



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :15.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.1371 & 24579 of 2018
and

WMP(MD)Nos.1455, 1456, 22282 & 22283 of 2018

WP(MD)No.1371 of 2018 :

Nehru Middle School,
Rep.by its Secretary,
No.240 A, South Marret Street,
Madurai.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.

2.The Director of Elementary Education,
Chennai - 600 006.

3.The Joint Director of Elementary Education (Aided),
Chennai - 600 006.

4.The District Elementary Educational Officer,
RMS Road, Madurai - 625 001.

5.The Assistant Elementary Educational Officer,
Madurai (South),
Madurai - 625 001.

... Respondents

Prayer in WP(MD)No.1371 of 2018 : This Writ Petition is filed under Article 226 of the Constitution of India, to call for the records pertaining to the order in ந.க.எண்.3686/2017/சு நாள் 05.01.2018 passed by the fourth respondent and quash the same and direct the respondents to approve the appointment of Smt.Flora Mary as Headmistress of the petitioner school from the date of appointment ie., 19.05.2010 with all consequential benefits.

WP(MD)No.24579 of 2018 :

Nehru Middle School,
Rep.by its Secretary,
No.240 A, South Marret Street,
Madurai.

... Petitioner



Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
School Education Department,
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2.The Director of Elementary Education, Chennai - 600 006.

3.The Joint Director of Elementary Education (Aided),
Chennai - 600 006.

4.The Chief Educational Officer, Tallakulam, Madurai - 02.

5.The District Educational Officer,
RMS Road, Madurai - 625 001.

6.The Assistant Elementary Educational Officer,
Madurai (South),
Madurai - 625 001.

... Respondents

Prayer in WP(MD)No.24579 of 2018 : This Writ Petition is filed under Article 226 of the Constitution of India, to call for the records pertaining to the order in Na.Ka.Enn.4528/A5/2018 dated 02.09.2018 passed by the fifth respondent and quash the same and permit the school to function.

For Petitioner: Mr.Rajagopalan for Mr.M.V.Venkatesan
(in Both Cases)

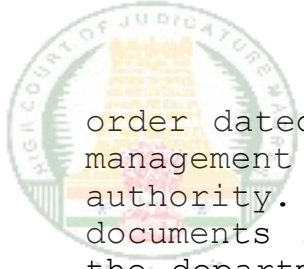
For Respondents: Mrs.S.Srimathy, Special Government Pleader
(in Both Cases)

COMMON ORDER

WP(MD)No.1371 of 2018:

The writ petitioner is a Middle School having classes from I to VIII. The school was started in the year 1951. It was receiving aid from the Government. The school was having a sanctioned post of Headmistress. One Arumugam was serving as the Headmaster of the school. He retired from service with effect from 31.03.2010. By proceedings bearing Moo.Mu.No.2366/A3/2010 dated 21.04.2010, the District Elementary Educational Officer, Madurai permitted the school management to fill up the resulting vacancy. It was made clear that the school management will have to follow the procedure laid down in Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

2.The teachers serving in the writ petitioner's school declined the opportunity of being considered for being promoted to the post of Headmistress. Therefore, the school management resorted to recruitment from the open market. The management selected one Tmt.Flora Mary and she has been working as Headmistress since 19.05.2010. The District Elementary Educational Officer, Madurai by communication dated 07.01.2011 declined to approve the said appointment. Hence, the petitioner filed WP(MD)No.4269 of 2011. By



order dated 06.12.2013, this Court gave one more opportunity to the management to make a further representation to the competent authority. The management was permitted to produce adequate documents in support of their contention that the requirements of the department have been complied with. The authority was directed to pass appropriate orders within a period of eight weeks thereafter. Since the approval issue was dragged on, the management filed WP(MD)No.2451 of 2017. The said writ petition was disposed of with certain directions. Pursuant to the direction given by this Court, the impugned order dated 05.01.2018 came to be passed declining to approve the appointment of Mrs.Flora Mary as the Headmistress. The said order is under challenge in this writ petition.

