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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM :

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.21120 of 2019
and W.M.P.No.20318 of 2019

S.Mithila Bai

..Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai-600 009.

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

3.The Chief Educational Officer,
Thiruvallur District,
Thiruvallur 602 001.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka.No.6986/A4/2017 dated 27.06.2019 and to quash the same and consequently directing the respondents to restore the petitioner in Kannappasamy Nagar Government High School, Chennai 600 066, as B.T.Assistant (English), based on the student's strength in the school forthwith all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran

For Respondents : Mrs.Annalakshmi,
Government Advocate.

O R D E R

This writ petition has been filed challenging the impugned proceedings of the third respondent dated 27.06.2019, confirming the re-deployment of the petitioner to the Government High School, Vayalur, Thiruvallur District.



2.It is seen from records that the petitioner was posted as BT Assistant (English) in the Panchayat Union Middle School, Kannappasamy Nagar, Thiruvallur District and he is working from the year 2012. While so, the concerned school was upgraded as a High School with effect from 18.07.2017 and the petitioner was absorbed into the High School. The student teacher ratio has been prescribed under the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act).

3.In the School in which the petitioner was working, there were 10 BT Assistant teachers and there were nearly 325 students studying in the School during the academic year 2018-19 (as on 01.06.2018). According to the petitioner, the teachers and the students ratio was perfectly in accordance with the above said Act and there was no surplus BT Assistant teachers working in the school. However, the petitioner was issued with an order of re-deployment from the above said school to the Government High School, Vayalur.

4.The petitioner aggrieved by the said order, filed writ petition before this Court in W.P.No.15267 of 2018. The ground that was taken by the petitioner was that the petitioner is not a surplus teacher and the student teacher ratio was in accordance with the above said Act. That apart, the petitioner also took a stand that the concerned authority did not take into consideration the students strength that was existing as on 2018-19 and what was taken into consideration was the strength as it prevailed on 01.01.2017.

5.The writ petition was entertained and initially an interim order was also granted. Subsequently, the writ petition was taken up for final hearing along with the connected cases and a final order was passed on 26.02.2018. The relevant portion of the order is extracted hereunder:

"21.This being the scope of the facts and circumstances, now placed before this Court in these writ petitions, this Court is inclined to pass the following orders:

(1)The relief as such sought for in the present writ petition stands rejected.

(2)The respondents 1 to 3 are directed to review the cases of surplus and redeployment on individual case basis with reference to the facts and details available on record and accordingly, review the cases, wherever required and in such an event, reasons must be recorded.

(3)The competent authorities, if necessary, shall consider the representations of the petitioner in this regard and verify the original records once again with reference to the guidelines issued by the Government



and accordingly, take a decision and confirm and modify or cancel the orders in accordance with the guidelines/instructions issued by the Government in the matter of surplus and redeployment.

(4) The said exercise can be done without causing any delay by the authorities and as expeditiously as possible, so as to avoid further complications.

22. With the above directions, all the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed. "

6. Subsequent to the orders passed by this Court, the matter was again placed before the third respondent to review the case of surplus teachers and take a decision based on the directions issued by this Court. The third respondent by his impugned order dated 27.06.2019, has confirmed the redeployment of the petitioner and aggrieved by the same, the present petition has been filed before this Court.

7. Mr. G. Sankaran, learned counsel appearing on behalf of the petitioner submitted that the impugned order passed by the third respondent did not take into consideration the directions given by this Court and it was a mere reiteration of the earlier orders passed on 19.06.2018. The learned counsel further submitted that the third respondent again went wrong in arriving at a conclusion regarding deployment by considering the students strength as on 01.08.2017. The third respondent ought to have considered the entire case by taking into consideration the students strength that was available during 2018-19 (as 01.06.2018). The learned counsel further brought to the notice of this Court the counter that has been filed by the third respondent. The learned counsel specifically brought to the notice of this Court Paragraph 14 of the counter and the same is extracted hereunder:

"14) It is submitted that as per the status as on 1-8-2018 the additional requirement of posts for the Kannappasamy Nagar Government High School has been assessed as follows:

Sl.No.	Subjects	No. of additional post required
1	Science	1
2	English	1
3	Tamil	1
4	Social Science	1
	Total	4

It is submitted that the staff fixation as on



1-8-2018 was carried out and the additional posts/vacancies of teachers were carried out by redeploying excess teachers on 28-8-2019 and no transfer order was issued.

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It is submitted that there is no surplus post available in petitioner's school. So, the petitioner was not transferred to the Kannappasamy Nagar High School as no transfer order was issued to any categories of teachers."

