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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.4046 of 2019
and W.M.P(MD)No.3157 of 2019

J.Jasmine

... Petitioner

Vs.

1.The Director of School Education,
College Road, Chennai - 6.

2.The Chief Educational Officer,
Tirunelveli District, Tirunelveli.

3.The District Educational Officer,
Valliyur, Tirunelveli District.

4.The Correspondent,
T.D.T.A Middle School, Thalavaipuram,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records pursuant to the impugned staff fixation report, dated 20.03.2017 insofar as fixing the one Pre-Vocational Instructor (Sewing) as surplus and consequential rejection order passed by the third respondent in A.Thi.Mu.No.274/A1/2018, dated 28.09.2018 quash the same and direct the third respondent to approve the petitioner's appointment as Pre-Vocational Instructor (Sewing) at the fourth respondent School and give all other service and monetary benefits from 25.10.2018.

For Petitioner : Mr.S.Chellapandian

For RR 1 to 3 : Mrs.S.Srimathy,
Special Government Pleader.

ORDER

This writ petition has been filed seeking to quash the impugned staff-fixation report, dated 20.03.2017, insofar as fixing one Pre-Vocational Instructor (Sewing) as surplus and the consequential rejection order passed by the third respondent, dated 28.09.2018 and further direct the third respondent to approve the petitioner's appointment as Pre-Vocational Instructor (Sewing) in the fourth respondent school and disburse salary and other attendant benefits with effect from 25.10.2018.



2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 to 3.

3. The learned counsel appearing for the petitioner submitted that the fourth respondent school appointed the petitioner as a Pre-Vocational Instructor (Sewing), due to retirement of the previous incumbent, for which, the fourth respondent school submitted a proposal to the third respondent and the same was returned by the proceedings of the third respondent dated 28.09.2018 stating that as per the staff fixation report, dated 20.03.2017, the Sewing Mistress is a surplus post as per staff fixation for the year 2016 - 2017. Challenging the same, this writ petition has been filed.

4. The learned counsel appearing for the petitioner further submitted that in similar circumstances, this Court passed orders in **W.P(MD)No.1352 of 2015 on 11.04.2018 [The Correspondent, St. Joseph's Middle School, Sarugani, Sivagangai District Vs. The Director of Elementary Education, College Road, Chennai - 600 006 and 2 others]**. It would be useful to refer to the relevant portions of the order, which read as follows:

30(i). In respect of the first decision ie., **2012 (4) MLJ 198** (cited supra), the learned counsel has relied upon this decision on the ground that once the incumbent is appointed in a sanctioned post at the time of the appointment, what was the position should be taken into account and if at all subsequently the student strength get reduced, the excess appointment, if it is identified, can be redeployed. This position has been reiterated by the learned Judge of this Court in the aforesaid judgment at paragraph Nos. 6 to 8, which are extracted hereunder:

"6. The issue to be decided in this Writ Petition is as to whether the petitioner was appointed in a sanctioned post. Admittedly, on 1.4.1998, the post of Secondary Grade Teacher became vacant and the petitioner was appointed in the sanctioned post. The only objection raised is that the fifth respondent school was not declared as a Minority Institution. On a perusal of the records, it is seen that the Civil Suit filed by the fifth respondent school was dismissed and the Judgment and Decree passed by the Lower Court was reversed in the appeal filed by the fifth respondent school, which was confirmed in the said Second Appeal filed by the department. The Government also sanctioned arrears of salary payable to the petitioner. The fall in strength of the students took place in the year 2003-2004, which



cannot be a ground to reject the approval of appointment of the petitioner from 1.4.1998.

7.The issue involved in this Writ Petition was already considered by a Divisional Bench of this Court in W.A.No.1263 of 2001, dated 22.1.2004. In the said Judgment, it is held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred/deployed to a needy school. The said Judgment of the Division Bench was followed in W.P.(MD)No.11353 of 2008, dated 11.9.2009. As against the said order dated 11.9.2009, the department preferred W.A.(MD)No.703 of 2009. A Division Bench of this Court, by Judgment dated 1.2.2011, dismissed the said Writ Appeal.

8.Applying the said Judgments to the facts of the present case and having regard to the un-disputed fact that the Government has issued G.O.(2D), School Education Department, dated 1.2.2011, conferring minority status on the fifth respondent school from the academic year 1990-1991 and directed that the appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1998 shall be approved and arrears of salary payable to the petitioner was directed to be paid, in my considered opinion, there can be no impediment for the respondents to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1998".

