

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.08.2019

Delivered on : 22.08.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.17821 of 2018

A.Simon

...Petitioner

vs.

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
- 3.The Chief Education Officer,
O/o.The Chief Education Officer,
Cuddalore - 607 001.
- 4.The District Education Officer,
O/o.The District Education Officer,
Cuddalore - 607 001.
- 5.The Head Master and Correspondent,
St.Joseph's Higher Secondary School,
Tirupapuliyur, Cuddalore - 607 002.

...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in Proceeding Oh.Mu.No.4661/A5/2013, dated 19.09.2013, on the file of the 4th respondent and quash the same and issue an order of direction directing the 4th respondent to approve the appointment of the petitioner as Physical Education Teacher (PET) with effect from 09.07.2013.

For Petitioner

.. Mr.R.Amardeep for
M/s.Tamizh Law Firm

For Respondents

.. Mr.K.Karthikeyan, GA
(for R.1 to R.4)
Mr.C.Ruban D.Silva (for R.5)

ORDER

The petitioner was appointed as Physical Education Teacher (PET) in the 5th respondent School, by appointment order dated 09.07.2013. He was appointed in the promotion vacancy of one Mr.R.Balasubramanian. The petitioner was appointed on the basis of the strength of students in the 5th respondent school during the year 2013-14, from Standard VI to XII, as per G.O.Ms.No.525, School Education, (D2) Department, dated 29.12.1997 and also other Government Orders on the subject matter. The School, at that point of time, had strength of 1814 students and therefore, it was in requirement of one Physical Director and three Physical Education Teachers.

2.According to the petitioner, he was appointed in the sanctioned post of Physical Education Teacher and ever since his appointment, he has been discharging his duties continuously. After his appointment, the school has forwarded the proposal for approval of the petitioner's appointment. The proposal was returned by the 4th respondent, on 19.09.2013, stating that the maximum sanctioned strength of the Physical Education Teachers was three, as per G.O.Ms.No.525, dated 29.12.1997. Therefore, the petitioner was surplus teacher and hence, approval could not be granted. The order returning the approval by the 4th respondent, dated 19.09.2013, is put to challenge in the present writ petition.

3.The learned counsel appearing for the petitioner would submit that since his appointment on 09.07.2013, the petitioner has been continued in service as Physical Education Teacher. The learned counsel would submit that this Court in W.P.(MD) No.12065 of 2011 has held that the School with the strength of students as that of the 5th respondent School ought to have minimum of three Physical Education Teachers and one Physical Director in the Higher Secondary level. The learned counsel would draw the attention of this Court to the observations made by the learned Judge in this regard, as under:

"5.As per the G.O., one post of Physical Education Teacher is provided for the students strength in High School upto 250 and for every additional strength of 300, one additional post of Physical Education Teacher would be sanctioned. However, there is a restriction to a maximum of three. Admittedly, in the petitioner school, there are 3474 students studying upto 10th standard in high school. If the strength of Physical Education Teacher without restriction is fixed for high school, then, it requires 11 Physical Education Teachers. However, the

government order restricts to a maximum of three. Apart from, three Physical Education Teachers upto High School level, one Physical Education director is provided for Higher Secondary Level. The Division Bench of this Court in Director of School Education, Chennai - 600 006 and Others Vs. K.Uma reported in (2010) 2 MLJ 277, has held that one Physical Education Director is not inclusive in the three posts in the High school level. Further, it is held that the Government shall reconsider the matter and issue reasonable viable and appropriate norms with regard to the appointment of Physical Education Teachers in the school as per the strength of the students . In this regard, it is useful to extract paras 23 and 24 of the said judgment. "23.As stated above, the normal understanding of the above government order with regard to Physical Education Teachers is that the High Schools would have maximum number of three Physical Education Teachers and Higher Secondary School would be added one more Physical Education Director in the name of Physical Education Director. However, there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary/increase as per the strength of the student's. When the student strength is increased, the ceiling has to be removed and required more Physical Education Teachers are to be appointed, otherwise the students would suffer irreparably and the government order would go against the very scheme of education. 24.Hence G.O.Ms.No.525 needs to be given a liberal interpretation and the government is at liberty to reconsider the matter and issue reasonable viable and appropriate norms with regard to appointment of physical education teachers in the schools as per the strength of students, considering the observations made by this Court expeditiously."

