

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.22352 of 2018

AND

WMP.No.26195 of 2018

Alaudin Aided Primary School,
rep. by its Manager cum Correspondent,
Nahangudi, Mannarkudi Region,
Thiruvarur District. ... Petitioner

Vs.

- 1.The Director of School Education,
College Road, Chennai-6
- 2.The District Elementary Education Officer,
Thiruvarur
- 3.The Additional Assistant Elementary Education Officer,
Mannarkudi, Thiruvarur District ... Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned order passed by the second respondent in Na.Ka.No.4370/A3/2017 dated 20.03.2018, quash the same and consequently direct the respondents to approve the appointment of Tmt.S.Sumokini as Secondary Grade Teacher w.e.f. 03.07.2017 in the petitioner school with all consequential benefits, in the light of the order passed by this Court in W.A.(MD) No.229 of 2017 dated 23.03.2017.

For Petitioner .. Mr.S.N.Ravichandran
For Respondents .. Mr.K.Karthikeyan,
Government Advocate

ORDER

This writ petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the entire records connected with the impugned order passed by the second respondent in Na.Ka.No.4370/A3/2017 dated 20.03.2018, quash the same and consequently direct the respondents to approve the

appointment of Tmt.S.Sumokini as Secondary Grade Teacher w.e.f. 03.07.2017 in the petitioner school with all consequential benefits, in the light of the order passed by this Court in W.A. (MD) No.229 of 2017 dated 23.03.2017.

2. The petitioner school was started in the year 1941 in Nagangudi Village. The school is an Aided Religious Minority Institution as declared by the District Munsif Court in Judgment and decree passed in O.S.No.384 of 1993 dated 30.03.1994. The school is governed by the provisions of Tamil Nadu Recognised Private School (Regulation) Act, 1973 and various other Government Orders issued from time to time. As on date nearly 100 students are studying from 1 to 5 Standards with one Headmaster and 2 Secondary Grade Teachers. The second respondent vide proceedings dated 28.12.2010 sanctioned one additional Secondary Grade Teacher post to the School. The same was reflected in the fixation of the staff strength by the authority concerned. In the year 2009, the Right of Children to Free and Compulsory Education Act (in short RTE Act) was enacted by the Central Government and the State Government vide G.O.Ms.No.181, School Education Department dated 15.11.2011 mandated Teachers Eligibility Test (TET) as a pre-requisite qualification for appointment of teachers in the Aided Institutions. Because of this impediment, the School was not in a position to appoint a qualified teacher who possesses TET at that point of time and as such, the school agreed to fill up the additional post by way of deployment.

3. In the said circumstances, the second respondent/District Elementary Education Officer ordered for deployment of two teachers on 24.01.2017 and 27.02.2017 respectively. But unfortunately, they did not join duty in school and one post of Secondary Grade Teacher remained vacant for many years. Since one post of Secondary Grade Teacher has been lying vacant for many years, the school management had no option except to withdraw their no objection submitted to the authority vide letter dated 09.06.2017 for filling up the unfilled posts by deployment. Simultaneously, on 03.07.2017, the petitioner school conducted a selection by following strict selection criteria and on the basis of evaluation of merits and abilities, appointed one Tmt.S.Sumokini, as Secondary Grade Teacher. The said teacher has also passed TET as early as in August 2013. The said teacher has also secured 97 marks. On the basis of selection by the school, the teacher has also joined in the school on 03.07.2017. On 25.09.2017, the school management submitted a proposal to the second respondent, through the third respondent, for approval of the appointment of the said teacher. However, by impugned proceedings dated 20.03.2018, the second respondent rejected the request for grant of approval to the appointment of Tmt.S.Sumokini on

03.07.2017 on the ground that the said vacancy will have to be filled up through deployment of surplus teacher from Director's pool. The said order passed by the second respondent is put to challenge in the present writ petition.

4. Mr.S.N.Ravichandran, learned counsel for the petitioner would submit that being a minority institution, it can appoint its own person when there is clear vacancy available to the post of Secondary Grade Teacher. The only criteria in minority school to be adopted is with regard to the merit of the candidate selected and appointed. The State has control only in regard to the merit of the candidate to be appointed and it cannot interfere in any other matters of the choice of the minority institutions in selecting TET candidates for appointment. The learned counsel would also submit that in this case, the candidate appointed was meritorious and she has passed TET in the year 2013. Since the post of Secondary Grade Teacher has been lying vacant for several years and the two teachers, who were deployed by the second respondent vide orders dated 24.01.2017 and 27.02.2017 respectively, did not choose to join the school, the school management had no other choice except going for recruitment and the selection of said Smt. S.Sumokini for appointment and the appointment is perfectly in order in all respects.

