



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM:

THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**

and

THE HONOURABLE **MR.JUSTICE KRISHNAN RAMASAMY**

REV.APLC(MD).No.84 of 2019

in

W.P(MD).No.3667 of 2017

and W.M.P(MD).No.16101 of 2019

1.The District Elementary Educational Officer,
Tuticorin, Tuticorin District.

2.The Block Educational Officer,
Sathankulam, Tuticorin District.

... Petitioners

Vs.

The Correspondent,
R.C.Middle School,
Chidambarapuram,
Pudukulam-628 704
Tuticorin District.

... Respondent

Prayer: Writ Petition is filed under Clause 47 Rule 1 and 2 r/w under Section 114 Code of Civil Procedure, to review the order passed in W.P(MD).No.3667 of 2017 dated 20.03.2018.

Prayer in WP(MD). 3667/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned Staff-Fixation for the academic year 2015-2016 issued by the 1st respondent DEEO in proceedings No. Nil dated 24.02.2016 and subsequent impugned proceedings issued by the 2nd respondent herein vide A.Thi.Mu.No.27/A1/2017 dated 27.01.2017 Quash the Same and further Direct the 1st respondent herein to approve the appointment of X.Daisy Sevagi as Pre-vacational Instructor(Sewing) in the petitioner school and disburse salary and other attended benefits w.e.f16.12.2016.

For Petitioners : Mr.S.Srimathy
Special Government Pleader

For Respondent : Mr.A.Ajith Geethan



ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

Heard Mr.S.Srimathy, learned Special Government Pleader, appearing for the petitioners and Mr.A.Ajith Geethan, learned counsel appearing for the respondent.

2.This application has been filed by the Educational Department to review a common order passed in W.P(MD).No.3667 of 2017 etc., batch, dated 20.03.2018. Identical grounds were raised by the department in Review Application(MD) No.37 of 2018 and after hearing the arguments of the learned Special Government Pleader and the learned counsel for the respondent elaborately, the review application was dismissed, by order dated, 11.01.2019. The operative portion of the order reads as follows:-

"3.We heard Mrs.S.Srimathi, learned Special Government Pleader and also gone through the written submissions as well as the counter affidavit filed by the first review applicant in teh writ petition and the grounds of review. The only ground on which the review is sought for is by contending that the decision rendered by the Division Bench, which was followed by us, relates to conversion of post whereas, in the instant writ petition, there is no conversion issue and appointment has been made to an unsanctioned post.

4.As pointed out by us earlier, we were conscious of this distinction, when we heard the writ petitions. Precisely for such reason, in paragraph 2 of the order passed in the writ petitions, we categorised the cases in a tabulated form and clearly indicated as to what was the relief sought for by the respective petitioners. The respondent/writ petitioner challenged the staff fixation dated 15.03.2017, raising several grounds and relied upon judgments of a Hon'ble Division Bench, more particularly, the one rendered in W.A(MD). No.1295 of 2016, dated 05.03.2018, in the case of **The Directorate of Elementary Education Vs. The Correspondent, St.Xavier's Middle School, Sethukkuvaithan** and allowed the writ petition. Thus, the issue was whether the computation of the staff strength was done in a proper manner and whether it can be interfered. The problem arose on account of the Government Order increasing the number of sections to 5 in classes 6 and 8. We considered the effect of the said Government Order and we held that the said computation can be only directory and not mandatory.



Consequently, we had interfered with the staff fixation done by the first review applicant, vide proceedings dated 15.03.2017. Thus, we held that the post could not have been declared as a surplus. Therefore, the stand taken by the review applicants before us was in fact the very same argument, which was made in the writ petitions, which was considered and rejected and we had followed the decision of the Hon'ble Division Bench, which had attained finality.

5.The learned Special Government Pleader pointed out that the Department is entitled to declare a post as surplus in the event there is fall in students strength. The students strength has been prescribed by various Government Orders and in August of every year, the Department is entitled to verify the students strength. However, we are concerend with the post of a teacher imparting Vocational Instruction, that too a single post.

6.The learned Special Government Pleader would further submit that invariably, there are no children in the vocational stream and the vocational teachers do not teach any vocational subject, but are used by the institution for other purposes. This general submission cannot be taken note of by us in the review application and it is for the Departmental Officials to proceed in accordance with law, if there are any erring institutions misusing the provisions of the Act and Rule and the various Government Orders."

3.In view of the above order, this Review Application is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar(CS)

rmk

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Tuticorin, Tuticorin District



2.The Block Educational Officer,
Sathankulam , Tuticorin District

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