

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.30313 of 2017

and

W.M.P.Nos.33044 & 33045 of 2017

The Correspondent,
St. Mary's Girls Higher Secondary School,
Mettur Dam,
Salem District.Petitioner

vs.

1. The Government of Tamil Nadu,
Represented by Secretary to Government,
Fort St.George,
Secretariat,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus,
College Road,
Nungambakkam,
Chennai - 600 006.
3. The Chief Educational Officer,
Salem. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the third respondent in connection with proceedings in (I) Na.Ka.No.10274/P2/2016 dated 15.09.2016 and (ii) O.Mu.No.2030/B2/2017 dated 03.02.2017 and quash the same and consequently direct the respondent to approve the appointment dated 01.06.2016 of Ms.Tamil Kalayarasi as Vocational Instructor (Computer Instructor) in the existing vacant post with all grant in-aid towards her salary and allowances w.e.f. 01.06.2016.

(Prayer amended as per order 07.03.2018 by VPNJ in W.M.P.No.35271/2017 in W.P.No.30313/2017.)

For Petitioner : Ms.T.Aananthi

For Respondents: Mr.C.Munusamy
Special Government Pleader (Education)

O R D E R

The petitioner is a Government Aided School. The challenge made in this writ petition is against the order dated 15.09.2016, fixing the staff strength in the petitioner school and the proceedings dated 03.02.2017, refusing to grant approval to the appointment made to the post of Vocational Instructor. Consequently, the petitioner also seeks for a direction to the respondent to approve the appointment of one Tamil Kalaiyarasi as Vocational Instructor (Computer Instructor) in the existing vacant post with all grant in-aid towards her salary and allowances w.e.f. 01.06.2016.

2. The case of the petitioner, in short, is as follows:

Among the total Teachers strength of 52, two Vocational Instructors were working in the petitioner school by 2015-2016. The said Tamil Kalaiyarasi was appointed on 23.12.2015 as Vocational Instructor (Computer) under the control of the management with consolidated pay. She was teaching Computer Science for 1st year and 2nd year of Higher Secondary students. She had shown 100% results in Computer Science subject during the academic years 2015-2016 and 2016-2017. While so, out of the two Vocational Instructors, who were working in the petitioner school, one teacher namely Santhi, voluntarily retired from service on 31.05.2016 and the said post fell vacant w.e.f. 01.06.2016. Accordingly, the petitioner decided to appoint the said Tamil Kalaiyarasi in that post as the Vocational Computer Instructor in regular vacancy, since the Computer Science Instructor post is sanctioned in all Government and Government Aided Schools. Accordingly, the said Tamil Kalaiyarasi was appointed on 01.06.2016 and the said appointment was duly informed to the third respondent by communication dated 02.01.2017 also with a request for approval of such appointment. However, the third respondent rejected the request of the petitioner by impugned order dated 03.02.2017 stating that the vacant Vocational Instructor Post has to be surrendered by citing the staff fixation made on 15.09.2016, which is also impugned in this writ petition.

3. A Counter affidavit is filed by the respondents, wherein it is stated as follows:

There is no provision in the existing rules for granting permission to the petitioner to regularise the service of the

said Tamil Kalaiyarasi in the post of Vocational Instructor. The rejection of approval in respect of the appointment of the said Tamil Kalaiyarasi was in compliance with the staff fixation order. The post of Vocational Instructor was created for the benefit of part-time Vocational Instructors, those who are working in the school concerned and not for the benefit of the school. In case the teacher working against the Vocational Instructor post resigned/retired/died or promoted to some other post, it is considered that the said post of Vocational Instructor was surrendered to the common/general pool of the Director. Hence, there is no provision in the existing rules to regularize the appointment of the said Tamil Kalaiyarasi as Vocational Instructor.

4. Learned counsel appearing for the petitioner contended that the appointment of the said Tamil Kalaiyarasi was made only in the sanctioned post and the staff fixation made subsequently on 01.08.2016, cannot take away the right of the petitioner to get the approval of such appointment in the sanctioned post. Further, the learned counsel for the petitioner, in support of her contention relied on an order passed in W.P.(MD)No.13965 of 2015 dated 01.12.2016 in a similarly situated case. She further contended that reducing staff strength in the vocational instructors post was also made without considering the student strength and need.

5. On the other hand, the learned Special Government Pleader appearing for the respondents, after reiterating the contentions raised in the counter, submitted that after the post is resumed, the petitioner is not entitled to seek for approval of appointment of the said person so appointed in the post, which was already presumed to be surrendered.

