



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.11029 of 2020

and

W.M.P. (MD) .Nos.9669, 9671 & 9672 of 2020

C.Rubance

... Petitioner

Vs.

- 1) The Director of School Education,
DPI Campus, College Road, Chennai-600 006.
 - 2) The Chief Educational Officer,
O/o. the Chief Educational Officer, Kanyakumari District.
 - 3) The District Educational Officer,
O/o. the District Educational Officer,
Nagercoil, Kanyakumari District.
 - 4) The Christian Welfare High School,
Represented by its Correspondent, Thadikkarankonam,
Kanyakumari District-629 851.
- ... Respondents

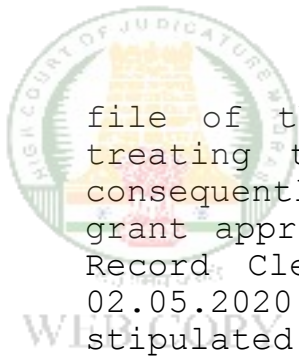
PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Mo.Mo.No.8824/E4/2019, dated 28.07.2020, on the file of the second respondent and quash the same as illegal in so far as treating the Record Clerk Post as surplus without teacher and consequently for a direction, directing the third respondent to grant approval to the appointment of the petitioner in the post of Record Clerk at the fourth respondent School with effect from 02.05.2020 with all consequential benefits within the time period stipulated by this Court.

For Petitioner: Mr.T.Aswin Rajasimman

For R-1 to R-3: Mrs.S.Srimathy
Special Government Pleader

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Mo.Mo.No.8824/E4/2019, dated 28.07.2020, on the



file of the second respondent and quash the same in so far as treating the Record Clerk Post as surplus without teacher and consequently for a direction, directing the third respondent to grant approval to the appointment of the petitioner in the post of Record Clerk at the fourth respondent School with effect from 02.05.2020 with all consequential benefits within the time period stipulated by this Court.

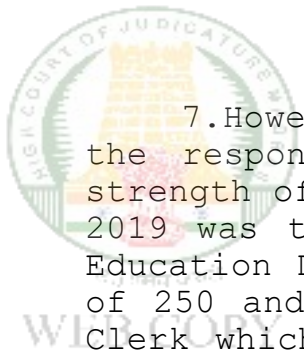
2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. At the consent of both sides, this writ petition is taken up for final hearing and disposed of accordingly at the admission stage itself.

4. The fourth respondent is a recognized minority high school where among various teaching and non teaching faculty, a post of Record Clerk is also a sanctioned post which was also continued to be in sanction at the time of fixation of staff strength for the academic year 2018-2019 by the respondents who passed the staff fixation order on 05.01.2019. In the said post of Record Clerk, one M.Kamala Bai was working and since she was superannuated, the post become vacant. Therefore, in the said post of Record Clerk, the petitioner was appointed in the fourth respondent school on 02.04.2020. Thereafter, the said appointment was sent for approval to the third respondent and the same is said to be pending.

5. In the meanwhile, for the next academic year, that is 2019-2020, the official respondents have fixed the staff strength and has passed the staff fixation order dated 28.07.2020, where, among various posts, the post of Record Clerk also having been continued for long years, was taken away from the academic year 2019-2020 as an excess post. By virtue of the staff fixation order, the post of Record Clerk wherein the petitioner was appointed on 02.05.2020, was taken away. The petitioner since been affected, filed this Writ Petition challenging the said taken away of the Record Clerk post from the academic year 2019-2020 through the impugned order dated 28.07.2020.

6. Heard Mr.T.Aswin Rajasimman, learned counsel for the petitioner who would submit that, since the post of Record Clerk is a sanctioned post in the fourth respondent school and the same was also continued to be sanctioned in the year 2018-2019, during the said academic year, since the earlier incumbent one M.Kamala Bai was retired, the post become vacant. Therefore, in the said post, the petitioner was appointed on 02.05.2020 and the approval for his appointment was also sent to the official respondents by the fourth respondent and the same is pending without approving the same. The post of Record Clerk itself is taken away by fixation of staff strength in the fourth respondent school for the academic year 2019-2020. ~~2020. Accordingly, over the same, this Writ Petition has been filed.~~



7. However, the learned Special Government Pleader appearing for the respondents on instructions would submit that, the students strength of the fourth respondent school for the academic year 2018-2019 was totally 281. As per the norms prescribed in the School Education Department, if the students strength of a school is above of 250 and more, the school will sanction with the post of Record Clerk which was already there in the fourth respondent school, was permitted to continue in the academic year 2018-2019. The learned Special Government Pleader would submit that, however, in the academic year 2019-2020, ultimately the strength of the fourth respondent school is reduced to 235 which comes below the norms and therefore the fourth respondent school would not be eligible or entitled to have the post of Record Clerk. Accordingly, for the academic year 2019-2020, the said post of Record Clerk was taken away and hence, the said impugned order requires no interference of this Court.

8. I have considered the said submissions made by the learned counsel on either sides and perused the materials placed before this Court.

9. So far as, the staff fixation for the year 2018-2019 for the fourth respondent school is concerned, there can be no dispute where the students strength of the fourth respondent school is above the norms where already been permitted to continue the post of Record Clerk. During that academic year the erstwhile incumbent M. Kamala Bai was retired and the post become vacant where the petitioner was appointed on 02.05.2020, that itself in the academic year 2018-2019. However, for the academic year 2019-2020, since the order of staff fixation was made only on 28.07.2020, after the impugned order was passed, the post has been taken away because of the reduction of the students strength that has come to 234 that is below the prescribed norms of 250. Therefore, if at all the official respondents wants to take away the post for the academic year 2019-2020 from the date the order is issued, as the said post can very well be taken away, for which, this Court will not stand in the way or will show any interference of the said fixation of staff strength for the academic year 2019-2020. Since the post of Record Clerk has been continued as a sanctioned post during the academic year 2018-2019 and the petitioner has also been working all along, if at all the official respondents since declared the post as an excess post in the school concerned, they can consider the said appointment made against the petitioner at the fourth respondent school on merits and once they decided to approve the petitioner's appointment, it is open to the official respondents to declare the said post, pursuant to the staff fixation made for the year 2019-2020, as excess, and accordingly the respondents will be at liberty to transfer the petitioner as an excess staff in any other needy school. Therefore, this Court is inclined to interfere with the said attitude on the part of the respondent and pass the following order;

<https://hcservices.ecourts.gov.in/hcservices/> the official respondents shall consider the



appointment of the petitioner made at the fourth respondent school through the order dated 02.05.2020 and verify the the petitioner's qualification and other eligibility and accordingly, if the official respondents decide to approve the appointment of the petitioner, they can do so, provided, after the approval of appointment, it is open to the official respondents to declare the petitioner as an excess staff at the fourth respondent school and accordingly transfer him by way of redeployment to any other needy school immediately".

10. With this direction, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1) The Director of School Education,
DPI Campus, College Road, Chennai-600 006.
- 2) The Chief Educational Officer,
O/o. the Chief Educational Officer, Kanyakumari District.
- 3) The District Educational Officer,
O/o. the District Educational Officer,
Nagercoil, Kanyakumari District.

Order made in

W.P. (MD) No.11029 of 2020

Dated: **07.09.2020**

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SDS (22.10.2020) 4P-4C