8.The learned counsel by bringing to the notice of this Court the specific stand that have been taken by the third respondent, submitted that after redeployment of the petitioner, there was in fact a vacancy as on 01.08.2018 and therefore, the petitioner cannot be redeployed on the ground of being an excess teacher based on the students strength. When there was a requirement for one more teacher for English, the petitioner ought to have been retained in the same school and should not have been redeployed to another school. The learned counsel concluded his arguments by submitting that the petitioner had already joined in a Government High School, Vayalur, and in his place some other teacher has now been appointed on 28.08.2019.

9.The learned counsel for the petitioner submitted that the redeployment and appointment of a teacher in the place of the petitioner had happened during the pendency of the writ petition and by the time this case is taken up for final hearing, it has become a fait accompli and the petitioner is left with no remedy. Therefore, the learned counsel submitted that some guidelines will have to be issued in the case of redeployment of the teachers in order to avoid this confusion in future.

10.Per contra, Mrs.V.Annalakshmi, learned Government Advocate, appearing on behalf of the respondents submitted that the redeployment of the petitioner was done strictly in accordance with the existing rules and the directions issued by this Court in the earlier writ petitions. The learned counsel submitted that taking into consideration the students strength as on 01.08.2017, it was found that the petitioner is an excess teacher and she was redeployed to a needy school within the same district. The learned counsel further submitted that the petitioner has joined in the new school and as on today, there is no vacancy that is available at the Kannappasamy Nagar Government High School, Thiruvallur District.

11.This Court has carefully considered the submission made on either side and the materials placed on record.

12.On an earlier occasion, this Court had entertained a doubt as to what will be the proper time to assess the students



teacher ratio. Whether it can be done even before reopening of the school or it would be proper to resort to the redeployment of the teacher after the completion of the admission of the students. This doubt was entertained by this Court since only after the admission of the students in the school, the actual strength of the students can be ascertained for the concerned academic year. Only based on this strength, the students teacher ratio can be fixed in accordance with the above said Act. If the same is ascertained even before the admission of the students, it will become a wasteful exercise, if it is ultimately found that there is an increase in the strength of the students after admission. The Director of Elementary Education, who was called upon to give his explanation regarding the same, has stated that this exercise must be carried on in the month of May every year and this will help the teachers to know the place at which they have to work. While considering this reply given by the authority, the learned single Judge has rejected this suggestion and has found that this will lead to conducting the redeployment counseling twice during the same academic year. This Court concurs with the finding of the learned single Judge on this issue.

13. In the present case, the redeployment of the petitioner was done in the year 2018 (19.06.2019) by taking into consideration the students strength as on 01.08.2017. The ascertainment of the students teacher ratio has obviously gone wrong and that is why it is found in the counter affidavit filed by the third respondent that the students strength as on 01.08.2018 reflects the fact that there was a requirement for one teacher in the English subject. If there is a requirement for a teacher as on 01.08.2018, obviously the ascertainment of the students strength should happen only after the completion of admissions for the academic year 2018-19. Since this was not done and the petitioner was already redeployed to a different school, the vacancy that was created was ultimately filled up by deploying some other teacher in the place of the petitioner. This exercise has gone contrary to the very concept of redeployment of teachers based on student teacher ratio.

14. The petitioner had no other option except to join the Government High School, Vayalur. In the meantime, the vacancy that was created after the exit of the petitioner has now been filled up by employing some other teacher in the place of the petitioner on 28.08.2019. This clearly reflects the illegality in the entire procedure adopted by the third respondent.

15. If this Court is to interfere with the impugned proceedings of the third respondent at this stage, it will obviously disturb the present incumbent, who has already been deployed at the Kannappasamy Nagar, Government High School. That



apart, the students should not be disturbed during the middle of the academic year and it will go against the interests of the students. In view of the subsequent development, even though the petitioner could have been accommodated in the same school if nobody else had been appointed in his place, this Court does not want to disturb the present status in exercise of its jurisdiction under Article 226 of Constitution of India. If in case any vacancy arises in future in the same school or in any other nearby school, it is always open to the petitioner to make a representation to the concerned authority and the same shall be considered by the concerned authority and appropriate orders shall be passed.

16. Before parting with this case, this Court wants to give a direction to the first respondent to hereinafter ascertain the students teacher ratio in accordance with the Act by taking the students strength after the completion of the admission in the relevant academic year and the redeployment can take place only after such ascertainment. The students teacher ratio should not be ascertained before the admission takes place in the relevant academic year or in the middle of any academic year. Only by adopting to this procedure, there will be consistency in maintaining the students teacher ratio in any Government School in a given academic year.

17. This writ petition is disposed of with the above directions. There shall be no order as to costs. Connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat,
Fort St. George,
Chennai-600 009.

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



3.The Chief Educational Officer,
Thiruvallur District,
Thiruvallur 602 001.

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+1cc to Mr. G.Sankaran, Advocate, S.R.No. 100987
+1cc to the Government Pleader, S.R.No. 100377

W.P.No.21120 of 2019
and WMP.No.20318 of 2019

SAI (CO)
GN(21/01/2020)