

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.2479 of 2020
and W.M.P No.2878 of 2020

S.Ramasamy

Petitioner

vs.

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The District Educational Officer,
Nagapattinam Educational District,
Nagapattinam.
3. The Block Educational Officer,
Kilvelur Block,
Nagapattinam District.
4. The Secretary,
Aided Primary School,
Manalur, Kilvelur Block,
Nagapattinam District.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 2nd respondent in O.Mu.No.8107/Aa3/2019 dated 12.12.2019 and to quash the same and consequently directing the respondents 1 to 3 to approve the re-employment of petitioner in the post of Secondary Grade Teacher till the end of the academic year 2019-2020 in the 4th respondent school, with all consequential and other attendant benefits, within a time frame to be fixed by this Court.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents: Mrs.V.Annalakshmi

Government Advocate for R1 to R3

O R D E R

By consent of both sides, this writ petition is taken up for final disposal.

2.This writ petition has been filed challenging the orders passed by the 2nd respondent in his proceedings dated 12.12.2019 rejecting the request made by the petitioner to re-employ the petitioner in the post of Secondary Grade Teacher till the end of the academic year in the 4th respondent School.

3.The case of the petitioner is that the petitioner was working as a Secondary Grade Teacher in the 4th respondent School and he reached the age of superannuation on 30.09.2019. According to the petitioner, he is entitled to be re-employed till the end of the academic year 2019-20, in accordance with the G.O.Ms.No.261, dated 20.12.2019.

4.The petitioner made a representation seeking for re-employment and the same was rejected by the 2nd respondent by impugned proceedings dated 12.12.2019 on the ground that there are surplus teachers who are available at Nagapattinam District. Aggrieved by the same, the present writ petition has been filed before this Court seeking for appropriate directions.

5.The learned counsel for the petitioner submitted that there are no surplus teachers who are available and the respondents ought to have considered the request made by the petitioner in line with the G.O.Ms.No.261, dated 20.12.2019. The learned counsel further submitted that what is required to be considered is whether there are surplus teachers in the same school and in the present case, there are only three teachers working in the 4th respondent school and the petitioner was reaching the superannuation in the middle of the academic year and therefore, the Government order in G.O.Ms.No.261, dated 20.12.2019 will directly apply in the present case.

6.Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that by virtue of the order passed by the Division Bench in W.A.No.3951 of 2019, the respondents will have to necessarily see if there are surplus teachers available for deployment in the available vacancy and only in the absence of such surplus teachers, the request made by the petitioner to extend her service till the end of the academic year can be considered. The learned counsel submitted that as per the report received by the 2nd respondent there are surplus teachers who are available for deployment at Nagapattinam Revenue District. The learned counsel, therefore, submitted that there are absolutely no grounds to interfere with

the impugned proceedings by the 2nd respondent dated 12.12.2019.

7.This Court had an occasion to consider the similar plea and this Court also considered the scope of the judgment of the Division Bench in W.P.No.34420 of 2019, dated 06.12.2019. The relevant portions in the judgment are extracted hereunder:

4. Mrs.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents submitted that the petitioner cannot make this claim as a matter of right. The learned counsel submitted that there are surplus teachers found to be re-deployed to various schools and only after they are accommodated, the claim made by the petitioner can be considered. The learned counsel in order to substantiate her submissions, placed reliance upon the recent order passed by the Hon'ble first bench of this Court in W.A.No. 3951 of 2019 dated 25.11.2019. It is also relevant to extract the order passed by the Hon'ble first bench:-

"The contention raised by the learned Special Government Pleader (Education) is that the learned Single Judge has committed an error in relying on the earlier Division Bench judgment and has not properly construed the Government Order dated 20.12.2018, according to which, the arrangement of surplus teacher is permitted and therefore compulsion to re-employ is not available as a matter of right to the respondent / writ petitioner. The contention requires to be considered having perused the Government Order dated 20.12.2018.

2. Learned Special Government Pleader (Education) has also relied upon a Division Bench judgment of this Court in the case of the Director of Elementary Education and others Vs. C.Rangan, decided on 20.09.2019 in W.A.No. 2611 of 2019 and also urged that the respondent / writ petitioner has already attained superannuation.

3. Issue notice to the respondent returnable on 17.12.2019. In the mean time, the appellants will not be compelled to proceed pursuant to the directions of the learned Single Judge, but in the event, if

the appeal fails, the respondent / writ petitioner will be entitled to get salary."

5. By placing reliance upon the above order, the learned counsel submitted that the petitioner cannot claim for extension of service till the end of the academic year as a matter of right.

6. This Court has carefully considered the submissions made on either side and also the orders passed by the Hon'ble first bench.

7. The petitioner is claiming for extension of service till the end of the academic year based on G.O.Ms.No. 261, dated 20.12.2018. The order that has been extracted supra makes it clear that priority must be given to surplus teachers and such extension of service can be made only if such surplus teachers are not available.

8. In the facts and circumstances of the case, there shall be a direction to the second respondent to consider the representation made by the petitioner and if in the absence of any surplus teacher for re-deployment in the concerned school, shall consider the claim made by the petitioner, if the petitioner satisfies the requirements under G.O.Ms.No.261 dated 20.12.2018. A decision shall be taken in this regard within a period of two (2) weeks from the date of receipt of a copy of this order. The petitioner is directed to make a fresh representation to the second respondent along with a copy of this order.

8.In view of the above, the respondents will have to necessarily act in accordance with the directions given by the Division Bench of this Court.

9.In the facts and circumstances of the case, there shall be a direction to the 2nd respondent to consider the claim made by the petitioner and if there are no surplus teachers available for deployment in the 4th respondent school, the claim made by the petitioner can be considered, if he satisfies the requirements of the G.O.Ms.No.261, dated 20.12.2019. A decision shall be immediately taken in this regard within a period of two weeks from the date of receipt of copy of this order. The petitioner is directed to make a fresh representation to the 2nd respondent along with a copy of this order.

10.This writ petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No Costs.

-s/d-
Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

ssr

To

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
 2. The District Educational Officer,
Nagapattinam Educational District,
Nagapattinam.
 3. The Block Educational Officer,
Kilvelur Block,
Nagapattinam District.
- +1 CC to Mr.G. Sankaran, Advocate sr 8332.
+1 CC to Govt. Pleader sr 8583.

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RJI (CO)
SP(06/02/2020)