

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.18 of 2020

and

WMP Nos.16 and 18 of 2020

Aided Elementary School,
Thanikalampattu,
Kadaganur Post 605 755,
Villupuram District,
Rep. By its Manager,
P.Martin Mathivanan

... Petitioner

Vs.

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.

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

3. The District Educational Officer,
Thirukovilur Education District,
Villupuram District.

4. The Block Educational Officer,
Mugaiyur Block,
Villupuram District.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings issued by the third respondent bearing O.Mu.No.1184/A4/2019 dated 24.09.2019 and the consequent impugned order issued by the fourth respondent bearing O.Mu.No.682/A2/19 dated 29.10.2019 and Quash the same and consequently directing the respondents to grant permission to the petitioner school to fill up the post of Secondary Grade Teacher in the regular sanctioned post lying vacant from 21.02.2019 forthwith.

For Petitioner

: Mr.G.Sankaran

For Respondents

: Mrs.V.Annalakshmi
Government Advocate

O R D E R

This Writ Petition has been filed challenging the proceedings of the third respondent dated 24.09.2019 and for a consequential direction to direct the respondents to grant permission to the Petitioner School to fill up the post of Secondary Grade Teacher.

2. The petitioner School is a Government Aided School governed under the provisions of The Tamil Nadu Recognized Private Schools (Regulations) Act, 1973. A vacancy to the post of Secondary Grade Teacher arose due to the promotion of the incumbent to the post of Headmaster on 21.02.2019. The Petitioner School thereafter made an application seeking for permission to fill up the post of Secondary Grade Teacher. In the meantime, the promotion of the incumbent to the post of Headmaster was also approved, with effect from 21.02.2019. The application made by the Petitioner School seeking for permission was rejected by the proceedings of the third respondent on the ground that the post can be filled up only with the surplus teachers available in other Government Aided Schools, in accordance with the orders passed by the Division Bench of this Court. Aggrieved by the same, the present Writ Petition has been filed before this Court.

3. Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner submitted that the G.O.Ms.No.165, dated 17.09.2019 has already become a subject matter of challenge and it has been suspended by orders passed by this Court. The learned counsel submitted that the vacancy has arisen to the post of Secondary Grade Teacher on 21.02.2019 and at this length of time, no surplus Teachers are available and therefore, the third respondent ought to have permitted the petitioner to fill up the post. The learned counsel submitted that this Court had already dealt with the similar issue in WP No.33889 of 2019 and issued appropriate directions.

4. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that the impugned proceedings came to be passed only due to the orders passed by the Division Bench of this Court. The learned counsel submitted that only after the surplus teachers are accommodated in the vacant post in all the Aided Schools, sanction can be given for fresh appointment if the vacancy continues.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The issue involved in this Writ Petition was dealt with by this Court in WP No.33889 of 2019 and the relevant portions of the order is extracted hereunder:

take note of the interim order of the Division Bench of this Court in W.P.No.31575 of 2019 dated 08.11.2019. The relevant portion of the interim order is extracted hereunder:

"7.A perusal of the information which has been placed before this Court and as made available by the concerned Department would disclose that there are very many surplus teachers available for deployment and despite that recruitments are taking place and as a consequence, the Government is put to heavy financial burden.

8.In the light of the above facts and circumstances, the respondents 4 to 6 are directed to take immediate and necessary steps to deploy the surplus teachers in Government run Middle Schools and High Schools and till such deployment is completed, there cannot be any recruitment to the said post, until further orders. Since a comprehensive Writ Petition in the form of Public Interest Litigation has been filed. Registry after obtaining appropriate orders. Tg W.A(MD).No.76 of 2019 along with this writ petition."

9.In view of the specific directions given by this Court, the 2nd respondent had no other option except to fill up the posts by deploying the surplus teachers who are available. Therefore, this Court does not find any illegality in the impugned communication of the 2nd respondent dated 24.09.2019. However, the petitioner school has already appointed a Secondary Grade Teacher and they are in the middle of the academic year. By now, the entire deployment of surplus teachers must have been completed. Therefore, in the absence of any surplus teacher being available for being deployed in the petitioner school, it will be in the interest of the petitioner school as well as the students to permit the teacher who has already been appointed to continue as a Secondary Grade Teacher in the school. Such a pragmatic approach has to be made in cases of this nature more particularly since the petitioner school is having only two teachers.

10.In the result, the petitioner is permitted to make a representation to the 2nd respondent along with a copy of this order seeking for the approval of the appointment made to the post of Secondary Grade Teacher in the petitioner school. If the deployment of surplus teachers is already completed for the present academic year, the 2nd respondent can as well approve the appointment of

the Secondary Grade Teacher since the appointment itself had taken place pursuant to the permission granted by the 2nd respondent by his proceedings dated 04.03.2019. The 2nd respondent shall pass appropriate orders within a period of four weeks from the date of receipt of representation from the petitioner school.

7. It is clear from the above order that in the absence of any surplus teachers, it is always open to the Petitioner School to appoint a Secondary Grade Teacher after getting the permission from the respondents. It is a matter of fact, as to whether, any such surplus teachers are available at this length of time.

8. In view of the above discussion, the impugned proceedings of the third respondent dated 24.09.2019 and the consequent order issued by the fourth respondent dated 29.10.2019 is hereby quashed. The petitioner School is directed to make a fresh representation to the third respondent and seek for permission to fill up the post of Secondary Grade Teacher and the third respondent after ensuring that there are no surplus teachers to be deployed in the Petitioner School, shall sanction the appointment and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

9. This Writ Petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (JJ Act)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.
2. The Chief Educational Officer,
Villupuram District,
Villupuram.
3. The District Educational Officer,
Thirukovilur Education District,
Villupuram District.

4. The Block Educational Officer,
Mugaiyur Block,
Villupuram District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No. 641
+1cc to the Government Pleader, S.R.No. 1323

W.P.No.18 of 2020
and WMP Nos.16 and 18 of 2020

VSN II (CO)
GN (21/02/2020)



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