3.Heard the learned counsel on either side. The respondents have filed a detailed counter affidavit. The learned Special Government Pleader reiterated all the contentions set out therein. The primary reason for declining to grant approval for the appointment of Mrs.Flora Mary is that she does not have five years teaching experience. This objection may not hold water because in similar cases, a direction was given for granting approval with a condition that the selected candidate shall draw salary payable to the B.T.Assistant for five years and thereafter be entitled to salary as Headmistress. The petitioner has enclosed a copy of the order dated 29.04.2015 in WA(MD)No.1119 of 2014. In the order of the Hon'ble Division Bench, quite a few earlier orders have been cited and referred to. In view of the decision of the Hon'ble Division Bench, the first objection set out in the impugned order will have to be overruled.

4.The second ground of rejection is that the eligible teachers working in the school have been overlooked. Again, this stand is unsustainable. It has been conclusively shown that the teachers working in the school have given letters expressing their unwillingness to work as Headmaster/Headmistress. If they were really aggrieved, they would have certainly challenged the selection of Mrs.Flora Mary. They have not done so. Therefore, this Court can safely assume that they have not been deliberately overlooked.

5.The 3rd contention that non availability certificate from the Employment Exchange has not been obtained is also not having much of a substance. This Court can take judicial notice of the fact that during the relevant time a number of appointments were made even though the five years teaching experience was not possessed by the selected candidates. That is why this Court also in quite a few decisions gave a direction that the selected candidate will draw the salary of a B.T.Assistant for five years and only thereafter be entitled to the salary of a Headmaster. Employment Exchange is another limb of the Government. The District Educational Officer, Madurai could have easily obtained a certificate from the employment exchange that candidates having requisite teaching experience are also waiting to be sponsored. He has not undertaken such an



exercise. Therefore, I am of the view that the said objection also deserves to be overruled.

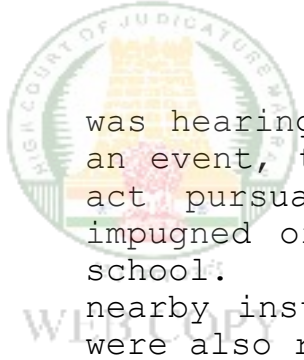
6.The other major objection is that the school was having a very low strength and that even the existing teachers have been rendered surplus. But then, this is a subsequent development. The case on hand will have to be viewed from the position that prevailed when the selection was made. The petitioner has enclosed a proceedings of the District Elementary Educational Officer made during 2010 which indicates that as many as 448 students were studying in the writ petitioner's school as on 21.04.2010. It is not the case of the department that the staff fixation was revised and downgraded. The validity of the selection of Mrs.Flora Mary cannot be determined with reference to the current state of affairs.

7.The learned counsel appearing for the petitioner drew my attention to the decision of the Hon'ble Division Bench in WA No.1263 of 2001 dated 22.01.2004. The Hon'ble Division Bench observed that the subsequent development or refixation of sanctioned strength could not be a ground for denying the right of the management to appoint the teacher as against the sanctioned strength for the previous academic years. The said decision squarely applies to the case on hand.

8.Since none of the objections are having any substance, this Court has to necessarily quash the order impugned in WP(MD)No.1371 of 2018. It is accordingly quashed. The third respondent is directed to approve the appointment of Mrs.Flora Mary as Headmistress of the writ petitioner school with effect from 19.05.2010. It is pointed out that the school was closed with effect from 02.09.2018. Therefore, Mrs.Flora Mary will not be entitled to any salary for the period from 02.09.2018. She is entitled to salary from the date of her appointment namely 19.05.2010 upto 02.09.2018. Since the writ petitioner school has now been closed, she shall be redeployed elsewhere. As and when she is redeployed, she would be entitled to be paid her salary. She would of course be entitled to continuity of service and other notional benefits for the period from 02.09.2018 till the date of her redeployment. The authorities are directed to disburse the salary payable to Mrs.Flora Mary within a period of twelve weeks from the date of receipt of a copy of this order. An order of redeployment shall also be issued within a period of sixteen weeks from the date of receipt of a copy of this order. **WP(MD)No.1371 of 2018 stands allowed.** No costs. Consequently, connected miscellaneous petitions are closed.

