counsel appearing for the petitioner would rely upon two decisions of this Court, wherein, it has been held that once permission is granted for appointment when the cadre strength was available, subsequent reduction of cadre strength cannot result in rejection of the approval. He would rely a decision of this Court rendered in W.P.No.9895 of 2012 dated 27.06.2012, wherein, in para 6, this Court has held as under:

"6.The Division Bench of this Court in W.A.No.1263 of 2001 judgment dated 22.01.2004 held that if a teacher is appointed in sanctioned post, the approval of the appointment cannot be rejected and if there is fall in strength subsequently and the post became surplus, after granting approval of the post, the said teacher along with the post could be transferred/ deployed to a needy school. Following the said judgment, the order made in W.P.(MD).No.11453 of 2008 was confirmed and the writ appeal in W.A.(MD).No.703 of 2009 was dismissed by the Division Bench on 01.02.2011."

6. The learned counsel also relied on a decision In W.A.No.844 of 2014, wherein, a Division Bench of this Court has followed its earlier order made in Writ Appeal in W.A.(MD) No.703 of 2009, wherein, it has been held in para 6 as under :

"6.The reason stated by the District Elementary Educational Officer for rejecting the request for approval was that there is



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reduction of student strength. The very same issue was considered by a Division Bench of this Court in W.A.No.1263 of 2001 and by Judgment dated 22.01.2004, the Division Bench held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred/deployed to a needy school. ..."

7. According to the learned counsel, the above observation of the learned single Judge and the Division Bench's view would support the claim of the petitioner herein in all fours and therefore, the impugned order passed by the 1st respondent cannot be countenanced in law and therefore, he would urge this Court to allow the Writ Petition.

8. The learned counsel appearing for the 3rd respondent school also made his submissions in support of the approval of the petitioner's appointment.

9. On the other hand, the learned Government Advocate, appearing for the respondents 1 and 2 would submit that although the petitioner was appointed at the time when the students' strength of the school was available in order to accommodate the petitioner, subsequently, there was a reduction in students' strength in the 3rd respondent school which necessitated the rejection of approval of the petitioner's appointment on the basis of the G.O. issued on the subject matter. He would rely upon two decisions of this Court, one rendered in Review Application No.35 of 2018 in W.P.No.259 of 2018, dated 3.4.2019 and another one in W.A.(MD) Nos.76 of 2018 batch, dated 9.4.2019, wherein, this Court has directed redeployment of surplus staff in other schools. He would therefore, submit that as per the above two decisions, since the petitioner has become a surplus teacher, his appointment was rightly not approved by the competent authority.

10. Heard the learned counsel appearing for the petitioner and the 3rd respondent and also the learned Government Advocate appearing for respondents 1 and 2.

11. It is an admitted position that at the time, i.e. on 5.6.2017, when the petitioner was appointed in 3rd respondent school, due permission was granted by the competent authority under Rule 15(4) of the Tamil Nadu State Private Schools (Regulation) Rules. When such due permission was granted in view of the fact that there was sufficient students' strength available to accommodate the petitioner, the subsequent



reduction in the students' strength of the school, cannot be held against the petitioner for the purpose of granting approval of her appointment. Even if the petitioner's appointment became surplus, it is incumbent upon the authority to grant first approval, then declare surplus and thereafter, deploy her in another school. However, it is certainly not open to the authority to reject the approval after due permission was granted under Rule 15(4).

12. As rightly contended by the learned counsel for the petitioner that two decisions relied upon by him which were extracted above, would fully cover the issue as raised in the present Writ Petition in favour of the petitioner herein.

13. Once a teacher is appointed in a sanctioned post, approval of the appointment cannot be rejected. If there is fall in students' strength subsequently, the only course open to the competent authority is to transfer the teacher along with the post to a needy school and such course has not been unfortunately adopted in the present case. Even otherwise, it is the claim of the petitioner that her appointment is well within the cadre strength even as on date and the question of declaring her post as surplus does not arise at all. In any event, in view of the categoric pronouncement of this Court both by learned single Judge and Division Bench, this Court is of the view that the approval cannot be rejected on the ground that there was a reduction in students' strength of the school subsequently.

14. In the light of the pleadings and the materials placed on record and also the decisions of this Court, relied upon by the learned counsel for the petitioner, this Court is of the view that the petitioner has made out a case for grant of the relief as sought for. As far as the decisions relied upon by the learned Government Advocate are concerned, this Court is unable to accept the same for the simple reason that those decisions have been rendered on the factual context of the respective cases and no ratio has been laid down to be followed by this Court and the same cannot be applied to the factual matrix of the present case. As far as the decisions relied upon by the learned counsel for the petitioner are concerned, the ratio laid down therein by this Court, have to be followed for dispensing uniform justice to the aggrieved persons.

15. For the said reasons, this Court is of the view that the petitioner is entitled to succeed and hence the impugned order dated 22.02.2019 in Na.Ka.No.5081/A4/2018 is hereby set aside. There shall be a consequential direction to the first respondent to approve the appointment of the petitioner as Secondary Grade Teacher with effect from the date when she was originally appointed with all consequential benefits. The first respondent



is directed to comply with this order within a period of four weeks from the date of receipt of a copy of this order.

16. The Writ Petition stands allowed on the above terms. No costs. Consequently, connected WMPs are closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Suk

To

1. The District Elementary Educational Officer,
Virudhachalam.

2. The Block Development Officer,
Virudhachalam.

+lcc to Mr.T.Sellapandian, Advocate, S.R.No.49318
+lcc to the Government Pleader, S.R.No.49149

W.P.No.8588 of 2019

PVS (CO)

RRS (05/08/2019)