



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

W.P(MD)Nos.16633 of 2013, 11540 to 11542 of 2014

W.P. (MD) .No.16633 of 2013 :

Kattu Bava Middle School,
Tenkasi - 627 811,
represented by its Manager,
S.Mohamed ibrahim,
Tirunelveli District.

... Petitioner

Vs.

1.The Government of Tamil Nadu,
rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai -9.

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai -06.

3.The Director of School Education,
DPI Campus, College Road,
Chennai -06.

4.The District Educational Officer,
Tenkasi,
Tirunelveli District.

5.The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned order passed by the first respondent dated 12.07.2013 in Letter (1D) No.225/Ni.Va.2/2013 and quash the same and consequently direct the respondents to sanction a teacher strength of 11 (9 + 1 + 1) in addition to one headmaster post and one part time instructor post for classes 6th to 8th standard in the petitioner school and other consequential orders.



W.P. (MD).Nos.11540 to 11542 of 2014:

Kattu Bava Middle School,
Tenkasi - 627 811,
Tirunelveli District,
represented by its Manager,
S.Mohamed Ibrahim.

... Petitioner in
all the writ petitions

Vs.

- 1.The Government of Tamil Nadu,
rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai -9.
 - 2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai -06.
 - 3.The Director of School Education,
DPI Campus, College Road,
Chennai -06.
 - 4.The District Educational Officer,
Tenkasi,
Tirunelveli District.
 - 5.The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.
 - 6.The Additional Assistant Elementary Educational Officer,
Tenkasi,
Tirunelveli District.
- ... Respondents in all
the writ petitions

PRAYER in W.P. (MD).No.11540 of 2014:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned order passed by the 6th respondent dated 24.07.2012 in Aa.Thi.Mu.860/Aa1/2011 and quash the same and consequently direct the respondents to sanction approval of appointment of A.S.Sheik Oli Vava as a Graduate Teacher in the petitioner school with effect from 01.11.2011 with all attendant, monetary and consequential benefits and further issue necessary orders of approval of upgradation of posts from Secretary Grade Teachers to Graduate Teachers.



PRAYER in W.P. (MD) .No.11541 of 2014:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned order passed by the 5th respondent in Na.Ka.No.4897/A3/2012, dated 25.10.2012 and quash the same and consequently direct the respondents to sanction approval of appointment of M.Siddhi Rahuma Begam as a graduate teacher in the petitioner school with effect from 12.10.2012 with all attendant, monetary and consequential benefits and further grant upgradation of post from Secretary Grade Teacher to Graduate Teacher.

PRAYER in W.P. (MD) .No.11542 of 2014:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents to grant approval to the appointment of Tmt.M.N.Jamal Mymoona Begum as pre -vocational instructor in the petitioner school with effect from 01.01.2013 with all attendant, monetary and consequential benefits within a reasonable time period.

For petitioner in all
the writ petitions : Mr.N.Dilip Kumar

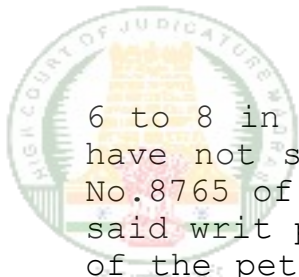
For respondents in
all the writ petitions : Mr.N.Shanmugaselvan,
Special Government Pleader

COMMON ORDER

W.P. (MD) .No.16633 of 2013 has been filed by the petitioner/school challenging the order rejecting to approve appointment of two posts in addition to sanctioned staff strength and for a direction to the respondents to sanction a teacher strength of 11 (9 + 1 +1) in additional to one Headmaster post and one Part Time Instructor post for classes 6th to 8th standard. W.P. (MD).Nos.11540 and 11541 of 2014 have been filed by the petitioner/school challenging the order rejecting to consider the approval of the teachers on the ground of pendency of the appeal in W.A. (MD).No.509 of 2012 and to approve the appointment. W.P.(MD). No.11542 of 2014 has been filed by the petitioner/school for a direction to approve appointment of a teacher.

2. As the issue involved in all the writ petitions are interrelated to each other, they heard together and are disposed of by way of this common order.

