



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2020

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WP(MD)No.18574 of 2014

and

M.P(MD).No.1 of 2014

Hammedia Middle School

Represented by its Correspondent Mr.A.Peer Mohammed

Periakulam 625 601

Theni District

... Petitioner

vs.

1.The State of Tamilnadu

Represented by its Secretary to Government

School Education Department

Fort.St.George, Chennai 9

2.The Director of Elementary Education

College Road, Chennai

3.The District Elementary Educational Officer

Office of the District Elementary Educational Office

Theni District

Theni

4.The Assistant Elementary Educational Officer

Periyakulam

Theni District

... Respondents

PRAYER : Writ petition 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 third respondent in his proceedings in Na.Ka.No.1712/A2/2013 dated 29.09.2014 and quash the same as illegal and consequently to direct the third respondent to approve the appointment of one Mrs.K.Muthulakshmi as Sewing Teacher with effect from 14.02.2007 and pay arrears of salary with all consequential benefits arising thereon.

For Petitioner : Mr.H.Mohammed Imran

For M/s.Ajmal Associates

For R1 to R4 : Mr.D.Muruganandham

Additional Government Pleader

**O R D E R**

The Writ petition has been filed to call for the records relating to the impugned proceedings issued by the third respondent in his proceedings in Na.Ka.No.1712/A2/2013 dated 29.09.2014 and quash the same as illegal and consequently to direct the third respondent to approve the appointment of one Mrs.K.Muthulakshmi as Sewing Teacher with effect from 14.02.2007 and pay arrears of salary with all consequential benefits arising thereon.

2.The learned counsel for the petitioner would submit that the petitioner School is a religious minority institution. The said School is offering studies up to 8th standard. As per G.O.Ms.No.224, dated 24.03.1994, the petitioner School had offered three months training to the Part Time Sewing Teacher. Since the Sewing Teacher passed the three months training course, she was converted into a full time teacher and her service was regularized in a time scale of Rs.1200-30-1550-40-2040 as per proceedings in Na.Ka.No.1326/A1/97, dated 23.04.1997. The above said post was sanctioned on conversion basis from Panchayat Union School, Gudalur, Cumbum Union, Theni District. In this circumstance, the petitioner School appointed one K.Muthulakshmi as Sewing Teacher due to the retirement of one Mrs.Saraswathi, Sewing Teacher. Thereafter, the petitioner School sent a proposal to the fourth respondent seeking approval of appointment of the Sewing Teacher. But, the fourth respondent, by proceedings in Na.Ka.No.284/A3/07, dated 20.03.2007, has refused to accord approval by the reason of the condition appended with the earlier proceedings of the first respondent dated 23.04.1997 to the effect that in case of retirement or resignation of the Sewing Teacher, the post would be reverted back to the Panchayat Union School.

3. The learned counsel for the petitioner would further submit that notwithstanding the above stipulated condition, the petitioner School is entitled to a regular post of Sewing Teacher, in view of G.O.Ms.No.39, dated 21.03.2003. As per the said G.O, the appointment of Sewing and Music Teachers have been allowed after 12.07.2002 and the ban is only for the appointment of other special and vocational teachers. Hence, the petitioner School filed a Writ petition in W.P.No.3626 of 2007 and this Court, by an order dated 12.03.2013, directed the first respondent to consider the representation to be submitted by the petitioner in the light of the said G.O., within a period of eight weeks, holding that the petitioner is entitled for appointment as per G.O.Ms.No.39, School Education Department, dated 21.03.2003. In view of the above order, the petitioner School has sent a representation to the respondents. However, the third respondent by his proceedings, dated 03.10.2013, has once again rejected the approval of appointment on the ground that the petitioner School, as of now, is not having the required students services.mca.gov.in/maeives which, the School Management filed a Writ petition



in W.P(MD).No.20885 of 2013, seeking to quash the order of the third respondent, dated 03.10.2013. This Court by an order dated 09.07.2014, set aside the impugned order and remitted back the matter to the third respondent for fresh consideration and also directed the third respondent to consider the application for approval afresh without reference to the subsequent events relating to the reduction in the total number of students and also directed to complete the said exercise within a period of three months. In pursuance of the above order, the Management sent a proposal for approval. On receipt of the same, the third respondent by an order dated 29.09.2014 has again rejected the approval on the ground that in case of retirement or resignation of the Sewing Teacher, the post would be reverted back to the Panchayat Union School, as per condition attached with the order dated 23.04.1997. Aggrieved over the same, the petitioner is before this Court.

