

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No. 2562 of 2018

The Manager and Correspondent
Dr.Zahir Hussain Memorial Minority High School
Tmt.A.M.Sikkandhar Bevi School Compus
Pillaiyarnatham, Pithalaipatti Post
Dindigul-2.

... Appellant/Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary
Education Department
Fort St. George, Chennai - 600 009.
2. The Joint Director of School Education
College Road, Chennai - 6.
3. The Chief Educational Officer
Palani Salai, Dindigul -10.
4. The District Education Officer
Karur Salai, Dindigul.

... Respondents 1 to 4/ Respondents 1 to 4

Writ Appeal filed under Clause 15 of Letters Patent against the order passed by the learned Single Judge of this Court in W.P.No. 31316 of 2017 dated 10.04.2018 disposing the Writ Petition by sustaining the impugned order in Writ Petition.

Prayer in W.P.No.31316 of 2017:

Writ Petition praying to call for the entire records connected with the impugned proceeding passed by the 2nd respondent vide Na.Ka. No.011051/D1/ E3/2017 dated 8.8.2017 and consequential order of the 4th respondent vide Aathimu No.5288/A5/2017 dated 27.09.2017 and Aathimu No.5289/ A5/2017

dated 27.09.2017 and quash the same and direct the respondents to approve the appointment of Tmt.S.Helen Pamila B.T.Tamil with effect from 01.9.2017 and Tmt.Raveena Banu B.T.English with effect from 1.9.2017 with all consequential benefits by converting the post of Arabic pandit as B.T. Tamil and B.T. Assistant History as B.T.English.

For Appellant : Mr. S.N.Ravichandran

For R 1 : Mr. R.Munusamy
Special Government Pleader

J U D G M E N T
(Delivered by DR.VINEET KOTHARI, J)

The appellant Dr.Zahir Hussain Memorial Minority High School, Dindigul, through its Manager and Correspondent, has filed this intra Court Appeal aggrieved by the Order of the learned Single Judge dated 10.04.2018 wherein the Writ Petition was disposed of with the following observations:-

"17. Heard the learned counsel on either side and perused the materials placed on record.

18. Admittedly, the 3rd Respondent/Chief Education Officer, Dindigul visited the Petitioner/School on 04.08.1986 and found that the Petitioner/School is eligible for 3 posts viz. one Secondary Grade Teacher, one B.T. Headmaster and one Arabic Language Teacher. Pursuant to the order dated 23.01.1986 passed by this Court in W.P.No.2368 of 1986, the 1st Respondent sanctioned the said three posts as 'Supernumerary' Posts with effect from 01.08.1986.

19. Rule 30-B of the Fundamental Rules of the Government of Tamil Nadu defines 'supernumerary Post' as under:

"(30-B) Supernumerary Post means a person oriented post created for a limited period and for a limited purpose to accommodate a person in certain contingencies."

20. From the records, it is clear that Teachers are required based on the strength of the students. In the case on hand, three posts are sanctioned to the Petitioner/School as 'Supernumerary' Posts. From the material documents, it is seen that one Kavitha, B.T. (Science) Teacher has been appointed in the Petitioner/School on 12.12.2007 vide the sanctioned post as per G.O.No.424. Though the said Teacher has been appointed in the post of B.T. Science, admittedly, the said Post is not a sanctioned one. That apart, as long as a Post is not a sanctioned one, the Petitioner/School, as a matter of right, cannot seek for conversion. Hence, I find there is no flaw in the orders impugned in this Writ Petition.

21. However, this Court makes it clear that if any request/proposal is made by the Petitioner/School for sanction of the Posts, viz. B.T. Tamil and B.T. English, without being influenced by the orders impugned in the present Writ Petition, the Respondents, taking into account the interest of the students, shall consider the request/proposal of the Petitioner/School and pass appropriate orders.

22. It is further made clear that the Teachers appointed in the Petitioner/School in the post of B.T. Tamil and B.T. English, on 01.09.2017 in the retirement vacancies, shall not be disturbed from their existing post for a period of two months.

The Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected W.M.P.No.34401 of 2017 is closed."

2. The learned counsel for the appellant Mr. S.N.Ravichandran, initially submitted that by G.O.Ms.No. 424, School Education, dated 03.10.1997 three new posts were sanctioned as 'supernumerary posts', namely, one Secondary Grade Teacher, one B.T. Headmaster and one Arabic Language Teacher

with effect from 01.08.1986 for the appellant minority School. Once these three persons from whom three 'supernumerary posts' created by the State Government have retired, the representation of the petitioner for converting supernumerary posts into the regular posts for B.T. Assistant History and B.T. Assistant English with effect from 01.06.2016 ought to have been considered by the State Government. However the Director of School Education vide its impugned order dated 08.08.2017 has rejected the said request. The petitioner/appellant had challenged the said order before the learned Single Judge, who disposed of the Writ Petition by the afore-quoted order.

3. The learned Special Government Pleader supported the impugned order and urged that the conversion of 'supernumerary posts' into regular posts by converting to other subject was not permissible as per Rule 30-B of the Fundamental Rules, which was quoted in paragraph 19 of the Order impugned before us which clearly shows that 'supernumerary posts' mean "a person oriented post" created for a limited period and for a limited purpose to accommodate a person in certain contingencies. Admittedly, therefore, with the retirement of those persons, who had worked in the three said supernumerary posts created under G.O.Ms.No. 424, School Education, dated 03.10.1997, stood lapsed when these three persons retired from service.

4. The learned Single Judge in paragraph 21 has given a liberty to the petitioner / appellant School to approach the State Government for sanction of the new posts for B.T. Tamil and B.T. English without being influenced by the orders impugned in the present Writ Petition. The appellant/petitioner instead of approaching the State Government however has preferred the present Writ Appeal.

5. Having heard the learned counsels for both the parties, we are satisfied that no exception can be taken to the order passed by the learned Single Judge.

6. The 'supernumerary posts' created by the State Government under G.O.Ms.No. 424, School Education, dated 03.10.1997 cannot be converted into regular posts for other subjects for the purpose of the petitioner/appellant Institution and therefore, the only appropriate course open to the appellant / Institution was to approach the State Government for sanction of new posts for the subjects as required. The 'supernumerary posts' created under the notification in G.O.Ms.No. 424, School Education, dated 03.10.1997 admittedly lapsed owing to the retirement of the persons who occupied those posts. Therefore, we dispose of the present Writ Appeal without interfering with

the impugned order of the learned Single Judge, while maintaining the aforesaid liberty for the appellant/petition even now.

7. With these observations, the Writ Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Secretary
The State of Tamil Nadu
Education Department
Fort St. George, Chennai - 600 009.
2. The Joint Director of School Education
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4. The District Education Officer
Karur Salai, Dindigul.

+1cc to Mr.Ravichandran, Advocate Sr.64863
+1cc to the Government Pleader Sr.65521

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