6.In view of the aforesaid categorical pronouncement of the Division Bench of this Court, atleast, there would be three Physical Education Teachers for High School Section and 1 Physical Education Director for Higher secondary section is necessary to handle the Physical Education classes. In fact, the Division Bench directed the Government to issue reasonable and appropriate norms, taking into account the

students' strength of the school.

7. In this case, it is sufficient if 3 + 1 is the sanctioned strength, i.e. 3 Physical Education Teachers and one Physical Education Director is the sanctioned strength. Admittedly, there are only 2 Physical Education Teachers and one Physical Education Director employed apart from Thiru. Logeshwaran. Hence, the appointment of Logeshwaran comes within the sanctioned strength as provided under G.O. Ms. No. 525, as interpreted by the Division Bench of this Court."

4. The learned counsel for the petitioner would therefore submit that the 5th respondent school should at least have minimum of three Physical Education Teachers and one Physical Director in terms of the interpretation by this Court in the aforementioned writ petition, in which case, even the petitioner's appointment would come within the sanctioned strength. According to the learned counsel, at present, the 5th respondent school has one Physical Director and three Physical Education Teachers, including the petitioner herein.

5. On notice, Mr. K. Karthikeyan, the learned Government Advocate entered appearance on behalf of the respondents 1 to 4 and Mr. C. Ruban D. Silva, learned counsel entered appearance for R5.

6. As far as the appointment of the petitioner is concerned, the objection as raised on behalf of the respondents is that as per the Government Orders in force, the School can have maximum of three Physical Education Teachers and if one Physical Director is to be appointed, the same would be out of the available three Physical Education Teachers in the School. In this case, originally there were three Physical Education Teachers and because of higher classes (Higher Secondary) one of the Physical Education Teachers was upgraded and therefore, the petitioner, being a 3rd Physical Education Teacher, became surplus. Therefore, the 4th respondent has rightly returned the proposal sent by the 5th respondent school.

7. The sum and substance of the objection raised on the respondents' side is that the post of Physical Director includes the maximum number of three Physical Education Teachers, as per the norms fixed by the Government. Since there is no provision in the Government Orders to accommodate the petitioner, the appointment was rejected.

8. At this, the learned counsel for the petitioner would submit that despite the stand taken by the Government,

factually the petitioner has been continued in service as on date. When the petitioner has been discharging his duties for the last six years without any blemish and the strength of the students has not come down, the learned counsel would submit that the rejection of approval by the 4th respondent has to be revisited. In fact, the learned counsel appearing for the petitioner would draw the attention of this Court to the strong observations made by the Division Bench of this Court in W.A.No.226 of 2019 and W.P.No.25348 of 2008, dated 04.12.2009 (The Director of School Education College Road, Chennai-600 006 vs. K.Uma). He would draw the attention of this Court to Paragraph Nos.20 to 24 of the Judgment, which are reproduced hereunder:

"20. The above findings of the research prove the importance of physical education for the students. When such is the position, the government is required to give much importance to physical education. Hence the physical education is a must for students and the service of the teachers is very much required for the students. When India is competing to get medals in Olympic, Asiad and Common Wealth games, more physical education teachers are required to be appointed to motivate and give proper training to the students and then only our country would excel in sports and games. When teachers give proper training in Physical Education, our country would be in a position to achieve excellence in the international games and sports. If proper physical education is not given to the students, we would continue to watch performance of other country sportsmen with awe. Our country cannot go near the achievements of the other countries in sports and games as most of the countries have very good curriculum of physical education.

21. "Physical education" as the nomenclature denotes is a separate education distinct from academic education and it is required to be given special attention. According to OXFORD ENGLISH DICTIONARY, "PHYSICAL EDUCATION" means:

"Instruction in physical exercise and games especially in schools".

