



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) Nos.11753 and 11754 of 2011

and

W.M.P(MD) .No.1 of 2011

St.Antony's R.C.Middle School
Represented by its Correspondent
Mr.Xariver Leoni Dhass
Udankudi 628 203
Thoothukudi District

... Petitioner in both petitions

-Vs-

1.The Director of Elementary Education
Chennai - 6

2.The District Elementary Educational Officer
Thoothukudi
Thoothukudi District

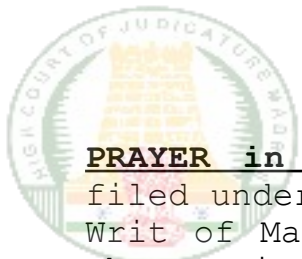
3.The Assistant Elementary Educational Officer
Udankudi 628 203
Thoothukudi District

4.Manager of R.C.School
R.C.Diocese
Tuticorin Diocese
Catholic Bishop's House
Tuticorin 628 001

5.Sr.Gilbert Jeya
St.Anne's Convent
Christia Nagar
Udankudi 628 203
Thoothukudi District

... Respondents in both petitions

PRAYER in W.P(MD).No.11753 of 2011: This Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned circular in Ne.Mu.Na.Ka.No.15880/Til/2006 dated 02.06.2006 on the file of the respondent no.1 and quash the same as illegal.



PRAYER in W.P(MD).No.11754 of 2011: This Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent nos. 2 and 3 to approve the appointment of the respondent no.5 to the post of Sewing Teacher at the petitioner School with effect from the date of appointment ie. 09.06.2008 with all service and monetary benefits within the time stipulated by this Court.

(In both petitions)

For Petitioner	: Mr.T.Lajapathi Roy
For R1 to R3	: Mr.N.Shanmuga Selvam Additional Government Pleader
For R4	: Fr.V.John Kennedy
For R5	: No appearance

COMMON ORDER

These writ petitions have been filed to call for the records pertaining to the impugned circular in Ne.Mu.Na.Ka.No.15880/Til/2006 dated 02.06.2006 on the file of the respondent no.1 and quash the same and directing the respondent nos. 2 and 3 to approve the appointment of the respondent no.5 to the post of Sewing Teacher at the petitioner School with effect from the date of appointment ie. 09.06.2008 with all service and monetary benefits within a time stipulated by this Court.

2.The learned counsel for the petitioner would submit that the fourth respondent, who is the appointing authority in the petitioner's minority School, appointed the fifth respondent to the post of Sewing Teacher and accordingly, she has joined duty and is working continuously as Sewing Teacher from 09.06.2008 onwards. The petitioner School sent approval for appointment to the post of Sewing Teacher vide representation, dated 20.10.2008 to the third respondent and the third respondent called for certain particulars vide his communication, dated 22.10.2008. The particulars sought for by the third respondent were served on him immediately. But, the claim of the approval was not considered on the ground of insufficient strength of girl students by an impugned circular of the first respondent in Ne.Mu.Na.Ka.No.15880/TI/2006 dated 02.06.2006. Thereafter, the petitioner School requested the respondents 2 and 3 that the appointment of the fifth respondent may be approved, as there are average of 130 students (both boys and girls).



3.It is further submitted that, in similar circumstances, this Honble Court in W.P.No.11501 of 2008 dated 20.09.2010, directed the respondents therein to sanction and approve the appointment to the post of Sewing Teacher. The fifth respondent herein is also similarly placed person like that of the petitioners in the above Writ Petition and therefore, the fifth respondent appointment ought to have been approved by the respondents in the light of the above judgment.

4. As per G.O.Ms.No.525 dated 29.12.1997, the teacher -students ratio is 1:40. But, when it comes to the post of Sewing Teacher, it is expected that there has to be the strength of students as 150 girl students and the same is illogical and not sustainable. That in a rural School, the children who happen to discontinue their studies after the primary schooling, the art of sewing enables them to make a living. Around 130 students are learning sewing in the petitioner School and they would get benefited in the future and hence, the State could certainly afford a teacher for the sake of 130 rural children. In such view of the matter, the impugned order is not sustainable. Therefore, the petitioner contended that the non-approval of her appointment is a clear case of arbitrary exercise of power which violates Article 14, 16 & 21 of the Constitution of India. Hence, the petitioner has come up with these Writ Petitions.

5.The second respondent has filed counter affidavit contending that there was a Weaving Teacher post in Saint Anne's Convent at Udankudi Village. One Maruthambal was working as Weaving Teacher till 31.05.2008 and she retired from service due to superannuation. Thereafter, the fifth respondent was directed to induct as Sewing Teacher in that School. But, after her appointment on 09.06.2008 as Sewing Teacher, it was found that only 130 students alone are studying in the School of the petitioner.

