



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.2503 of 2020
and
W.M.P.No.2909 of 2020

V.Mahalakshmi

...Petitioner

Vs

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Villupuram District,
Villupuram.
3. The District Educational Officer,
Kallakurichi,
Villupuram District.
4. The Block Educational Officer,
Chinnasalem,
Villupuram District.
5. The Secretary,
Azath Middle School,
Mettupalayam, Chinnasalem Union,
Chinnasalem Taluk, Villupuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 1st respondent in Na.Ka.No.020973/H2/2019 dated 03.01.2020 and to quash the same and consequently directing the respondents 1 to 4 to approve the appointment of petitioner in the post of Secondary Grade Teacher in 5th respondent school from the date of appointment on 17.10.2018, with all consequential and other attendant benefits, within a time frame.

For Petitioners	: Mr.S.Nedunchezhiyan
For Respondents	: Mr.K.V.Sajeev Kumar Government Counsel for R1 to R4



ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein was appointed as a Secondary Grade Teacher in the fifth respondent Aided Minority School, in the vacancy that arose due to the retirement of one Tmt.C.Poongodi on 31.05.2018 after her period of re-employment.

3. When the fifth respondent herein had sought for approval of appointment of the petitioner herein as Secondary Grade Teacher, the third respondent/District Educational Officer, Villupuram District had, by order dated 17.05.2019, rejected the approval application of the petitioner on the ground that, there are surplus teachers working in other schools and based on the instructions of the first respondent/Director of Elementary Education, no new appointments can be granted. In the mean time, the petitioner herein had filed W.P.No.12004 of 2019, seeking approval of her appointment and this Court, by order dated 03.09.2019, had directed the first respondent to dispose of the proposal of the school management. Subsequent to the orders passed in the said writ petition, the first respondent had passed the impugned order dated 03.01.2020, stating that there are 154 students studying 1st to 5th Standard in the fifth respondent school and based on the students strength, only 5 posts were allowed to continue in the said post and the petitioner's post was considered as surplus.

4. The learned counsel for the petitioner submitted that the action of the respondents in rejecting the request for approval of appointment of the petitioner is opposed to Rule 26 of the Tamil Nadu Private School Regulation Act. In support of his contention, the learned counsel placed reliance on various decisions rendered by this Court, including the decision in the case of S.Rasheetha Banu Vs. State of Tamil Nadu, rep. by its Secretary to Government, Chennai and others, reported in (2012) 4 MLJ 198.

5. On the other hand, the learned Government Counsel appearing for the respondents 1 to 4 placed reliance on the counter statements and submitted that the said post in the fifth respondent School has been rendered as surplus and only five posts were allowed to be retained, by taking into account of the students-teacher ratio. Hence, approval to the said post cannot be granted in view of the fall in the students strength.



6. The issue involved in the present writ petition as to the correctness of the decision of the authorities in rejecting the approval petition on the ground that the fall in the students strength, has come up for consideration on various occasions and in one of the decisions before the Hon'ble Division Bench of this Court in W.A.No.1263 of 2001, dated 22.01.2004, it was held that, whenever there is a fall in the strength of the students, the approval petition cannot be rejected, but requires to be approved by transferring the said teacher or deploying them to a needy school. The decision of the Hon'ble Division Bench was relied upon by a learned Single Judge in the case of S.Rasheetha (supra) and the relevant portion of the findings, reads as follows:

"6.The issue to be decided in this Writ Petition is as to whether the petitioner was appointed in a sanctioned post. Admittedly, on 01.04.1998, the post of Secondary Grade Teacher became vacant and the petitioner was appointed in the sanctioned post. The only objection raised is that the fifth respondent school was not declared as a Minority Institution. On a perusal of the records, it is seen that the Civil Suit filed by the fifth respondent school was dismissed and the Judgment and Decree passed by the Lower Court was reversed in the appeal filed by the fifth respondent school, which was confirmed in the said Second Appeal filed by the department. The Government also sanctioned arrears of salary payable to the petitioner. The fall in strength of the students took place in the year 2003-2004, which cannot be a ground to reject the approval of appointment of the petitioner from 01.04.1998.

7.The issue involved in this Writ Petition was already considered by a 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."



7. The aforesaid ratio is a reiteration of Section 26 of the Tamil Nadu Recognized School Regulation Act, which reads as follows:

"26. Absorption of Teachers or other persons on retrenchment.- Where any retrenchment of any Teacher or other person employed in any private school is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, [or consequent on the reduction in strength of the pupil's studying in any such private school] it shall be competent for the Government or the School Committee of any private school to appoint such Teacher or other person in any school or institution maintained by the Government or in such private school, as the case may be.

[Explanation.-For the purpose of this section, the strength of the pupil's shall be determined in accordance with the norms fixed in the Grant-in-Aid Code of the Tamil Nadu Education Department or under any Rule, Regulation or other as may be made or issued by the Government or the Director of School Education, from time to time, for appointment of Teachers or others in any private school].

8. A combined reading of Rule 26 of the Act, with the decisions of this Court, particularly in the case of S.Rasheetha (supra) as extracted above, lays down the proposition that, even in cases when there is a fall in the students strength and the post of Secondary Grade Teachers are rendered as surplus, the authorities are bound to grant approval for the appointments made to such teachers, who are absorbed in the approved vacancies and thereafter, either transfer them or re-deploy them to other needy schools. The official respondents have deviated from this legal proposition in the impugned order by rejecting the request for approval of appointment of the petitioner as Secondary Grade Teacher. As such, the impugned rejection order cannot be sustained.

9. In the light of the above discussions, the impugned order dated 03.01.2020 passed by the first respondent herein is quashed. Consequently, the respondents 1 to 4 are directed to grant approval of appointment to the petitioner herein from the date of her appointment and thereafter, if the authorities are still of the view that there are surplus teacher posts in the fifth respondent School, they shall re-deploy the petitioner



herein to such needy schools, where her services may be required. The respondents shall endeavor to grant the approval order, as expeditiously as possible, in any event, within a period of six weeks from the date of receipt of a copy of this order.

10. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

hvk
To

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
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Azath Middle School,
Mettupalayam, Chinnasalem Union,
Chinnasalem Taluk, Villupuram District.
- +1 CC to M/s.G. Sankaran, Advocate SR 34160.

W.P.No.2503 of 2020
and
W.M.P.No.2909 of 2020

GSM(CO)
SP(26/07/2021)