As per the American Heritage Dictionary of the English Language, Fourth Edition "Physical Education " means:

"Education in the care and development of the human body, stressing athletics and including hygiene"

Physical education gives good health, builds self esteem, develops co-operation, team work and sportsmanship skill and physically active lifestyle, apart from preventing diseases. Future of the country depends upon our children. If our children are not properly groomed up mentally and physically in an appropriate proper manner, it will badly reflect on the future of our nation. Every one is concentrating on academic excellence neglecting physical education, whereas both are like human eyes.

22. If physical education is appropriate, good sportsmen and excellent athletes would be made. In mythology, Rama and Arjuna were able to marry Sita and Drowpadi respectively and win in battles as they were good in "ARCHERY". It was possible because of the excellent physical education and training they underwent in their "GURUKULAM". Nowadays gurukulams are "Schools" and therefore physical education needs to be given more attention in schools. Achievements of Chachin Tendulkar, P.T. Usha, Abhinav Bindra are basically because of good physical education and training. In schools alone, young talents could be identified and they could be groomed in the specific sports and games in appropriate way for future excellence.

23. As stated above, the normal understanding of the above government order with regard to Physical Education Teachers is that the High Schools would have maximum number of three Physical Education Teachers and Higher Secondary School would be added one more Physical Education Director in the name of Physical Education Director. However there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary/increase as per the strength of the student's. When the student strength is increased, the ceiling has to be removed and required more Physical Education Teachers are to be appointed, otherwise the students would suffer irreparably and the government order would go against the very scheme of education.

24. Hence G.O.Ms.No. 525 needs to be given a liberal interpretation and the government is at liberty to reconsider the matter and issue reasonable viable and appropriate norms with regard to appointment of physical education teachers in the schools as per the strength of

students, considering the observations made by this court expeditiously."

9.The above finding and observation of the Division Bench of this Court would strengthen the claim of the petitioner herein that the 5th respondent School is actually in need of adequate teachers in Physical Education Department. Therefore, the rejection of approval by the 4th respondent is misconceived and suffers from non-application of mind. Lastly, the learned counsel would submit that even otherwise, the claim of the petitioner can be considered in the light of the fact that one Physical Education Teacher C.Eugin Simon is due to retire on his superannuation, on 30.11.2019, which is three months down the line. On his retirement, the petitioner's claim could be considered even as per the 4th respondent's own understanding in the matter.

10.Heard the learned counsels appearing for the parties and considered the materials and pleadings placed on record.

11.The only point that is to be considered in this case is as to whether the appointment of the petitioner was well within the sanctioned limit in respect of Physical Education Department in the 5th respondent school.

12.Admittedly, the 5th respondent school has a strength of 1814 students at that time when the petitioner was appointed in 2013. According to the petitioner, the student strength has not come down even as on date, nevertheless, the fact remains that the petitioner has been continued as Physical Education Teacher continuously since 2013, which means that the 5th respondent School is actually in requirement of the service of the petitioner as a third Physical Education Teacher.

13.As rightly relied on by the learned counsel for the petitioner, the Division Bench of this Court has observed that the schools with particular strength of students need to have at least three Physical Education Teachers and one Physical Director in the higher secondary level. In fact, the Division Bench of this Court has clearly held that due importance need to be given to Physical Education and such importance could be fulfilled only when adequate number of teachers are available in the Physical Education Department. In the said circumstances, it becomes imperative that the Physical Education Department is manned adequately by the competent teachers.

14.As far as the case on hand is concerned, the petitioner was appointed on 09.07.2013 and ever since his appointment, he has been continued in service. The 5th respondent school appears to be having more than sufficient student strength on its own. Therefore, there appears to be a

requirement of adequate Physical Education Teachers in order to impart Physical Education to the students studying in the School. Therefore, the continuance of the petitioner as Physical Education Teacher in the 5th Respondent School becomes necessary in the interest of students. Moreover, as contended by the learned counsel for the petitioner, the claim of the petitioner could be considered, at least, after 30.11.2019, due to the fact that one Mr.C.Eugin Simon, who is working as Physical Education Teacher, is due for retirement on his attaining the age of superannuation on 30.11.2019. Therefore, without going into the controversy as to whether the appointment of the Physical Director includes the number of Physical Education Teachers, viz., three or it should be an additional post, the writ petitioner's claim could be considered by the 4th respondent, after 30.11.2019 and in case, the petitioner fulfills the eligibility criteria, his appointment could be approved by the Educational authority.

