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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.33889 of 2019

and

WMP Nos.34427 & 34432 of 2019

Aided Primary School,
rep.by its Correspondent
E.Deenadayalan,
S/o.Elumalai
Illodu Village,
Vallam Union, Gingee Taluk,
Villupuram District.

... Petitioner

Vs.

- 1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.
- 2.The District Educational Officer,
Gingee Education District,
Villupuram District.
- 3.The Block Educational Officer,
Vallam Union,
Villupuram District.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Proceedings issued by the second respondent bearing O.Mu.No.1196/A4/2019 dated 24.09.2019 and to QUASH the same and consequently directing the respondents to approve the appointment of Selvi S.Sudha in the sanctioned post of Secondary Grade Teacher in the petitioner school, as per the permission granted by the 2nd respondent in Mu.Mu.No.006/A4/2019 dated 04.03.2019, from t he date of appointment on 06.06.2019, with all consequential and attendant benefits including the payment of salary from the date of appointment along with interest, within a time frame to be fixed by this Court.



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For Petitioner : Mr.G.Sankaran

For Respondents : Ms.V.Annalakshmi
Government Advocate

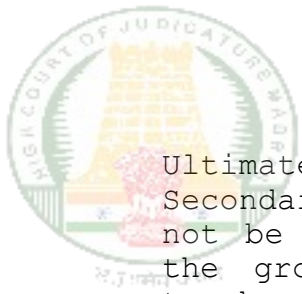
O R D E R

This writ petition has been filed challenging the impugned order passed by the 2nd respondent dated 24.09.2019, refusing to approve the post of Secondary Grade Teacher which has already been sanctioned, on the ground that the school in question is an aided school and the surplus teachers available will be deployed and only in the absence of the same, such approval will be granted.

2.Mrr.G.Sankaran, learned counsel appearing for the petitioner submitted that the petitioner school is a Government aided School and it is a two teacher school with one Headmaster and one Secondary Grade Teacher. He submitted that a vacancy arose to the post of Headmaster who was due for retirement on 31.05.2017. The Secondary Grade Teacher was promoted as the Headmaster of the School on 02.01.2018. Consequently, a vacancy arose to the post of Secondary Grade Teacher with effect from 02.01.2018 and therefore the petitioner school made a representation to the 2nd respondent seeking permission to fill up the post of Secondary Grade Teacher.

3.The learned counsel further submitted that the 2nd respondent by his proceedings dated 04.03.2019, granted permission to fill up the post of Secondary Grade Teacher that was lying vacant from 02.012018. The petitioner school was taking steps to fill up the post and it also notified the vacancy to the Employment Exchange apart from giving advertisement in the newspaper. The learned counsel submitted that the Appointment Committee conducted the selection from the candidates who applied for the said post and it selected one Sudha as the Secondary Grade Teacher in the petitioner school. She was also appointed in the sanctioned post based on the permission granted by the 2nd respondent. Ultimately, the proposal was forwarded to the 2nd respondent for approval. The 2nd respondent in th meantime had issued the impugned communication refusing to grant approval for the appointment of the Secondary Grade Teacher.

4.The learned counsel for the petitioner submitted that the school in question has only two teachers, one being the Headmaster and the other is the Secondary Grade Teacher. Therefore at any point of time, there has to be a Secondary Grade Teacher failing which the students will face hardships. The learned counsel further submitted that the petitioner school went ahead in selecting the Secondary Grade Teacher only after the approval was granted by the 2nd respondent.



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Ultimately after the selection process was over and the Secondary Grade Teacher was appointed, the 2nd respondent could not be permitted to turn around and refuse the approval on the ground that priority must be given for the surplus teachers for deployment in aided schools where there are vacancies.

5.Ms.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents submitted that the impugned order passed by the 2nd respondent is well within the interim order passed by the Division Bench of this Court in W.P.No.31575 of 2019 dated 08.11.2019. The learned counsel submitted that the 2nd respondent had to pass such an order since a Division Bench of this Court had specifically directed the authorities to deploy surplus teachers in all aided schools and till such deployment is completed, no aided school must be permitted to make any recruitment for the vacant post. The learned counsel submitted that in view of the orders of the Division Bench, the 2nd respondent had no other option except to refuse sanction to fill up the post of Secondary Grade Teacher.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The petitioner school which is an aided school has proceeded to conduct the selection process to fill up the post of Secondary Grade Teacher, only after obtaining permission from the 2nd respondent. The 2nd respondent has permitted through his proceedings dated 04.03.2019, the petitioner school to fill up the post of Secondary Grade Teacher. The teacher was selected and she was also appointed in the sanctioned post. Thereafter, when the 2nd respondent was approached for approval, the present impugned order came to be passed.

8.At this juncture, it will be relevant to take note of the interim order of the Division Bench of this Court in W.P.No.31575 of 2019 dated 08.11.2019. The relevant portion of the interim order is extracted hereunder:

"7.A perusal of the information which has been placed before this Court and as made available by the concerned Department would disclose that there are very many surplus teachers available for deployment and despite that recruitments are taking place and as a consequence, the Government is put to heavy financial burden.

8.In the light of the above facts and circumstances, the respondents 4 to 6 are directed to take immediate and necessary steps to deploy the surplus teachers in Government run Middle Schools and High



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Schools and till such deployment is completed, there cannot be any recruitment to the said post, until further orders. Since a comprehensive Writ Petition in the form of Public Interest Litigation has been filed. Registry after obtaining appropriate orders. Tg W.A(MD).No.76 of 2019 along with this writ petition."

9. In view of the specific directions given by this Court, the 2nd respondent had no other option except to fill up the posts by deploying the surplus teachers who are available. Therefore, this Court does not find any illegality in the impugned communication of the 2nd respondent dated 24.09.2019. However, the petitioner school has already appointed a Secondary Grade Teacher and they are in the middle of the academic year. By now, the entire deployment of surplus teachers must have been completed. Therefore, in the absence of any surplus teacher being available for being deployed in the petitioner school, it will be in the interest of the petitioner school as well as the students to permit the teacher who has already been appointed to continue as a Secondary Grade Teacher in the school. Such a pragmatic approach has to be made in cases of this nature more particularly since the petitioner school is having only two teachers.

10. In the result, the petitioner is permitted to make a representation to the 2nd respondent along with a copy of this order seeking for the approval of the appointment made to the post of Secondary Grade Teacher in the petitioner school. If the deployment of surplus teachers is already completed for the present academic year, the 2nd respondent can as well approve the appointment of the Secondary Grade Teacher since the appointment itself had taken place pursuant to the permission granted by the 2nd respondent by his proceedings dated 04.03.2019. The 2nd respondent shall pass appropriate orders within a period of four weeks from the date of receipt of representation from the petitioner school.

This writ petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

KP



To

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.

2.The District Educational Officer,
Gingee Education District,
Villupuram District.

3.The Block Educational Officer,
Vallam Union,
Villupuram District.

+1cc to Mr.G.Sankaran, Advocate SR.No.102005

+1cc to Government Pleader SR.No.102217

W.P.No.33889 of 2019

AP(CO)
GMY(10/12/2019)