5. The learned counsel for the petitioner would further submit that being a minority institution, their rights are protected under Article 30 of the Constitution of India. It is not open to the authority to deploy any teacher from a different school and to force the school management to accept such deployment. In this connection, the learned counsel for the petitioner would draw the attention of this Court to the judgment passed by the learned Single Judge of this Court in W.P.Nos.306 to 308 of 2018 dated 11.04.2018 in the case of (The Manager, Immaculate Heart of Mary Higher Secondary School and 2 others Vs. The Union Territory of Puduchery, rep. by its Secretary and 2 Others). The observation made by the learned Single Judge in Paragraph no.10 of the above judgment is extracted below:

'10.The issue on hand is whether there is vacancy in the post of Teachers in the Petitioner/School in all the above Writ Petitions. Undoubtedly, it is open to the Respondents to transfer Teachers from other Schools to the Petitioner/Schools, on account of non-availability of students in other Schools. But, deployment of Teachers cannot be done to a minority School. A minority School has the right to recruit Teachers and staff on their own. On the ground of non-

availability of 50% of the students from the minority community, whether the Petitioner/Schools will lose their minority status, cannot be gone into the present Writ Petitions, as the same is not the subject matter.

6. He would therefore, submit that deployment cannot be resorted to in respect of the minority schools. Therefore, the learned counsel would submit that the reason as stated in the impugned order cannot be sustained in law.

7. Per contra, learned Government Advocate appearing for the respondents vehemently submitted that the second respondent has ordered deployment of two teachers earlier vide orders dated dated 24.01.2017 and 27.02.2017 respectively. The petitioner management refused to allow them to join in the school and having refused to allow those teachers to join in the school, it is not open to the petitioner management to go for fresh recruitment and appoint the teacher of their own choice. According to him, in view of the refusal by the school management, the second respondent recalled the order by cancelling the same. Further, learned Government Advocate would also rely on the recent judgment of learned Division Bench of this Court in W.A.(MD) Nos.76, 225 of 2019 and etc batch dated 09.04.2019 in the case of (The Secretary to Government, School Education Department and 2 Others Vs. Iruthaya Amali and other), wherein, the learned Division Bench has held that the deployment can be resorted to in case of surplus teachers both in minority and non-minority institutions. The observation made by the learned Division Bench of this Court in para no.6 of the aforesaid judgment, which is extracted hereunder:

'6. While protecting the interest of aided institutions viz., both non-minority and minority, in order to protect the interest of the State Exchequer and Public Exchequer, this Court would like to issue the following directions:

(i) Since there is a likelihood of boosting the students strength of the Aided Schools for the purpose of getting more teachers, the Government is directed to implement the bio-metric attendance of the students studying in the Aided schools as well as the teachers employed in Aided Schools;

(ii) There shall not be any fresh appointment from today in Private Aided Schools, till surplus teachers in other schools coming under the same Management are exhausted;

(iii) The Government shall not approve any appointment made by the Private Aided Schools, till the surplus teachers in the schools coming under the same Management are exhausted';

(iv) Insofar as the matters in which the issues have been decided finally either by the learned Single Judge or the Division Bench, the appellants are not at liberty to reopen the issue;

(v) There is no prohibition for approval of teachers, where concerned teachers or management obtained orders from this Court which reached finality for grant of approval;

(vi) In case, an appeal or review has been preferred as on date, it is open to the appellants to contest the cases on merits;

(vii) Wherever, there is no dispute with regard to existence of surplus teachers, it is open to the appellants to deploy those teachers, wherever, it is required viz., in other aided schools.

(viii) In cases, where the minority school is a Single School and there is no question of getting surplus teachers from other schools in the same Management, it is open to the school authorities to approach the Educational Authority well in advance, so that, the Educational Authority will be able to deploy the eligible teachers. Such deployment of eligible teachers from any other school should satisfy the eligibility criteria as prescribed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

Call on 15.04.2019''.

8. Therefore, he would submit that both for the reasons that the deployment order passed by the second respondent was not accepted by the minority institutions and also the arguments

advanced on behalf of the petitioner management that the deployment is impermissible in minority institutions as held by the learned Single Judge of this Court may not be correct, in view of the learned Division Bench direction issued in the afore mentioned batch of Writ Appeals.

