



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 24.02.2021

Delivered on 26.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Rev.Aplc.(MD)No.32 of 2020

The Correspondent
R.C. Middle School
Mokkaiyur - 623 120
Ramanathapuram District.

... Petitioner/Petitioner

Vs.

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

2.The District Elementary Educational Officer,
now as the District Educational officer
Mandabam Block
Om Shanthi Nagar
Ramanathapuram District.

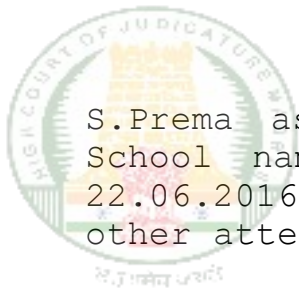
3.The Additional Assistant Elementary Educational Officer
now as the Block Educational officer
Kadaladi - 623 703
Ramanathapuram District.

... Respondents

Prayer: Review Application filed under Order XLVII Rule 1 of C.P.C. R/w Section 114 of C.P.C against the order of this Court dated 22.03.2019 in WP(MD)No.2367 of 2018.

Prayer in WP(MD). 2367/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 3rd respondent Assistant Elementary Education officer in A.Thi.Mu.No.971/a3/2017 dated 05.09.2017 and the subsequent impugned staff fixation issued by the District Elementary Educational Officer for the Academic year 2016 - 2017 signed on 12.09.2017 holding one post of Secondary Grade Teacher and single post of Sewing Mistress as surplus, quash the same and further direct the 2nd respondent District Elementary Educational Officer to approve forthwith the appointment of



S.Prema as Secondary Grade School Teacher in the Petitioner's School namely, RC Primary School, Mokkaiyur with effect from 22.06.2016 and disburse the grant in aid towards her salary and other attendant benefits.

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For Petitioner : M/s.A.Amala

For Respondents : Mrs.S.Srimathy, SGP

ORDER

1. The present Review Application has been filed by the writ petitioner to review the order made in WP.(MD)No.2367 of 2018 dated 22.03.2019.

2. For the sake of brevity, the parties are referred to as per their litigative status in the writ petition.

3. The case projected in the writ petition is as follows:

3.1 The petitioner school is a recognised, Government aided, minority institution. It has I to VIII standards with 193 students and the medium of instruction is Tamil. Originally, there were 8 teachers viz., 1 Headmistress, 6 Secondary Grade Teachers and 1 Sewing Mistress working in the said school against the sanctioned posts.

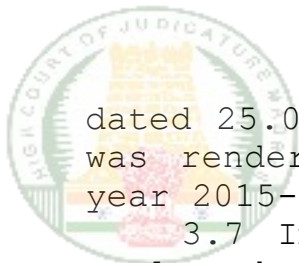
3.2 According to the petitioner, the teachers were appointed strictly in accordance with the rules and regulations prescribed by the Government as well as the judicial pronouncements.

3.3 When the things stood thus, the second respondent, while settling the staff fixation for the academic year 2015-16, issued a proceedings on 19.01.2016 stating that one post of Secondary Grade Teacher and one post of Sewing Mistress as surplus as against the sanctioned strength and thereby fixing five Secondary Grade Teachers and one Headmistress in the petitioner school.

3.4 Aggrieved over the said staff fixation, the petitioner school submitted a detailed objection to the second respondent on 19.02.2016. Being satisfied with the same, the second respondent orally informed that he would rectify the mistake.

3.5 In the mean while, on 22.06.2016, the petitioner school appointed one S.Prema as Secondary Grade Teacher in the vacancy arisen due to transfer of one M.Yogeshwari on 15.06.2016 and she continues to work in the school till date.

3.6 Thereafter, the petitioner school submitted a proposal to the second respondent on 18.07.2016 through the third respondent, seeking approval of the said appointment and disburse grant-in-aid towards her salary. The third respondent, instead of forwarding the same to the second respondent, by communication



dated 25.01.2017, rejected the said proposal, as if the said post was rendered as surplus in the staff fixation for the academic year 2015-16.

3.7 Immediately, the petitioner school submitted a detailed reply dated 02.03.2017, which was rejected by the third respondent, by proceedings dated 05.09.2017, stating that in the proceedings of the Ramanathapuram District Elementary Educational officer dated 01.01.2017, the petitioner school was directed to fill up the vacancies from the surplus of teachers available in the management; and if any approval is made to the incumbent, there would be revenue loss to the Government.