WP(MD)No.24579 of 2018 :

The challenge in this writ petition is to the order directing the closure of the institution. It appears that when WP(MD)No.1371 of 2018, which was filed by the management, was taken up for hearing, the department informed the court about the pathetic state in which the school was being run. Thereupon, the learned Judge who



was hearing the matter is said to have orally observed that in such an event, the authorities must shut down the school. Purporting to act pursuant to the oral direction of the learned Judge, the impugned order dated 02.09.2018 came to be passed for closing the school. The children studying in the school were shifted to the nearby institutions. 10 teachers who were working in the school were also redeployed.

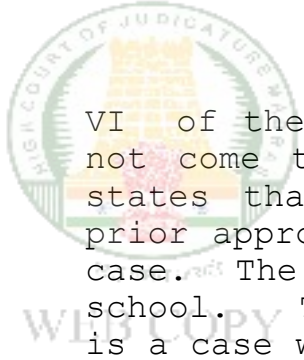
2. In fact, the communication dated 02.09.2018 is not a formal order directing the closure of the school. It was more in the nature of an action taken report submitted to the Special Government Pleader who was handling WP(MD)No.1371 of 2018 on behalf of the respondents. Since the impugned communication dated 02.09.2018 is not a formal order and it is only a privileged communication addressed to the then Special Government Pleader, the question of quashing the same does not arise. But, the fact remains that the department has effectively shut down the institution. The petitioner's case is that the school must be allowed to function.

3. The school is located in South Marret Street, Madurai. The learned Special Government Pleader produced the photographs. They speak volumes. The inspection report of the year 2010 also indicates the pathetic condition in which the school was being run.

4. It appears that the students strength had gone down to 26 by the year 2018. A Middle School must have certain minimal infrastructural facilities. It appears that the school was functioning without any amenities. But then, the school is having stability certificate issued by the competent engineer, no objection certificate from the Fire Service Department and sanitary certificate issued by the Health Department and also public building license issued by the jurisdictional tahsildar.

5. I really wonder how such certificates came to be issued. The Special Government Pleader submitted that the Education Department intervened only to prevent the occurrence of Kumbakonam-like tragedy. I have no doubt whatsoever in my mind that the school does not deserve to function at No.240 A, South Marret Street, Madurai. It is a residential building that abuts the main street. There are no setback facilities. There is no open space and no play ground. I wonder what kind of school the petitioner was running. It is a tragedy that such a school was allowed to run in such conditions all these years. I am even more surprised that the staff fixation was not revised till 02.09.2018. Thus, for catering to the educational needs of 26 students, 10 teachers had been allowed to be on the rolls of the petitioner school. This only shows that periodical inspection was not undertaken and even if it was undertaken, no remedial or consequential steps were taken.

6. The learned counsel appearing for the writ petitioner no doubt contended that if the department wants to close down a recognized school, it must follow the procedure set out in Chapter



VI of the Act. I am of the view that Section 29 of the Act will not come to the aid of the writ petitioner. The said provision states that a private school cannot be closed without obtaining prior approval from the competent authority. Here that is not the case. The Government has also not taken over the management of the school. Therefore, Section 34 also will not come into play. Here is a case where the school has died a natural death. Resurrection of Jesus is celebrated as easter. But if the petitioner springs back to life, it will be disaster. It is better it is not resurrected. I find no ground to grant relief sought for in this writ petition.

7.Hence, WP(MD)No.24579 of 2018 stands dismissed. WP(MD) No.1371 of 2018 stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.
 - 2.The Director of Elementary Education, Chennai - 600 006.
 - 3.The Joint Director of Elementary Education (Aided),
Chennai - 600 006.
 - 4.The Chief Educational Officer, Tallakulam, Madurai - 02.
 - 5.The District Educational Officer, RMS Road, Madurai - 625 001.
 - 6.The Assistant Elementary Educational Officer,
Madurai (South), Madurai - 625 001.
- +2cc to Mr.M.V.Venkatesan,Advocate, SR.No.550608,55061
+1cc to Special Government Pleader, SR.No.54602,54605

WP (MD) Nos.1371 & 24579 of 2018
and
WMP (MD) Nos.1455, 1456,
22282 & 22283 of 2018
15.03.2019

SP/25.03.2019/ 6P/10C

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