4.The learned Additional Government Pleader appearing for the respondents would submit that it is prerogative right of the Government to abolish or surrender the post of part time Sewing Teacher in the interest of administration and the general public. Therefore, the third respondent has passed the impugned order in accordance with law and hence, the same need not been interfered with. Thus, he prayed for dismissal of this writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. It is stated that the post of Sewing Teacher was available in the petitioner's School ever since its establishment. As the Part Time Sewing Teacher by name Saraswathi, after completion of three months training as per G.O.Ms.No.224, dated 24.03.1994, was converted into a full time Teacher in a regular time scale of pay, as per the proceedings dated 23.04.1997, subject to a condition that in the event of resignation or retirement of the said teacher, the sanctioned post would be reverted back automatically to the Panchayat Union School. It is seen that the said condition was imposed in view of the ban existing at that point of time for recruitment of vocational instructors. While so, the said Saraswathi retired from service on attaining the age of superannuation on 31.05.2006. However, the petitioner school appointed one K.Muthulakshmi in the said post on 14.02.2007. The approval for her appointment was rejected stating that the petitioner is unjustified in appointing the said teacher, as there was a specific condition in the proceedings dated 23.04.1997 and the petitioner cannot plead ignorance of the said condition. Challenging the said order, the petitioner has filed a writ petition in W.P.(MD).No.3626 of 2007. This Court, by order dated 12.03.2013, has held as follows:



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"5.Be that as it may, the condition which was imposed in the proceedings dated 23.4.1997 was due to the fact that there was a ban on recruitment in respect of vocational instructors and the Government from time to time issued instructions and G.O.Ms.No.104, School Education Department, dated 12.07.2002 certain guidelines were prescribed. Subsequently, on the recommendations made by the Director of School Education, by communication dated 17.09.2002, 19.11.2002 and 28.02.2003, the Government issued G.O.Ms.No.39, School Education Department, dated 21.03.2003. By virtue of the said Government Order, on and from 12.07.2002, the managements were entitled to fill up the posts of Music Teacher and Sewing Teacher. However, in respect of Craft Teachers, the ban was not relaxed. Though this Government order came into effect on 21.03.2003, the management did not take any specific step to seek for sanction of the post of Sewing Teacher to the school presumably, since the existing incumbent Saraswathi was continuing in service and she was to attain the age of superannuation only in 2006 and it is only after the retirement of the incumbent and the appointment of K.Muthulakshmi on 14.02.2007, this problem has arisen.

6. As already observed, the reasons assigned by the second respondent in the impugned order is perfectly justified. However, the respondents should also take into consideration the effect of G.O.Ms.No.39, School Education Department, dated 21.03.2003 for the post of Sewing Teacher. Admittedly, the post was converted and the incumbent functioned in the post till 2006 and received salary. When the Government has subsequently taken a decision in 2003 to permit the managements to fill up the posts of Sewing and Music teachers, the petitioner management is also entitled to seek for protection under the said Government order. It is stated that the incumbent who is now been appointed namely K.Muthulakshmi is working since 2007 without salary and she is a widow. Therefore, the management would submit that the post may be sanctioned so as to enable her to receive salary and the post of Sewing Teacher is very imminent for the said school.

7.In view of the above facts, without setting aside the impugned order, a direction is issued to the petitioner management to submit a ~~detained~~ representation to the first respondent



and in the said representation, the petitioner shall request the first respondent to extend the benefit of G.O.Ms.No.39, School Education Department, dated 21.03.2003 so as to enable them to retain the post of Sewing Teacher even after 31.05.2006 when the earlier incumbent Saraswathi retired. Such representation shall be given by the petitioner management to the first respondent within a period of three weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall consider the said representation in the light of the G.O.Ms.No.39, School Education Department, dated 21.03.2003 and take a decision in the matter for the purpose of considering as to whether the post of Sewing Teacher could be sanctioned to the petitioner School with effect from 14.02.2007 on which date the incumbent K.Muthulakshmi was appointed in the said post. The above said exercise shall be completed by the first respondent, within a period of eight weeks thereafter. "

(emphasis supplied)

