

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.NO.17487 of 2018
and
WMP No.20766 of 2018

D. Selvam Jayanthi

...Petitioner

-Vs-

1. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006.
2. The District Elementary Education Officer
Tiruppur District
Now re-designated as District Educational Officer
Tiruppur
3. CSI Aided Primary School
Rep. by its Correspondent
Kadayur,, Kankeyam 638 701
Tiruppur District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ, Order of Direction more so in the nature of a Writ of Certiorarified Mandamus calling for the records of the second respondent in Na.Ka.No.840/A4/2017 dated 28.06.2017, quash the same and consequently direct the respondents to grant approval for the appointment of the petitioner with effect from 19.10.2015 with all attendant service and monetary benefits.

WEB COPY

For Petitioner : M/s.Dakshayani Reddy

For Respondents: Mrs.V. Annalakshmi
Government Advocate for R1 & R2

ORDER

This Writ Petition has been filed challenging the orders passed by the second respondent by his proceedings dated 28.06.2017 rejecting to grant approval for the appointment of the petitioner.

2. The case of the petitioner is that he was appointed as Secondary Grade Teacher in the third respondent school on 19.10.2015. The petitioner was appointed in a sanctioned post and the staff strength, as could be seen from the records, shows that it is a two teacher school, one being the Head Master and the other being the Secondary Grade Teacher. When the approval was forwarded to the second respondent, the same was rejected on the ground that there are surplus teachers available in the other schools that is run by the same management and they can be redeployed in the vacant post and, therefore, no approval can be granted for the appointment of the petitioner.

3. The learned counsel appearing on behalf of the petitioner submitted that the issue that has been raised in the present Writ Petition is covered by the earlier judgments of this Court. The learned counsel for the petitioner relied upon the judgment of this Court in W.A.(MD) No. 688 of 2015 dated 07.07.2015. The relevant portion in the judgment is extracted hereunder.

2. For brevity, order made in W.A.(MD).No.639 of 642 of 2015 etc., batch, dated 17.06.2015, is reproduced hereunder:-

Challenge in all the writ appeals, is to the directions issued to the appellants/respondents, to approve the appointment of the writ petitioners, from the date of their initial appointment.

2.Summary of the facts of the writ petitions, is that the writ petitioners were appointed as Secondary Grade Teachers, as against sanctioned posts in the respective schools. When the Management of the schools sought for approval of their appointment, from the date of appointments, the District Elementary Educational Officer, Tirunelveli, 2nd appellant in all the appeals, rejected the claim, on the ground that approval cannot be granted, as there were surplus teachers in other schools, under the same Management.

3.Perusal of the orders made in the writ

petitions shows that the Writ Court, has considered few earlier orders, passed by this Court, in writ petitions, on the same issue. The Writ Court, has also taken note of the orders passed by the Hon'ble Division Benches, dismissing the appeals filed by the State, against the orders made in the writ petitions, setting aside the orders of rejection passed by the educational authorities, wherein, approval was denied on the grounds that posts in which, the teachers were appointed, were also found as surplus. Consequently, the Writ Court, by a common order dated 25.02.2014, allowed Writ Petition(MD)Nos.5731 to 5733 & 5735 of 2013. The said order is extracted hereunder:-

The approval sought for the post of the appointment of the petitioners were rejected only on the ground that there were surplus posts available in the Schools coming under the Management of the very same authority.

2. The learned counsel for the petitioner has submitted that admittedly, the petitioners' appointment were in the sanctioned post. He has further submitted that the issue raised in the writ petitions are covered by the orders of this Court.

3. Considering the very same issue, this Court in W.P(MD)No.5872 of 2012, dated 12.12.2013, after taking note of the earlier decision was pleased to hold in paragraph Nos.5 to 7 and the same reads as follows:-

...5.Considering the very same issue, this Court was pleased to pass the following order:

..2.The case of the petitioner is that he was appointed as Secondary Grade Teacher in the third respondent school on 01.02.2010 in a vacancy caused on account of voluntary retirement of one A.Sarojini. A proposal was submitted by the third respondent management seeking approval of appointment of the petitioner.

The first respondent, by the impugned order dated 30.05.2011, declined to approve the appointment of the petitioner on the ground that there are

surplus teachers in the other schools run by the same management, and therefore, the appointment of the petitioner cannot be approved. Challenging the said order, the petitioner has come forward with the present Writ Petition.