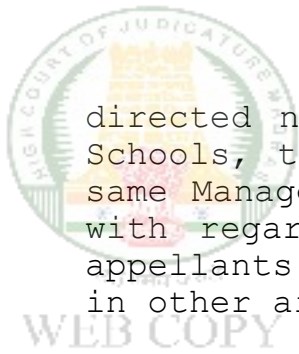
3. It is seen that the petitioner school is an aided minority educational institution and it has been running from the year 1913 onwards. According to the petitioner/school, though the petitioner/school was eligible for 10 posts for High School Classes



6 to 8 in terms of G.O.Ms.No.525, dated 29.12.1997, the respondents have not sanctioned the said posts and hence, they filed W.P.(MD). No.8765 of 2009. This Court, by order dated 12.09.2011, allowed the said writ petition and directed the respondents to consider the case of the petitioner/school in the light of the Full Bench decision of this Court in the case of Director of Elementary Education and others Vs. S.Vigila, reported in 2006 (5) CTC 385. Challenging that order, the District Elementary Educational Officer has filed an appeal. A Division Bench of this Court, by order dated 04.12.2012, disposed of the writ appeal with a direction to the Secretary to the Government, School Education Department, Chennai, to consider the representation of the petitioner/school, in the light of the order passed in the writ petition. As against that order, the petitioner/school has filed a review petition. However, the respondents, by the impugned order dated 12.07.2013, has rejected the claim of the petitioner/school and challenging that order, the petitioner/school has filed W.P.(MD).No.16633 of 2013. In the meantime, the respondents denied to consider the proposal for appointment of some of the teachers on the ground of pendency of the above writ appeal and hence, challenging that order, the petitioner/school has filed W.P.(MD).Nos.11540 to 11542 of 2014.

4. The learned counsel for the petitioner/school submitted that now the Joint Director (Middle School) has passed an order in November, 2019, downgrading the petitioner school again as a Middle School having classes from 1 to 8 from the academic year 2019-2020. Therefore, the question of bifurcation of the Staff strength and request for sanction of additional post for the High School no longer survives. As the writ appeal has already been disposed of, there may not be any impediment for the respondents to approve the proposal for appointment of teachers. He would further submit that in view of the decision of this Court in the case of the **Government of Tamil Nadu Vs. J.Ramila and other**, reported in **2018 (1) Writ L.R. 410**, the respondents could very well appoint the Graduate Teachers in the vacancies caused due to the retirement/resignation of the Secondary Grade Teachers. He would further submit that the petitioner will withdraw the review petition filed against the judgment passed in W.A.(MD).No.509 of 2012. Thus, he prayed to allow these writ petitions.

5. The learned Special Government Pleader appearing for the respondents by referring to Na.Ka.No.900/A1/2018 dated 22.11.2019 of the District Educational Officer submitted that the petitioner/school has sufficient students strength to approve the proposal for appointment of the teachers, which have been sent by the petitioner/school. However, by relying on the judgment of a Division Bench of this Court, in a batch of appeals in W.A.(MD). Nos.76, 225, 341 of 2019 and 1612, 1076, 1093, 1461, 1473 and 1531 of 2018, he would further submit that the Division Bench has



directed not to approve any appointment made by the Private Aided Schools, till the surplus teachers in the schools coming under the same Management are exhausted and that wherever there is no dispute with regard to existence of surplus teachers, it is open to the appellants to deploy those teachers, wherever, it is required viz., in other aided schools.

6. At this juncture, the learned counsel for the petitioner submitted that the appointment of six teachers by the petitioner/school was made much before the above decision and therefore, the said decision may not be applied in these cases.

7. Now, the petitioner school has been downgraded as Middle school and there is also students strength for approving the appointment of the six teachers, for which proposals have been sent by the petitioner/school. As rightly stated by the petitioner/school, the appointment of the said teachers were made much before the decision of the Division Bench dated 09.04.2019. More over, in the said decision of the Division Bench itself, it is stated that "there is no prohibition for approval of teachers, where concerned teachers or management obtained orders from the Court which reached finality for grant of approval". The issue with regard to the approval for appointment of Teacher in the post of Secondary Grade Teacher is no more *res integra*, in view of the decision of the Division Bench of this Court in J.Remila case, cited supra. Further, the petitioner/school has also agreed to withdraw the review petition filed against the judgment in W.A.(MD).No.509 of 2012 and hence, there may not be any impediment for the respondents to approve the proposal for appointment of six teachers in the petitioner / school.

8. In view of the above, all the impugned orders are set aside and the respondents are directed to approve the proposals submitted by the petitioner/school for appointment of six teachers within a period of twelve weeks from the date of receipt of a copy of this order.

9. These writ petitions are disposed of accordingly. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

- 1.The Principal Secretary to Government,
School Education Department,
Secretariat,
Fort St. George,
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 - 2.The Director of Elementary Education,
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 - 5.The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.
 - 6.The Additional Assistant Elementary Educational Officer,
Tenkasi,
Tirunelveli District.
- +1CC to Mr.N.DILIPKUMAR, Advocate, SR.No.3388.

W.P(MD)Nos.16633 of 2013 and 11540 to 11542 of 2014
27.01.2020

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