3.8 Subsequently, the second respondent sent a proceedings dated 12.09.2017 to the petitioner school, rendering one post of Secondary Grade Teacher and single post of Sewing Mistress as surplus.

3.9 The aforesaid two proceedings issued by the respondents 2 and 3, were challenged in the writ petition.

4. By order dated 22.03.2019, this Court disposed of the aforesaid writ petition, the operative portion of which, reads as under:

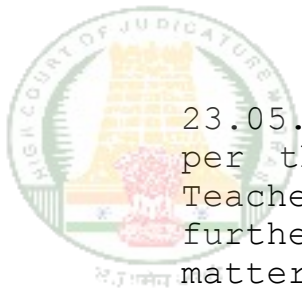
"Considering the facts and circumstances of the case and having regard to the submissions made on either side and also taking into account the decision of the Full Bench, the impugned orders are set aside and the matter is remitted back to the respondents for considering the staff fixation of the petitioner school afresh, in the light of the order passed by the Full Bench reported in 2006 (5) CTC 385 (cited supra). Such an exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order."

5. The aforesaid order passed in the writ petition is sought to be reviewed in this review application by the writ petitioner.

6. At the outset, it is brought to the notice of this Court that as against the order dated 22.03.2019 passed in the aforesaid writ petition, which is the subject matter of this review application, the respondents preferred a writ appeal viz., W.A. (MD)No.685 of 2020, wherein, a Division Bench of this Court passed an order on 23.09.2020, which is profitably extracted hereunder:

"The official respondents aggrieved by the disposal of the writ petition with certain directions, vide impugned order dated 22.03.2019, had filed this Writ Appeal.

2. Sis.A.Amala, learned Counsel appearing for the respondent/writ petitioner has brought to the knowledge of this Court that the second appellant/second respondent in the writ petition in a subsequent proceedings dated



23.05.2018, has refixed the student teacher ratio and as per the said proceedings, the post of Secondary Grade Teacher has not been declared as surplus and would further state that to review the order, which is subject matter of challenge in this Writ Appeal, Review Application No.32 of 2020, has also been filed and in view of this Writ Appeal, the Review Application has not been taken up.

3. Per contra, Mrs.S.Srimathy, learned Special Government Pleader would submit that, in the light of the subsequent march of law, the Full Bench decision in Director of Elementary Education, Chennai-6 & Ors., vs. S.Vigila, reported in 2006 (5) CTC 385, would no longer hold good and prays for appropriate orders.

4. This Court has considered the rival submissions and also perused the materials placed before it.

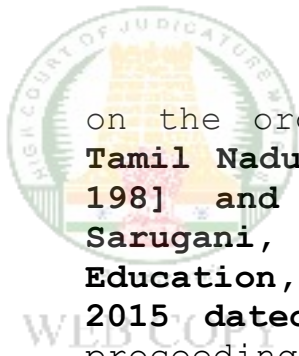
5. In the considered opinion of this Court, the disposal of the Review Application No.32 of 2020, to review the order dated 22.03.2019, passed in W.P. (MD). No.2367 of 2018, would resolve the dispute.

6. Further, it is brought to the knowledge of this Court by the learned Counsel appearing for the respondent/writ petitioner to the typed set of documents filed in support of the Review Application, the Staff fixation dated 23.05.2018, done by the second respondent has also been annexed as one of the document. Therefore, this Court request the learned Single Judge to take up the Review Application and depending upon the result of the same, appropriate orders can be passed in this Writ Appeal.

7. Call on 15.10.2020."

In the said circumstances, as directed by the Division Bench in the aforesaid order, this Court is inclined to proceed with this review application, on the basis of the materials placed in the writ petition.

7. According to the learned counsel for the petitioner, without considering the admitted fact that the petitioner school was originally sanctioned with the posts of one Headmistress, six Secondary Grade Teachers and one Sewing Mistress and the appointment of the said S.Prema as Secondary Grade Teacher was made in the regular and sanctioned post, this Court erred in proceeding with the matter on the premise that the challenge was made to the staff fixation of the petitioner school for the year 2016-17. The learned counsel further produced a copy of the proceedings of the second respondent dated 23.05.2018 and submitted that the petitioner school was sanctioned with one Headmistress and six Secondary Grade Teachers for the academic year 2017-18 and hence, there is no impediment for the respondents to approve the appointment of the said incumbent. Placing reliance



on the orders of this Court in (i) **S.Rasheetha Banu v. State of Tamil Nadu [WP(MD)No.12525 of 2011 dated 21.03.2012, (2012) 4 MLJ 198]** and (ii) **the Correspondent, St. Joseph's Middle School, Sarugani, Sivagangai District v. the Director of Elementary Education, College Road, Chennai and two others [WP(MD)No.1352 of 2015 dated 11.04.2018]**, the learned counsel submitted that the proceedings impugned in the writ petition are liable to be quashed, as the same are arbitrary, illegal and without application of mind on the part of the respondent authorities. Thus, the learned counsel prayed for appropriate direction to the respondents by reviewing the order passed in the writ petition.

