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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31.01.2019

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.(MD)Nos.15299 and 19415 of 2018

and

W.M.P.(MD)Nos.13820 and 17258 of 2018

R.Mahendran ... Petitioner in W.P.(MD)No.15299 of 2018
K.Suganthi ... Petitioner in W.P.(MD)No.19415 of 2018

Vs.

1. The Secretary to Government
Department of School Education,
St.George Fort, Chennai.
2. The Director of School Education,
School Education Department,
DPI Compound, Chennai.
3. The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.
4. The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli. ... Respondents in both W.Ps.
- 5.The Correspondent,
St.Peter's Higher Secondary School,
Ukkirankottai, Tirunelveli
...Respondent in W.P.(MD)No.15299 of 2018
6. The Correspondent,
Mary Sargent Girl's Higher Secondary School,
Palayamkottai, Tirunelveli.
... Respondent in W.P.(MD)No.19415 of 2018

Prayer in W.P.(MD)No.15299 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned staff fixation report in Na.Ka.No.7510/22/2017, dated 27.09.2017 insofar as condition restricting the appointment of vocational instructor in the new vacancy caused at fifth respondent school and consequential rejection order passed by the fourth respondent in O.Mu.No.1101/24/2018, dated 23.05.2018 quash the same and consequently, direct the fourth respondent to approve the appointment as vocational instructor at fifth respondent school and give all other service and monetary benefit from 24.01.2018.



Prayer in W.P.(MD)No.19415 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned staff fixation report in Na.Ka.No.7510/22/2017, dated 26.09.2017 insofar as condition restricting the appointment of vocational instructor in the new vacancy caused at fifth respondent school and consequential rejection order passed by the fourth respondent in O.Mu.No.2669/22/2018, dated 28.06.2018 quash the same and consequently, direct the fourth respondent to approve the petitioner's appointment as vocational instructor at fifth respondent school and give all other service and monetary benefit from 20.01.2018.

For Petitioner : Mr.S.Chellapandian
(in all both W.Ps.)
For R1 to R4 : Mrs.S.Srimathy
(in all both W.Ps.) Special Government Pleader

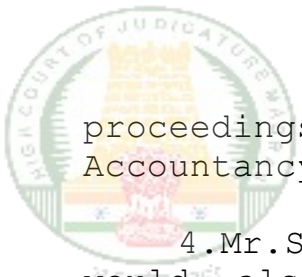
For R5 in : No appearance
both WPs

COMMON ORDER

The petitioners in both writ petitions were appointed as vocational instructors by the institution namely the fifth respondent. The fifth respondent which is the minority educational institution sought for approval of the appointments from the authorities concerned. The fourth respondent/District Educational Officer, Tirunelveli, rejected the approval on the ground that the post of Vocational Instructor was a man post and it is not a post allotted to the institution. Therefore, the post would lapse once the present incumbent retired. It is this order that is challenged in all these writ petitions.

2.Heard Mr.S.Chellapandian, learned counsel appearing for the petitioners and Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents 1 to 4. The fifth respondent is the management which has no-say in the matter of approval.

3.Mr.S.Chellapandian, learned counsel appearing for the petitioners would rely upon the staff fixation done for the 5th respondent school for the academic year 2017-2018. The staff fixation dated 26.09.2017 and 27.09.2017 for the academic year 2017-2018 would disclose that in the Accountancy and Auditing course, there are 31 students in 11th standard and 27 students in the 12th standard in W.P.(MD)No.15299 of 2018. There are 32 students in the 11th standard and 33 students in the 12th standard in W.P.(MD)No.19415 of 2018 respectively. He would also point out that the staff fixation



proceedings itself sanctioned two vocational teachers for Accountancy and Auditing course in both writ petitions.

4.Mr.S.Chella Pandian, learned counsel for the petitioners would also point out that the decision to regularise the vocational teachers was made by the Government in G.O.Ms.No.712, dated 28.05.1990 wherein 800 sanctioned post of vocational teachers were created in the Higher Secondary Schools in the State of Tamil Nadu. The said G.O.Ms.No.712, dated 28.05.1990 was followed by G.O.Ms.No.967, dated 17.10.1992, wherein, 587 posts were sanctioned and the vocational instructors who were serving as double part-time vocational instructors were brought into regular time scale of pay.