9. At this, learned counsel for the petitioner would submit that the teachers, who were originally deployed vide order dated 24.01.2017 and 27.02.2017 respectively, did not choose to join in the petitioner school and in fact, the authorities themselves have cancelled the order. The learned counsel would draw the attention of this Court to the order issued by the authorities. Therefore, the teachers having not chosen to join duty and the deployment did not in fact take place at all, the petitioner school cannot be denied full complement of teachers in the school. Moreover, he would draw the attention of this Court to the communication in which the school has admitted that presently, there are 92 students studying in school in which, even there is a requirement of one additional teacher in the post of Secondary Grade Teacher.

10. The learned counsel would further submit that even assuming that the direction issued by the learned Division bench is applicable, the Division Bench order came only in April 2019, whereas, the appointment of teacher in question happened on 03.07.2017 and any approval to be granted would date back to the date of original appointment i.e., 03.07.2017. Therefore, the learned Division Bench's observation may not be pressed into service, as far as the present claim is concerned.

11. Considering the submissions made by the learned counsel for the petitioner and learned Government Advocate appearing for the respondents, the subject issue to be decided in this case is as to whether the appointment of Smt.S. Sumokini as Secondary Grade Teacher on 03.07.2017 is to be approved by the second respondent or not and whether such approval can be denied on the ground that the earlier deployment orders passed by the second respondent was not accepted by the school management. The said reason as stated in the impugned order, in the opinion of this Court cannot be countenanced both in law or on facts for the reason that the deployed teachers vide order dated 24.01.2017 and 27.02.2017 respectively have eventually not chosen to join in the petitioner's school. Even assuming for a moment that the respondents have authority to deploy surplus teachers in the minority institutions, the order passed by the authority did not ultimately fructify in deploying of those teachers in the petitioner school. The petitioner school was left with no option except to go in for recruitment from the open market which resulted in the appointment of one Smt.S.Sumokini, who appears to be meritorious candidate in the

opinion of school management. Moreover, the right of the educational institutions governed by minorities are protected under Article 30 of the Constitution of India. Except with regard to the qualification/merit, the Government cannot interfere with the governance of the minority institutions. The right to govern and manage the minority schools is fully protected in the hands of the minority management enshrined under Article 30 of the Constitution of India. Therefore, as rightly held by the learned Single Judge of this Court, the deployment cannot be resorted to in minority institutions. Therefore, irrespective of the fact that as to whether those teachers who were ordered to be deployed on 24.01.2017 and 27.02.2017 have chosen to join the school management or the request refused to allow them to join is not relevant at all. Once Article 30 is pressed into service in regard to the rights of minorities to manage their institutions, the interference of the Government is extremely limited only to the extent of prescriptive of qualification commensurate with the merit of the candidate and the other matters shall be entirely to be left to the discretion of the Management, who run the institutions. Although, reliance has been placed on the directions issued by the learned Division Bench of this Court in the afore mentioned batch of Writ Appeals, this Court does not think that this issue was the subject matter of consideration before the learned Division Bench of this Court. Therefore, this Court does not think that any law as laid down by the learned Division Bench of this Court would apply to the subject matter in issue except the observation that was made in para No.6 of the judgment. Even otherwise, in this case, the appointment of teacher was on 03.07.2017. It appears that the same is in order as the said teacher was qualified in TET and also has secured 97 marks and the said fact is not disputed by the respondents. Further, the school is having 92 students and this strength is also not disputed and if the required strength of the teacher is not available, the students' interest would be undermined.

12. In the circumstances, it is of at most importance and imperative that the school authorities have to give due appreciation in regard to the rights of minority management and grant approval if the appointment of the said teacher is otherwise in order. Therefore, the reasons as assigned in the impugned proceedings and also the objection as raised by the learned Government Advocate during oral submissions are in the opinion of this Court unsustainable and cannot be countenanced both in law or in facts.

13. For the above reasons, this Court is of the view that the petitioner has made out a clear case for grant of relief. Therefore, the impugned order passed by the second respondent

in Na.Ka.No.4370/A3/2017 dated 20.03.2018 is set aside and the second respondent is directed to grant approval of the appointment of Smt. S.Sumokini from the date on which she was appointed i.e., on 03.07.2017, if her appointment is otherwise in order and pass appropriate orders within a period of 4 weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Director of School Education,
College Road, Chennai-6
- 2.The District Elementary Education Officer,
Thiruvavarur
- 3.The Additional Assistant Elementary Education Officer,
Mannarkudi, Thiruvavarur District.

+1cc to Mr.S.N.Ravichandran, Advocate Sr.No.68364

+1 cc to The Government Pleader Sr.No.68474

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W.P.No.22352 of 2018

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