8. Per contra, the learned Special Government Pleader appearing for the respondents submitted that the grant-in-aid shall be made only in respect of qualified and admissible teachers actually employed in minority schools, whose appointments have been approved by the concerned authorities according to the number of posts sanctioned to the said institutions, whereas the petitioner school appointed the incumbent as per their own will, without deploying the surplus teachers, which is illegal and against the Government Order. Stating so, the learned Special Government Pleader submitted that no interference is required and the review application is liable to be dismissed.

9. This Court considered the submissions made by both the parties and perused the materials available on record.

10. Before proceeding further, it would be appropriate to point out the power of this Court under review jurisdiction, as laid down by the Supreme Court in **Kamlesh Verma Vs. Mayawati and others reported in (2013) 8 SCC 320**, which reads as follows:-

"17. In a review petition, it is not open to the Court to reappraise the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some other reason akin thereto. This Court in Kerala SEB Vs. Hitech Electrothermics and Hydropower Limited reported in (2005) 6 SCC 651 held as under:-

"10..... In a review petition it is not open to this Court to reappraise the evidence and reach a different conclusion, even if that is possible. The learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be



advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate Court. If on appreciation of the evidence produced, the Court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court in *Jain Studios Limited Vs. Shin Satellite Public Company Limited* reported in (2006) 5 SCC 501 held as under:-

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:



20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram Vs. Neki* (1921-22) 49 IA 144 and approved by this Court in *Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulse Athanasius* AIR 1954 SC 526 to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India Vs. Sandur Manganese & Iron Ores Limited* (2013) 8 SCC 337.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

11. Admittedly, the petitioner school is having 1st to 8th standards and was sanctioned with the posts of one Headmistress, Grade Teachers and one Sewing Mistress for the



academic year 2014-15. On 21.06.2016, the petitioner school appointed one S.Prema as Secondary Grade Teacher in the transfer vacancy, which is a sanctioned post. However, by the two separate orders dated 05.09.2017 and 12.09.2017 impugned in the writ petition, the respective respondents 3 and 2 rejected the proposal seeking approval of the appointment of the said teacher and rendered one post of Secondary Grade Teacher and one post of Sewing Mistress in the petitioner school as surplus.

12. In the first order in **S.Rasheetha Banu v. State** referred to above by the learned counsel for the petitioner, it was categorically held by this Court that "if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected". The relevant paragraph of the said order is extracted hereunder:

"8.Applying the said judgments to the facts of the present case and having regard to the undisputed fact that the Government has issued G.O(2D), School Education Department, dated 1.2.2011, conferring minority status on the fifth respondent school from the academic year 1990-91 and directed that the appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1998 shall be approved and arrears of salary payable to the petitioner was directed to be paid, in my considered opinion, there can be no impediment for the respondents to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1998."

13. In the second order in **The Correspondent v. Director of Elementary Education and two others** (cited supra), which writ petition was filed against the order holding one full time post of sewing mistress as surplus, this Court has held as follows:

"31. On perusal of these judgments of this Court, the point emerged before this Court is that, the fixation of staff strength based on the student strength will have a prospective effect and therefore, if the post is sanctioned and approved, during the approved time, if the post is filled up by a qualified Teacher, the teacher appointed shall be approved and thereafter, if the teacher is found to be excess, based on the student strength, subsequently, decision may be taken by the authority to redeploy the Teacher. Also, it further emerges that, if it is a single Teacher, that too, in a specialized subject, the same cannot be straight away dispensed with, as without the single teacher in the specialized subject, no one will be there to impart training on the particular subject.



32. Another position emerges from the said judgments cited above is that, imparting of vocational training to the students, especially, the girl students in the subject Sewing is important and the paramount consideration is to give employment opportunity to the women in the later point of time and that is the reason vocational training to the girl students should be given importance.