3. A similar issue was considered by this Court in W.P.(MD).No.4372 of 2006, dated 01.09.2006, wherein, this Court repelled such stand taken by the respondents. The said order was followed in W.P.Nos.10350 to 10352 of 2006, by order dated 08.12.2006. The said order passed in W.P.No.10351 of 2006 was challenged in W.A.292 of 2007 and the same was dismissed by a Division Bench of this Court on 02.08.2007. The orders passed in W.P.Nos.10350 & 10352 of 2006 were also confirmed in W.A.No.194 of 2007 and W.A.No.205 of 2007, dated 09.06.2007. The said Judgments were also implemented. In W.P.(MD).No.10256 of 2008, dated 27.03.2013, a similar order of rejection was quashed and the Writ Petition was allowed.

4. In view of the said settled position, there is no justification to deny the approval of appointment as sought for by the petitioner, as the petitioner was appointed in a sanctioned vacancy and the school, in which the petitioner was appointed, is eligible to retain the said post and the petitioner is fully qualified for being appointed in the said post.

5. Applying the said Judgments to the facts of this case, the impugned order dated 30.05.2011 passed by the first respondent is set aside and the Writ Petition is allowed. The respondents are directed to approve the appointment of the petitioner from the date of his appointment with salary and other benefits. The respondents shall pass orders within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs...."

This earlier judgment was followed in the judgment that has been referred by the learned counsel for the petitioner and it was held that if there is surplus staff available, the Education Department must take action to redeploy the excess teachers immediately and the same cannot be a ground to deny the approval

of teachers who were appointed against a sanctioned post and who also fulfilled all the qualifications for such appointment.

4. This judgment was also subsequently followed by a Single Judge in W.P.(MD) No.2943 of 2017 dated 24.03.2017. The learned counsel, therefore, submitted that the impugned order passed by the second respondent requires interference.

5. Counter has been filed by the second respondent and a specific stand has been taken to the effect that there are 28 surplus teachers who are available in the other schools that is run by the same management and, therefore, those teachers will have to be redeployed to this vacant post and the petitioner cannot be granted any approval for the appointment.

6. The learned Government Advocate appearing on behalf of the respondents submitted that if the surplus teachers are not redeployed, it will result in excess teachers who are available in the school, which is under the control of the third respondent, and in turn it also results in a financial loss to the Government in paying the salaries of teachers who are found to be surplus. The learned counsel submitted that the impugned order passed by the second respondent is perfectly in line with G.O. No.525, School Education (D1) Department, dated 29.12.1997, which fixes the student teacher ratio.

7. This Court carefully considered the submissions made on either side. The issue raised in this Writ Petition is squarely covered by the judgment that was cited by the learned counsel for the petitioner. The Division Bench of this Court has, under similar circumstances, categorically held that there is no justification in denying the approval of the teacher who has been appointed in a sanctioned vacancy and where the teacher also fully qualifies for being appointed in the said post. It was further held that the Education Department ought to have taken action for deployment of the surplus teachers and without doing so, denial of the sanction for the appointment made is not sustainable.

8. In the light of the above judgment of the Division Bench, the impugned order passed by the second respondent becomes unsustainable and accordingly the same requires interference.

9. If the second respondent finds that there are surplus teachers who are available in the schools belonging to the same management, immediate steps shall be taken to start the process of redeployment, in order to ensure that the teachers are

redeployed to the schools, which are in want of teachers. Paying the surplus teachers is certainly a dent to the public exchequer. The authorities are expected to strictly comply with the Government orders and complete the process of redeployment on time instead of raking up the issue only at the time of seeking for sanction for the appointments done towards the sanctioned post.

10. In view of the above discussion, the impugned order passed by the second respondent on 28.06.2017 is hereby quashed and there shall be a direction to the first and second respondents to grant approval for the appointment of the petitioner from the date of her appointment with all attendant benefits. An order shall be passed in this regard within a period of six(6) weeks from the date of receipt of copy of this order.

11. This Writ Petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006.
2. The District Elementary Education Officer
Tiruppur District
Now re-designated as District Educational Officer
Tiruppur
3. The Correspondent
CSI Aided Primary School
Kadayur,, Kankeyam 638 701
Tiruppur District.

+1 cc to Government Pleader Sr.No. 10861

W.P.NO.17487 of 2018

A.SK(04/03/2020)