6.It is further submitted by the second respondent that as per G.O. a Sewing Teacher post shall be formed and approved, when that School has the student's strength of 150 or more than that. Though at the first instance, the fifth respondent was appointed as Sewing Teacher, subsequent to the same, the Sewing Teacher post is not liable to be formed due to the lesser strength of students of 130 numbers in the place of 150. Hence, the total strength of the petitioner School is lesser than 150, there is no possibility for approval of the Sewing Teacher post in the petitioner's School as per G.O.No.Ne.Mu.Na.Ka.No.15880/Til/2006 dated 02.05.2006. Hence, the second respondent called up the fifth respondent from the Sewing Teacher Post through their communication to the petitioner School on the ground that due to the non availability of total strength of 150 students in the petitioner School. The order passed in W.P.No.11501 of 2008 dated 20.09.2010 is not applicable to the case of the



petitioner School. Hence, he prays for dismissing this Writ petition.

7. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner, Mr.N.Shanmuga Selvam, learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr.V.John Kennedy, learned counsel appearing for the fourth respondent. There is no representation on behalf of the 5th respondent.

9. Perusal of record shows that the petitioner School appointed Sr.Gilbert Jeya, who is the fifth respondent herein as Sewing Teacher in the permanent vacancy arose due to the retirement of Sr.Maruthambal in the petitioner School on 31.05.2008. The fifth respondent appointment was sent for approval to the official respondents which was returned by the first respondent on the ground of insufficient strength of girl students that the petitioner School is having the student strength less than 150.

10. The Learned Counsel for the petitioner would contend that in identical circumstances, this Honble Court by its order made in **W.P.No.1603 of 2011 dated 08.06.2017** in the case of **C. Jebasingh Vs- The Additional Assistant Elementary Educational Officer and 2 Others**, held as follows:

"3. The refusal to approve the appointment on the ground of lack of students strength cannot be sustained in view of the judgment of the Division Bench of this Court in W.A(MD). No.703 of 2009 dated 01.02.2011 wherein it was made clear that the approval sought for to a sanctioned post cannot be refused on the ground of fall in students strength. The Division Bench in the said decision has followed the earlier decision of this Court in W.A(MD).No.1263 of 2001.

4. Insofar as the other grounds on which the application seems to have been returned, Mr.S.Chellapandian, learned counsel for the petitioner would submit that even assuming the promotion is not approved, the respondents cannot reject the approval for the appointment of the petitioner as the post of vocational instructor (sewing) has fallen in vacant and it should be allowed to fill up the sanctioned post. I am in entire agreement with the submission of the learned counsel for the petitioner. Once it is admitted that the post of vocational instructor (sewing) is a sanctioned post and the same is borne out by the staff fixation report for the years 2008-2009, 2009-2010 and 2010-2011, the authorities cannot refuse to approve the appointment.

5. In the counter affidavit, it is claimed that as per G.O.Ms.No.132, dated 27.04.1998 a minimum of 250 students is required for the purpose of appointment of vocational



instructor. The said Government order would apply only to Government schools. In G.O.Ms.No.104, dated 12.07.2002, it is made clear that the Government aided schools can fill up the posts which fell vacant after the date of the said Government order.

6. From the records, it could be seen that the post became vacant only during the year 2000 and the petitioner was appointed to a sanctioned post which fell vacant after issuance of G.O.Ms.No.104 dated 12.07.2002.

7. In the light of the above, this writ petition is allowed and the respondents are directed to approve the appointment of the petitioner with effect from 11.12.2008 namely, the date on which he was appointed and pay the arrears of salary and other service and monetary benefits due and payable to the petitioner. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P (MD).No.1 of 2011 is closed".

11.The above Judgment is squarely applicable to the present facts and circumstances of the case.

12.In the result, these writ petitions are allowed and the respondents 2 and 3 herein are directed to approve the appointment of the fifth respondent as Sewing Teacher with effect from 09.06.2008 and to pay all attendance and monetary benefits to the fifth respondent. The said exercise has to be carried out by the respondents 2 and 3 within a period of twelve weeks from the date of receipt of a copy of this order. There is no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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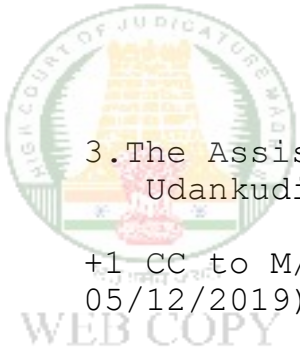
Sub Assistant Registrar(CS)

msa

To

1.The Director of Elementary Education, Chennai - 6

2.The District Elementary Educational Officer
Thoothukudi, Thoothukudi District



3.The Assistant Elementary Educational Officer
Udankudi 628 203, Thoothukudi District.

+1 CC to M/s.FATHER XAVIER ASSOCIATES, (SR-103611[F] dated
05/12/2019)

+2 CC to M/s.T.LAJAPATHIROY, Advocate (SR-103760 & 103761[F] dated
06/12/2019)

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JMN(27.12.2019) 6P : 7C