7. Though this Court has specifically held in the above writ petition filed by the petitioner that the petitioner school entitled to seek for protection as per G.O.Ms.No.39, dated 21.03.2003, as the Government has subsequently taken a decision in 2003 to permit the managements to fill up the posts of Sewing and Music Teachers, it is seen that the 3rd respondent, by order dated 03.10.2003, denied to approve the appointment of the said teacher based on the condition mentioned in the earlier approval for appointment dated 23.04.1997 and the students strength of the year 2013 and further stating that G.O.Ms.No.39 is not applicable. The petitioner has subsequently challenged the said order in W.P.(MD).No.20885 of 2013. This Court, by order dated 09.07.2014, has set aside the impugned order and directed the third respondent to consider the application for approval afresh without reference to the subsequent events relating to the reduction in the total number of students strength. Again, the third respondent, by the impugned order dated 29.09.2014, denied to approve the appointment of the petitioner based on the condition mentioned in the earlier approval for appointment dated 23.04.1997 and stating that G.O.Ms.No.39 is not applicable.

8. Admittedly, the respondents have not filed appeal against the order passed in W.P.(MD).No.3626 of 2007, dated 12.03.2013. In the said writ petition, this Court has held that the rejection of the present approval for appointment based on the condition imposed in the earlier approval is valid. This Court has



further held that G.O.Ms.No.39 is clearly applicable to the case of the petitioner and in the light of the same, the approval for appointment of the teacher Mrs.K.Muthulakshmi as Sewing Teacher can be considered. In pursuance of the above order, the third respondent has rejected the approval of appointment of Mrs.K.Muthulakshmi on the ground that the petitioner School is not having required student strength. Again, the Management has filed an another Writ petition in W.P(MD).No.20885 of 2013 and in that writ petition, this Court directed the respondents to consider the matter afresh without looking into the present students strength. Once again, the third respondent rejected the claim of the petitioner School stating that based on the earlier conditional approval, the approval for appointment of Mrs.K.Muthulakshmi cannot be considered.

9. Though this Court in W.P.No.3626 of 2007, by an order dated 12.03.2013, has specifically held that G.O.Ms.No.39 is squarely applicable to the case of the petitioner and based on the same, the approval for appointment of Sewing Teacher can be made, the respondents again and again rejected the case of the petitioner stating that based on the earlier conditional approval, the case of the petitioner cannot be considered. Therefore, this Court is not inclined to remit the matter back again to the file of the respondents for fresh consideration in the light of G.O.Ms.No.39. According to the third respondent, G.O.Ms.No.39 is not applicable to the case of the petitioner as it is applicable only to fill up sanctioned post of Craft Teacher (Sewing). This Court is not inclined to accept the same, as in the fifth column of the G.O.No.39, it has been clearly stated that the aided school can appoint Craft Teacher (Sewing) and Craft Teacher (Music) and it has not been stated as if it can be applicable only to the sanctioned post of Craft Teachers (Sewing) and (Music). Therefore, the impugned order of rejection cannot be sustained.

10. In similar circumstances, this Court in W.P.(MD).No.5841 of 2011 (Rahim Brothers Middle School, Vadagarai, Periyakulam, Theni District Vs. the District Elementary Educational Officer, Theni District and another) by order dated 01.03.2017 has held that in paragraph No.4 as follows:

"4.On a perusal of G.O.Ms.No.39, School Education Department, dated 21.03.2003, it is seen that after 12.07.2002 the appointment of Craft Teacher (Sewing) and Craft Teacher (Music) has been permitted. Admittedly, the petitioner school had appointed K.Saranya on 03.01.2011 as a Craft Teacher (Sewing). In view of the subsequent clarification of the Government vide G.O.Ms.No.39, dated 21.03.2003, the impugned order rejecting the petitioner's request for approval of the appointment cannot be sustained."



11. In view of the above, the impugned order passed by the third respondent in Na.Ka.No.1712/A2/2013, dated 29.09.2014 is set aside and the respondents are directed to approve the appointment of Mrs.K.Muthulakshmi as Sewing Teacher with effect from 14.02.2007 and to grant all service and monetary benefits, within a period of twelve weeks from the date of receipt of a copy of this order.

12. This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa/gcg

To

- 1.The Secretary to Government,
State of Tamilnadu,
School Education Department,
Fort.St.George, Chennai 9.
- 2.The Director of Elementary Education
College Road, Chennai.
- 3.The District Elementary Educational Officer,
Office of the District Elementary Educational Office,
Theni District,
Theni.
- 4.The Assistant Elementary Educational Officer,
Periyakulam,
Theni District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-5713[F] dated 11/02/2020)

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and
M.P(MD) .No.1 of 2014
07.02.2020

MK (26.05.2020) 7P 6C