33. Considering all these principles as emerged from the judgments cited supra, if the same are fit in the facts and circumstances of this case, it can be easily concluded that the petitioner's school is having the necessary strength for the purpose of having one special teacher as Sewing Mistress, even though the over all students strength may be less than the prescription made by the Government under the relevant Government Order. Such reduction in strength may exist to the authorities to reduce the staff strength in general teaching area, such as, Secondary Grade Teacher and B.T. Assistants, but, not the special teacher, because the special teacher in Sewing subject is the single post and also the said subject is one of the compulsory subject for the girl students, who are studying VI to VIII standard at the petitioner's school.

34. Therefore, the reason cited by the respondents for fixing staff strength at the petitioner's school, primarily stating the reduction in student strength may not be applicable to the present circumstances of the case, as the Teacher post, which is in question now, as has been reduced or taken away, is a special teacher, that too, a single post, who takes classes of sewing for the said standards as special subject.

35. Looking from any angle, the action taken on the part of the respondents, as reflected in the impugned orders taking away the post of Sewing Mistress from the petitioner's school is not justifiable. Unless the authorities come to a conclusion that there is no student available in the petitioner's school, taking the compulsory subject of Sewing, the said post of Sewing Mistress cannot be taken away.

36. In view of the above, this Court has no hesitation to hold that the impugned order fixing the staff strength by declaring the said post of Sewing Mistress as an excess post, is unjustifiable and therefore, it is liable to be interfered with.

37. In the result, this Writ petition is disposed of with the following orders:

(i) The impugned order is set aside;



(ii) In view of the impugned order having been set aside, the proposal sent by the petitioner's school on 08.08.2012 and subsequently, on 07.11.2012 for the appointment of Mrs. A.Gnana Sagaya Mary, in the post of Sewing Mistress at the petitioner's school, shall be taken into account and such proposal shall be considered and orders to that effect approving the appointment shall be made by the third respondent;

(iii) Once such appointment is approved by the authorities, the incumbent, who has been appointed as Sewing Mistress and taking classes in the petitioner's school, shall be entitled to claim the salary for the said post from the date of her appointment;

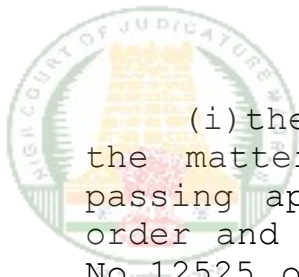
(iv) All the aforesaid directions as indicated above shall be undertaken by the respondents especially, the second respondent within a period of six weeks from the date of receipt of a copy of this order;

(v) Since the proposal has already been returned by the second respondent, the same is to be once again resubmitted by the petitioner school within a period of two weeks from the date of receipt of a copy of this order and only on receipt of the same, the second respondent shall do the needful as indicated above, within the time frame set out therein."

14. This Court is of the opinion that the aforesaid orders referred to on the side of the petitioner, are squarely applicable to the facts of the present case, as the petitioner school is a similarly placed institution. However, while disposing of the writ petition, the decision of the Full Bench was inadvertently, mentioned in the order dated 22.03.2019 and accordingly, the said order is hereby, reviewed.

15. It may not be out of place to note at this juncture that the second respondent by proceedings in Na.Ka.No.5118/A2/2017 dated 23.05.2018, a copy of which is enclosed at page 36 of the typed set filed along with this review application, has fixed the staff strength for the academic year 2017-18 in respect of the petitioner school as 7 i.e, one Headmistress and six Secondary Grade Teachers. Therefore, there is no impediment for the respondents to approve the appointment of S.Prema with effect from 22.06.2016 with all benefits.

16. In the ultimate analysis, the order dated 22.03.2019 passed in WP(MD)No.2367 of 2018 is reviewed in the following terms:



(i)the orders impugned in the writ petition are set aside and the matter is remanded back to the concerned respondents for passing appropriate orders, as observed in paragraph 15 of this order and also in the light of the orders of this Court in WP(MD) No.12525 of 2011 dated 21.03.2012 and WP(MD)No.1352 of 2015 dated 11.04.2018 (cited supra).

(ii)Such an exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

17. Accordingly, this Review Application stands disposed of. No costs.

Sd/-

Assistant Registrar (AE)

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/ /2021

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,
now as the District Educational officer
Mandabam Block
Om Shanthi Nagar
Ramanathapuram District.

3.The Additional Assistant Elementary Educational Officer
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Kadaladi - 623 703
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+1 cc to M/s.A.Amala , Advocate SR.No.17609

order in
Rev.Aplc (MD) No.32 of 2020
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