6. Heard both sides.

7. It is seen that the petitioner school was sanctioned with two post of Vocational Instructors during the academic year 2015-2016. It is further seen that out of the said 2 teacher, one Vocational Instructor by name R.Santhi voluntarily retired from service on 31.05.2016. In the said vacant post, the petitioner appointed the said Tamil Kalaiyarasi on 01.06.2016. Therefore, it is evident that the said appointment was made as against the sanctioned post and thus the respondents are bound to approve the appointment. No doubt, the respondents sought to rely upon the staff fixation made on 01.09.2016, whereby the strength of the post of Vocational Instructor was fixed as one instead of two w.e.f. 01.09.2016. It is stated that there are sufficient number of students in the school with a grand total of 2151 requiring atleast 2 Vocational Instructors. The staff fixation done by the respondents as on 01.08.2016 in respect of

the Vocational Instructor was not based on the student strength and on the other hand, solely based on the voluntarily retirement made by one of the Vocational Instructor on 31.05.2016. Therefore, I find that the staff fixation made by the respondents not based on students ratio is not valid. Whether the respondents are entitled to resume the said post in pursuant to the voluntary retirement made by one of the teacher and whether there arises any question of surrendering the post and whether the respondents are justified in refusing to approve the appointment, are the questions which are already considered by this Court in W.P.(MD) No.13965 of 2015 dated 01.12.2016, wherein at Para Number 8.1, 9.1 and 13, the learned Judge has observed as follows:

"8.1. This contention is refuted by the learned counsel for the petitioner, by submitting that, when a course offered in the school has been approved long ago and the post of Vocational Instructor has been sanctioned by the Government long before, and when the present appointment is only as against the vacancy in the sanctioned post, it is not open to the Government to contend that it will not grant approval only because it is a funding authority. It is also pointed out that the approval to the appointment made against a sanctioned vacancy cannot be denied, citing the proceedings of the Director, dated 28.08.2003, which was issued in respect of an individual working in a particular school at Coimbatore. The proceedings are binding only, if it is issued adhering to the Act and Rules and any other proceedings based on orders passed against a particular individual cannot have a legal footage.

...9.1. The contention of the respondents is very strange and once there is a sanctioned post and so long as there is a necessity to maintain the teacher pupil ratio and as long as the recognition for the course continue with sufficient student strength, the question of surrendering the post does not arise at all.

...13. The next point to be considered is as to whether by denying sanction of eligible posts to the petitioner school, the respondents are violating the fundamental right guaranteed to the students of the petitioner schools under Article 21(A) of the Constitution of India, which is also declared as a statutory right

under the Right of Children to Free and Compulsory Education Act, 2009. Section 3 of the said Act gives right of child to free and compulsory education between the age group of six and fourteen years in a neighbourhood school till completion of elementary education. As per Section 3(2) of the said Act, no child shall be liable to pay any kind of fee or charges or expenses, which may prevent him or her from pursuing and completing the elementary education. The said Act mandates the appropriate Government, i.e., State Government and the Local Authority to establish schools. The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of the said Act. The Central Government shall provide to the State Governments, grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2), as it may determine from time to time in consultation with the State Governments. Responsibilities of Schools and Teachers are also stated in Chapter IV. No capitation fee for admission can be collected. The norms and standards for schools are also fixed. The qualification for appointment of teachers and terms and conditions of service of teachers are also fixed. Teacher Pupil ratio to be followed for appointment of teachers is also to be mandatorily followed. Rules were also issued in the year 2010 to carry out and implement the Act. The State Government also issued Rules recently. Thus, it is too late of the day for the Government to raise a contention that, due to want of funds, posts cannot be sanctioned to the schools, for which recognition and aid are already granted."

8. Considering the above stated facts and circumstances and in view of the order passed by this Court in an identical case as extracted supra, I am of the view that the petitioner is entitled to succeed in this writ petition. Accordingly, the writ petition is allowed and the impugned order dated 15.09.2016, insofar as fixing the staff strength of the Vocational Instructor as one as well as the impugned order dated 03.02.2017, are set aside. Consequently, the respondents are directed to approve the appointment of the said Teacher Tamil Kalaiyarasi as Vocational Instructor with effect from the date

of her appointment and pay the monetary benefits to her within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Government of Tamil Nadu,
Represented by Secretary to Government,
Fort St.George,
Secretariat,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus,
College Road,
Nungambakkam,
Chennai - 600 006.
3. The Chief Educational Officer,
Salem.

+1cc to M/S.T.Aananthi, Advocate Sr.2453
+1cc to the Government Pleader Sr.3235

W.P.No.30313 of 2017

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srg 05/02/2019

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