15. In any case, since the service of the petitioner has been continued for more than six years, till his approval is considered after 30.11.2019, the status-quo of the petitioner shall be continued, in the interest of students community of the 5th respondent school.

16. For the aforesaid reasons and in the light of the observations made by the Division Bench of the Court as well as the learned single Judge, the impugned order passed by the 4th respondent in his proceedings in Oh.Mu.No.4661/A5/2013, dated 19.09.2013, is hereby set aside and the petitioner shall be continued in service as Physical Education Teacher.

17. The 4th respondent is directed to consider the grant of approval to the appointment of the petitioner after 30.11.2019 in the vacancy to be created by the retirement of the existing Physical Education Teacher Mr.C.Eugin Simon, and if the petitioner is otherwise fit for regular appointment, approval may be granted. The 4th respondent is directed to pass appropriate orders in this regard within a period of four weeks after 30.11.2019 and in any case, the status-quo in regard to the present employment of the petitioner shall continue till a final decision is taken by the 4th respondent.

In the result, the writ petition shall stand allowed.
No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To

1.The Principal Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai.

2.The Director of School Education,
College Road, Chennai - 600 006.

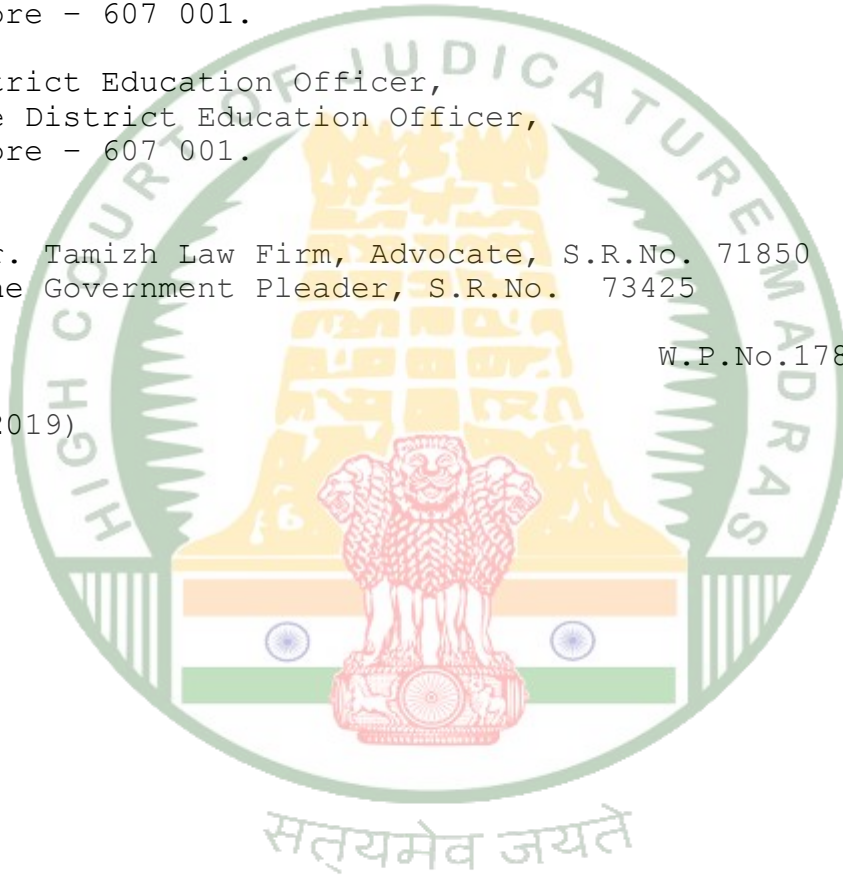
3.The Chief Education Officer,
O/o.The Chief Education Officer,
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4.The District Education Officer,
O/o.The District Education Officer,
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+1cc to Mr. Tamizh Law Firm, Advocate, S.R.No. 71850
+1cc to the Government Pleader, S.R.No. 73425

W.P.No.17821 of 2018

PPA(CO)
GN(04/10/2019)



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