



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition (MD)No.20358 of 2019

Correspondent,
V.K.P.Higher Secondary School,
Colachel,
Kanyakumari District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu
represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.
- 2.The Director of School Education,
College Road,
Chennai 600 006.
- 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Thuckalay,
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the fourth respondent District Educational Officer in Ni.Mu.No.5189/A2/2017, dated 17.01.2018 and quash the same insofar as restricting the approval of S.R.Sandhya as B.T.Assistant (Science) till 31.05.2014 and further direct the respondents to approve forthwith the appointment of S.R.Sandhya as B.T. Assistant (Science) continuously in the petitioner's school and release the arrears of salary and other benefits.

For Petitioner
For Respondents

: M/s. A.Amala
: Mr.A.Thiagarajan
Government Advocate



ORDER

This writ petition has been filed challenging the impugned proceedings issued by the fourth respondent District Educational Officer in Ni.Mu.No.5189/A2/2017, dated 17.01.2018 and quash the same insofar as restricting the approval of S.R.Sandhya as B.T.Assistant (Science) till 31.05.2014 and further direct the respondents to approve forthwith the appointment of S.R.Sandhya as B.T. Assistant (Science) continuously in the petitioner's School and release the arrears of salary and other benefits.

2. The petitioner School appointed one Tmt.S.R.Sandhya as B.T.Assistant (Science), on 01.07.2013 and submitted a proposal to the fourth respondent for approval of her appointment with effect from 01.07.2013, on the same day. The fourth respondent, vide impugned order dated 17.01.2018, approved the appointment of Tmt.S.R.Sandhya as B.T.Assistant (Science) with effect from 01.07.2013 to 31.05.2014.

3. The main contention of the petitioner School is that once the approval is granted for the appointment of B.T.Assistant viz., S.R.Sandhya, it cannot be taken away, due to the reason that the particular post fell vacant in the subsequent year. If at all if the particular post fell vacant, S.R.Sandhya, B.T.Assistant (Science) should be transferred and be posted as B.T.Assistant (Science), wherever the vacancies are there in the Aided School by the fourth respondent. But, due to the restricted approval, which is not known to the service law, by the fourth respondent, the petitioner has approached this Court by filing the present writ petition.

4. In support of the contention of the petitioner, the learned counsel for the petitioner has produced the judgment of this Court reported in **(2012) 4 MLJ 198 (S.Rasheetha Banu vs. State of Tamil Nadu, by its Secretary to Government, Chennai 600 009 and others)**. By referring to the said judgment, the learned counsel for the petitioner has submitted that once the approval is granted for the appointment of B.T.Assistant, even the said post fell vacant or surplus, the said B.T.Assistant should be transferred and posted wherever the vacancy is available in the Aided School. Therefore, she prayed for quashing the impugned order passed by the fourth respondent, dated 12.01.2018.

5. Per contra, Mr.A.Thiyagarajan, learned Government Advocate appearing for the respondents submitted that the post of B.T.Assistant fell vacant with effect from 01.06.2014. The impugned order was passed on 17.01.2018. When the impugned order was passed, the fourth respondent very well aware of the fact that the post was fell vacant, that is the reason why though the application was made for approval on 01.07.2013, the fourth respondent has restricted the approval from 01.07.2013 to 31.05.2014. Therefore, according to the learned Government Advocate, the fourth respondent has passed the



impugned order, based on the vacancies available in the petitioner School.

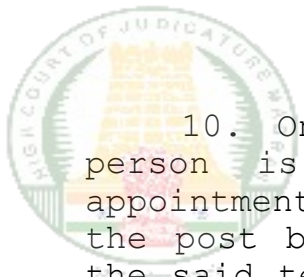
6. In reply, the learned counsel appearing for the petitioner submitted that the particular post fell vacant with effect from 01.06.2014. However, the post viz., B.T.Assistant (Science) teacher is required for the School. Therefore, she contended that on assumption or presumption, the fourth respondent ought not to have come to the conclusion that it was a surplus post and granted an approval for one year, which is unknown to the service law. Therefore, she contended that the impugned order is liable to be set aside.

7. Heard the learned counsel for the petitioner, learned Government Advocate appearing for the respondents and perused the materials available on record.

8. From the materials on record, it appears that the petitioner School submitted a proposal to the fourth respondent for approval of S.R.Sandhya as B.T.Assistant (Science) Teacher with effect from 01.07.2013 and the said proposal was made on 01.07.2013. The fourth respondent has passed an order dated 17.01.2018, granting the approval for the said appointment starting from 01.07.2013 to 31.05.2014. This Court is of the view that once the approval is granted for the appointment of particular person viz., S.R.Sandhya and appointed in a vacant post, subsequently by showing the availability of surplus posts, that appointment cannot be taken away and if at all if there is any surplus posts, the said S.R.Sandhya should have been transferred to some other place and not like the present case.

9. It is relevant to extract Paragraph No.7 of the judgment passed by this Court reported in **(2012) 4 MLJ 198 (S.Rasheetha Banu vs. State of Tamil Nadu, by its Secretary to Government, Chennai 600 009 and others)**

"7. The issue involved in this writ petition was already considered by the Division Bench of this Court in W.A.No.1263 of 2001, dated 22.01.2004. In the said judgment it is held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred/deployed to a needy school. The said judgment of the Division Bench was followed in W.P.(MD).No.11353 of 2008 dated 11.09.2009. As against the said order dated 11.09.2009, the Department preferred W.A.(MD).No.703 of 2009. A Division Bench of this Court, by judgment dated 01.02.2011, dismissed the said Writ Appeal.



10. On perusal of the said judgment, it appears that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting the approval of the post, the said teacher along with the post can be transferred/deployed to a needy school.

11. In view of the settled position of law by this Court, the issue is no more res integra and this Court is of the view that the fourth respondent cannot pass any order for a limited period by showing the availability of surplus posts. Therefore, this Court, while upholding the order of approval granted by the fourth respondent with effect from 01.07.2013, quashing the impugned order of restriction up to 31.05.2014. In consequence, the present approval granted is not only up to 31.05.2014, but it would continue without mentioning any date. Accordingly, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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 Secretary,
the State of Tamil Nadu,
Department of School Education,
Fort St. George,
Chennai 600 009.
- 2.The Director of School Education,
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- 3.The Chief Educational Officer,
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<https://hcservices.ecourts.gov.in/hcservices/>



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