5.Relying the said Government Orders, Mr.S.Chellapandian, learned counsel for the petitioners would contend that there is nothing in the Government Orders to show that the post would lapse on the retirement of the present incumbent. He would also invite my attention to the judgment of a Division Bench of this Court, dated 01.03.2018 made in W.A.(MD)No.1494 of 2017 (State of Tamil Nadu Vs. Secretary/Correspondent, Sethupati Higher Secondary School, Madurai), wherein, it was held that the Government cannot refuse approval, if the students strength is available.

6.Per contra, Mrs.S.Srimathy, learned Special Government Pleader for the respondents 1 to 4 would contend that the Government had undertaken the exercise of restructuring the vocational courses by the Government Orders in G.O.Ms.Nos.8 and 9, School Education (VE) Department, dated 06.01.2009. The Government had made it clear that unpopular and school specific vocational courses should be wound up. The Government had also made it clear that no new vocational course can be opened without the permission of the Government.

7.The learned Special Government Pleader for the respondents would contend that the appointment of the petitioners as vocational instructors itself is in contravention of the Government Orders and therefore, the same cannot be approved.

8.I have considered the rival submissions.

9.As rightly pointed out by Mr.S.Chellapandian, learned counsel appearing for the petitioners, neither G.O.Ms.No.712, dated 28.05.1990 nor G.O.Ms.No.967, 17.10.1992 indicate that the post would lapse on the retirement of the present incumbent. Even though the Government Order No.9, dated 06.01.2009 prohibits the appointment of the vocational teachers, the Government had not discontinued the vocational course and no prohibition has been imposed on schools from admitting the students in the vocational courses. The Hon'ble Division Bench had considered the similar claim made by the Government and held that as long as

students strength is available, the teachers must also be made available, particularly in aided institutions. While doing so, the Hon'ble Division Bench has observed as follows:-

"7. After elaborate and careful perusal of the materials on record, we find from the staff fixation year 2013-2014, dated 29.10.2017 as on 01.08.2013 there was one post of Vocational Instructor for the subject General Machinist and on the date when Thiru.R.kannan was appointed, i.e., 10.06.2013, the school had one post of Vocational Instructor and therefore, to state that the appointment itself is not sustainable is a stand which has to be rejected.

8. Next we come to staff fixation done by the Department for the year 2014 vide order dated 07.11.2014. It is interesting to note that in the said order the appellant department records the fact that there are 46 students in the 11th standard and 39 students in the 12th standard in spite of the same stated in the fixation order that one post is surplus. In our considered view, the Department cannot take such a technical plea. When it is admitted fact that there exists sufficient students strength, the course has to continue. Thus the order of the fifth respondent showing one post of Vocational Instructor as surplus, he has virtually closed down the said course as there would be no teacher. We cannot lose sight of the fact when there is full students strength and course is in demand, the Department cannot take such a stand and render one post as surplus. In the Government Order in G.O.Ms.No.525 School Education (D1) Department, dated 29.12.1997, in Paragraph No.IV, the number of post eligible for Higher Secondary School is mentioned in the clause (d) of the said order which states that for vocational stream, 2 posts of teachers (full time) will be sanctioned irrespective of the number of courses. Therefore, even while passing the order dated 29.10.2013 and fixing the staff strength for the year 2013-2014, the respondent/Management was entitled to two post of Vocational Instructor. Thus, we find the reason for rejection of approval of the Vocational Instructor, Thiru.R.Kannan as well as staff fixation for the year 2014-2015 is completely flawed."

10. In view of the above categorical pronouncement of the Division Bench, I am unable to persuade myself to agree with the contentions of the learned Special Government Pleader. The orders of the authorities in rejecting the approval sought for by the fifth respondent Management are liable to be set aside and accordingly, the impugned orders are set aside. There will be a direction to the fourth respondent to consider the proposals for approval in the light of the pronouncement of the Division Bench and to file a copy of the order of approval, within a period of six weeks from the date of receipt of a copy of this order. This however will not preclude the Government from taking a policy decision regarding the



continuance or otherwise of the vocational course in private, aided, minority or non-minority schools. The writ petitions are accordingly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Secretary to Government
Department of School Education,
St. George Fort, Chennai.
2. The Director of School Education,
School Education Department,
DPI Compound, Chennai.
3. The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.
4. The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli.

+2 cc TO Mr.S.Chellapandian, ADVOCATE IN SR NO.44168,44169
rmi
MK/RSK/SAR 2/18.02.2019/5P/7C

order made in
W.P. (MD) Nos.15299 and 19415 of 2018
and
W.M.P. (MD) Nos.13820 and 17258 of 2018
31.01.2019
(½)