30(ii).In the Division Bench judgment made in Writ Appeal (MD)No.1207 of 2016 dated 23.08.2016, the Division Bench, in a similar circumstances, has considered and observed that the importance of vocational training to be given to the girl students, which shall be greatly helpful at the later part of their life. The relevant portion of the said observations made by the Division Bench is extracted hereunder:

11.Therefore, we have absolutely no hesitation whatsoever to dismiss the Writ Appeal. We may take this opportunity to add one other reason. Admittedly, there are large number of girl students pursuing various courses in the school concerned. May be their strength may have fallen short of the number of 250 prescribed, as necessary for sanction of a



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post. But however, the State, as a wise policy, has sanctioned such posts to the schools, so that, the vocational skills can be imparted to the girl students. In the instant case, the vocation training sought to be imparted related to tailoring an avocation which better suits the girl students, to enhance their employment capabilities in the later part of life.

12. Therefore, the object of the State to promote the welfare and wellbeing of the girl child is a paramount consideration in case of this nature.

30(iii). In the recent Division Bench judgment made in W.A.(MD) No.1295 of 2016 dated 05.03.2018, it is observed that if it is a single post, which has been sanctioned, the same cannot be dispensed with. The relevant portion of the order in the said judgment, as it has been relied upon by the learned counsel for the petitioner, is extracted hereunder:

"4. The issue involved in this Writ petition was as to whether the respondents / appellants were justified in refusing to approve the appointment of the respondent Tmt. Kokila as Sewing Mistress in the respondent school. The reason for rejection of the application is by placing reliance on G.O. Ms. No. 168 School Department dated 13.09.2006. In the said Government Order, a direction was issued that while sanctioning the post of full time Craft Instructors, the Government had specifically mentioned that there should be at least 5 sections in 6-8 classes having workload of not less than 18 periods in the higher elementary schools. Pre-vocational instructors, who were working during 1960-63 were allowed to continue without reference to the work periods. Similarly, the teachers appointed as Pre-vocational instructors during 1963-64 to 1973-74 were permitted to continue, when the schools had less than 5 sections in 6-8 classes. However, this was made after the year 1973-74. By referring to the said Government order, it was contended that the said Tmt. Kokila was appointed in a retirement vacancy in the year 2009 and the same cannot be approved as there were no 5 sections in 6-8 classes in the respondent school.

6. Therefore, we opined that the stipulations of 5 sections in 6-8 classes was



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considered to be directory and not mandatory and that is why the Government took such a stand not only in respect of 10 middle schools, but also other similar cases. The Government order came to be issued in 2006 and the appointment of Tmt.Kokila was in the year 2009. Above all, there is only one post and therefore, the department cannot insist upon the course being conducted and simultaneously not sanction the post. Apart from that, increasing the number of sections in a class is not at the sole discretion of the management of minority institution. Be it an aided non-minority institution or minority institution or for that matter a government institution, it has to abide by the Rules and Regulations, which stipulate a students strength of minimum 40 and that strength has to be assessed in August every year for the purpose of assessing the staff strength.

7. Therefore, the Government Order in G.O.Ms.No.168 dated 13.09.2006, if read in tandem with the guidelines stipulated for increasing the number of sections, then, this stipulation of having 5 sections in 6-8 classes can at best be read as directory and not mandatory. Further, it is relevant to point out that the decision in the case of N.Regii Mallika referred supra has been affirmed by the Hon'ble Division Bench in W.A.(MD)No.16 of 2011 dated 25.01.2011. In the said appeal, the Division Bench referred to an earlier order in W.P.(MD)No.7218 of 2008 dated 04.08.2009, which was implemented by the department. However, the learned counsel appearing for the respondent pointed out that there is another judgment of the Division Bench in the case of State Vs.S.Renganayaki (W.A.(MD)No.1207 of 2016), wherein, identical issue was considered in respect of high school and the appeal was dismissed and the same was implemented in G.O.Ms.No.132 dated 27.04.1998".

