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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.S.RAMESH

W.P. (MD) .No.1321 of 2020

and

W.M.P. (MD) .Nos.1067 and 1071 of 2020

Correspondent

Amali Girls Higher Secondary School

Irudayakulam

Vickramasingapuram

Tirunelveli District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

2.The Director of School Education
College Road, Chennai-600 009.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4.The District Educational Officer
Cheranmahadevi, Tirunelveli District.

... Respondents

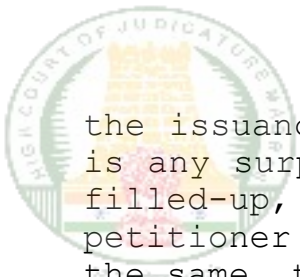
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent DEO in O.MuNo.4559/A1/2019 dated ... 11.2019, quash the same, and further direct the respondents herein to approve forthwith the appointment of A.Gnana Princy as Tailoring Teacher in the Petitioner's School from the date of her promotion ie., 12.06.2019 and disburse the grant-in-aid towards her salary and allowance w.e.f the said dated.

For Petitioner : M/s.A.Amala

For Respondents : Mr.A.Thiyagarajan
Government Advocate

O R D E R

The petitioner School has a sanctioned post for Tailoring Teacher and one Teacher viz., Gnana Princy was appointed on 11.06.1999 in the vacancy that arose in the sanctioned post. On 01.10.2014 the petitioner had submitted a proposal seeking approval of appointment for the said post, which came to be rejected by the respondents, through the impugned order, on the ground that after



the issuance of the staff fixation for the year 2019-2020, if there is any surplus post in the Corporate Management, the same has to be filled-up, which has not been adhered to and therefore, the petitioner was not entitled for approval of appointment. Challenging the same, the present writ petition has been filed.

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2.The learned counsel for the petitioner would submit that the post of Tailoring Teacher is a single post sanctioned to the school long back and at present, the school has about 640 girls students. Hence, denying the approval of a single post of Tailoring Teacher amounts to depriving of the rights of the education to the girl students. Apart from the same, the learned counsel also submitted that the impugned order has been passed without any prior notice and hence, the order itself is in violation of principle of natural justice.

3.The learned Government Advocate appearing for the respondents had reiterated the averments made in the counter affidavit and submitted that as per G.O.Ms.No.165, dated 17.09.2019, unless and until, the surplus Teachers are redeployed, no new appointment shall be made in the aided schools. This submission is countered by the learned counsel for the petitioner by placing reliance on G.O.Ms.No.39 dated 21.03.2003, in which, G.O.Ms.No.165, was also referred to, and filling up the post for Tailoring Instructor has been permitted.

4.The issue with regard to the single sanctioned post in a school and the consequence denial of approval came up for consideration before the learned Single Judge of this Court in a decision rendered in the case of **The Correspondent, vs. The Director of Elementary Education, College Road, Chennai-600 006** in **W.P(MD). No.1352 of 2015** and by an order dated 11.04.2018, this Court had placed reliance on various decisions of the Division Benches and had thereby come to the conclusion that when the post is filled-up by a qualified incumbent, the Teacher appointed shall be approved and thereafter, if the Teacher is found to be surplus, based on the student strength, the decision could be taken by the authority to redeploy the Teacher. The relevant portion of the order reads 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, the post is sanctioned and approved. During the approved time, if the post is filled up by a qualified incumbent, the Teacher appointed shall be approved and therefore, 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 put in the facts and circumstances of this case, it can be easily concluded that the petitioners 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 Teacher 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 at the petitioners school."

5. The learned Government Advocate appearing for the respondents would submit that the petitioner school does not possess the required strength of 250 students and therefore, there is no infirmity in the denial of approval.

6. What requires to be noted here is the object of the State to promote the welfare and well being of the school children and when the post itself is a single sanctioned post and it has been held that such surplus post would arise in the school where there is a single sanctioned post, relying upon the minimum prescribed strength of 250 students, as a reason for denying the approval sought for, cannot be appreciated. Effectively what the Department would venture is, to deny the right of education to such girl students, particularly, in a specialized academic field of tailoring, which may be pertinent and essential requirement for a girl student. The Division Bench of this Court in the case of **The State of Tamil Nadu, rep by its Secretary to Government, School Education Department, Secretariat, Chennai-9 vs. S.Renganayagi** in **Writ Appeal No.1207 of 2016 dated 28.08.2010** had also held that when there are large number of girl students and the strength has also fallen short of a number of 250 prescribed students, which is the required minimum strength of sanctioned post and the State, on a wise policy has chosen to sanction the post, of a vocational skill, which can be important to girl students, the object of the State would be rendered futile on a mere reference to the principles, for the sake of denying the approval, particularly, in a single sanctioned post, can be termed



as arbitrary as well as unconstitutional.

7. In view of the decision of this Court in the case of *The State of Tamil Nadu, rep by its Secretary to Government, School Education Department, Secretariat, Chennai-9 vs. S.Renganayagi* (Supra), I do not find any reason to differ from such ratio laid down and by applying the same, the petitioner herein would be entitled to succeed.

8. In the result, the impugned order dated ..11.2019 passed by the fourth respondent in O.Mu.No.4559/A1/2019 is set aside and consequently, there shall be a direction to the third respondent herein to approve the appointment of A.Gnana Princy, as Tailoring Teacher in the petitioner's school from the date of her appointment and consequently, disburse the grant-in-aid towards her salary and allowance, which process shall be completed, atleast within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-600 009.

2. The Director of School Education
College Road, Chennai-600 009.

3. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4. The District Educational Officer
Cheranmahadevi, Tirunelveli District.

+1 CC to M/s.A.AMALA, Advocate (SR-7241[F] dated 20/02/2020)

+1 CC to M/s.SPL.GP (SR-7262[F] dated 20/02/2020)

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