



WEB COPY

W.P(MD)No.6847 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.6847 of 2015

and

M.P(MD)No.2 of 2015

A.Gnana Mallika

... Petitioner

vs.

1)The Director of Elementary Education,
College Road, Chennai-600 006.

2)The District Elementary Educational Officer,
Tuticorin, Tuticorin District.

3)The Assistant Elementary Educational Officer,
Sathankulam, Tuticorin District.

4)The Correspondent,
St.Joseph's R.C. Middle School,
Kadakulam-628 656,
Tuticorin District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd respondent District Elementary Educational Officer in Oo.Mu.2137/A2/2014 dated 25.10.2014 quash the same and further direct the 2nd respondent DEEO to approve forthwith the appointment of the petitioner as Sewing Mistress(pre-Vocational Instructor) in the 4th respondent School namely, St. Joseph's Middle School Kadakulam w.e.f. the date of petitioner's appointment on 24.06.2013 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Mr.T.Cibi Chakraborty

For R1 to R3 : Mr.N.Shanmuga Selvan

Additional Government Pleader

For R4 : Mr.FR.V.John Kennedy

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd respondent District Elementary Educational Officer in Oo.Mu.2137/A2/2014 dated 25.10.2014 quash the same and further direct the 2nd respondent DEEO to approve forthwith the appointment of the petitioner as Sewing Mistress(pre-Vocational Instructor) in the 4th respondent School namely, St. Joseph's Middle School Kadakulam w.e.f. the date of petitioner's appointment on 24.06.2013 with all attendant benefits including the arrears of salary and allowance.

2.Learned counsel for the petitioner would state that the 4th respondent school is a recognised and aided minority educational

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institution, in which, one post of Sewing Mistress (Pre-Vocational Instructor) fell vacant on 01.06.2013 due to the retirement of the then incumbent and on 24.06.2013, the petitioner was appointed as Sewing Mistress (Pre-Vocational Instructor) in the said vacancy and thereafter, the 4th respondent school submitted a proposal to the 2nd respondent/DEEO to approve the said appointment of the petitioner and to disburse grant-in-aid towards his salary. The 2nd respondent by impugned proceedings dated 25.10.2014 returned the proposal stating that approval can be made only if there is atleast 5 sections, 18 teaching periods and 100 students in standards VI to VIII and also sought for clarification whether the post is a sanctioned post. Hence, this writ petition.

3.Learned counsel would rely on the judgment in W.A(MD)No.1295 of 2016 dated 05.03.2018 and stated that the above conditions for approval mentioned in G.O.Ms.No.168, School Education (B2) Department, dated 13.09.2006 are only directory and not mandatory and therefore, approval ought to have been granted. Thus, he would pray for setting aside the impugned order.

4.The 2nd respondent filed counter reiterating the stand taken in the impugned order and the learned Additional Government Pleader would state that as per G.O.Ms.No.168, the 4th respondent school does not have 5 sections in Standards 6 to 8 and the petitioner does not have 18 periods of workload in a week and therefore the petitioner has no right to seek for approval of her appointment. Thus, he would pray for dismissal of the writ petition.

5.Heard both sides.

6.It is relevant to extract below paragraphs 4 to 6 of the judgment in W.A(MD)No.1295 of 2016 dated 05.03.2018 relied on by the learned counsel for the petitioner:-

'5. An identical issue was considered by this Court in the case of N.Regii Mallika Vs. The Director of Elementary Education in W.P.(MD) No.9137 of 2008 dated 20.08.2010. This Court allowed the writ petition taking note of paragraph 5 of the said Government order in G.O.Ms.No.168, School Education (B21) dated 13.09.2006. In paragraph 5, the Government observed that not only 10 Middle schools, who had done appointments after the year 1973-74 without considering the workload may be granted exemption, the said benefit was also directed to be extended to all similar cases as a special case.

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

7. On perusal of the said judgment, I am of the view that the said decision is squarely applicable to the present case. Further, the petitioner was appointed in a sanctioned post which is not seriously disputed in the counter. Therefore, following the said decision, the order impugned herein dated 25.10.2014 is set aside and the 2nd respondent is directed to approve the appointment of the petitioner as Sewing Mistress (pre-Vocational Instructor) in the 4th respondent School with effect from the date of her appointment on 24.06.2013 with all attendant benefits including the arrears of salary and allowance. Such exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



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To

1)The Director of Elementary Education,
College Road, Chennai-600 006.

2)The District Elementary Educational Officer,
Tuticorin, Tuticorin District.

3)The Assistant Elementary Educational Officer,
Sathankulam, Tuticorin District.

+1 CC to M/s.M/S.FATHER XAVIER ASSO, Advocate (SR-104133[F] dated
10/12/2019)

+1 CC to M/s.M/S.ISAAC CHAMBERS, Advocate (SR-104155[F] dated
10/12/2019)

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