31. On perusal of these judgments of this Court, the point emerged before this Court is that, the fixation of staff strength based on the student strength will have a prospective effect and therefore, if the post is sanctioned and approved, during the approved time, if the post is filled up by a qualified Teacher, the teacher appointed shall be



approved and thereafter, if the teacher is found to be excess, based on the student strength, subsequently, decision may be taken by the authority to redeploy the Teacher. Also, it further emerges that, if it is a single Teacher, that too, in a specialized subject, the same cannot be straight away dispensed with, as without the single teacher in the specialized subject, no one will be there to impart training on the particular subject.

32. Another position emerges from the said judgments cited above is that, imparting of vocational training to the students, especially, the girl students in the subject Sewing is important and the paramount consideration is to give employment opportunity to the women in the later point of time and that is the reason vocational training to the girl students should be given importance.

33. Considering all these principles as emerged from the judgments cited supra, if the same are fit in the facts and circumstances of this case, it can be easily concluded that the petitioner's school is having the necessary strength for the purpose of having one special teacher as Sewing Mistress, even though the over all students strength may be less than the prescription made by the Government under the relevant Government Order. Such reduction in strength may exist to the authorities to reduce the staff strength in general teaching area, such as, Secondary Grade Teacher and B.T. Assistants, but, not the special teacher, because the special teacher in Sewing subject is the single post and also the said subject is one of the compulsory subject for the girl students, who are studying VI to VIII at the petitioner's school.

34. Therefore, the reason cited by the respondents for fixing staff strength at the petitioner's school, primarily stating the reduction in student strength may not be applicable to the present circumstances of the case, as the Teacher post, which is in question now, has been reduced or taken away, is a special teacher, that too, a single person, who takes classes for the said standards as special subject.

35. Looking from any angle, the action taken on the part of the respondents, as reflected in the impugned order taking away the portion of Sewing Mistress, from the petitioner's school is not justifiable. Unless the authorities come to a conclusion that there is no student available in the



petitioner's school, taking the compulsory subject of Sewing, the said post of Sewing Mistress cannot be taken away.

36. In view of the above, this Court has no hesitation to hold that the impugned order fixing the staff strength by declaring the said post of Sewing Mistress as an excess post, is unjustifiable and therefore, it is liable to be interfered with.

37. In the result, this Writ petition is disposed of with the following orders:

(i) The impugned order is set aside;

(ii) In view of the impugned order having been set aside, the proposal sent by the petitioner's school on 08.08.2012 and subsequently, on 07.11.2012 for the appointment of the said Mrs. A. Gnana Sagaya Mary in the post of Sewing Mistress at the petitioner's school shall be taken into account and such proposal shall be considered and orders to that effect approving the appointment shall be made by the third respondent;

(iii) Once such appointment is approved by the authorities, the incumbent, who has been appointed as Sewing Mistress and taking classes in the petitioner's school, shall be entitled to claim the salary for the said post from the date of her appointment;

(iv) All the aforesaid directions as indicated above shall be undertaken by the respondent especially, the second respondent within a period of six weeks from the date of receipt of a copy of this order;

(v) Since the proposal has already been returned by the second respondent, the same is to be once again be resubmitted by the petitioner school within a period school within a period of two weeks from the date of receipt of a copy of this order and only on receipt of the same, the second respondent shall do the needful as indicated above, within the time frame set out therein.

38. With the above directions, the Writ petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs."

Hence, the learned counsel prayed that the case of the petitioner has to be considered in the light of the aforesaid decision.

5. The learned Special Government Pleader appearing for the respondents 1 to 3 submitted that the claim of the petitioner cannot be considered, since there are surplus of teachers in the



fourth respondent school. However, she has not disputed the aforesaid decision relied on the side of the petitioner.

6. Considering the facts and circumstances of the case and having regard to the submissions made by the parties and also following the aforesaid decision, the Writ Petition has to succeed. Accordingly, the writ petition is allowed and the impugned orders, dated 20.03.2017 and 28.09.2018 are quashed. The third respondent is directed to approve the petitioner's appointment as Pre-Vocational Instructor (Sewing) in the fourth respondent school and disburse salary and other attendant benefits with effect from 25.10.2018. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Director of School Education,
College Road, Chennai - 6.
2. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.
3. The District Educational Officer,
Valliyur, Tirunelveli District.
4. The Correspondent,
T.D.T.A Middle School,
Thalavaipuram,
Tirunelveli District.

+1CC TO MR.S.CHELLAPANDIAN, Advocate Sr. No.59521
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.59578

W.P(MD)No.4046 of 2019
05.04.2019

SCR(CO)

TR (23.05.2019) 8P 7C