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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2022

PRONOUNCED ON : 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.17768 OF 2020

AND

W.M.P.NOS.22026 & 22027 OF 2020

AND

W.M.P.NO.6233 OF 2021

J.Kanchana

... Petitioner

Vs.

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.
2. The District Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.
3. The Block Educational Officer,
Chengam Block, Thiruvannamalai District.
4. The Correspondent,
Aided Primary School,
Paliyapattu, Chengam Taluk,
Thiruvannamalai District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.1932/A4/2020 dated 23.09.2020 and to quash the same and consequently, direct the respondents 1 to 3 to approve the appointment of the petitioner in the post of Secondary Grade Teacher in the fourth respondent School from the date of appointment on 21.04.2017, with all consequential and other attendant benefits including arrears of salary with interest.



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For petitioner : Mr.G.Sankaran
For Respondents : Mr.Abishek Murthy,
Government Advocate

ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.1932/A4/2020 dated 23.09.2020 and to quash the same and consequently, direct the respondents 1 to 3 to approve the appointment of the petitioner in the post of Secondary Grade Teacher in the fourth respondent School from the date of appointment on 21.04.2017, with all consequential and other attendant benefits including arrears of salary with interest.

2. The case of the petitioner is as follows:

(i) The petitioner was selected and appointed to the post of Secondary Grade Teacher in the fourth respondent School vide order dated 21.04.2017. The fourth respondent School is a Government Aided School, governed by the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act 1973 and the rules made thereunder. The petitioner joined the said post on the same day i.e., on 21.04.2017 and has been continuously working as such till the date of filing of the present writ petition.

(ii) According to the petitioner she was appointed in the regular sanctioned post of Secondary Grade Teacher by the fourth respondent School and the vacancy against which she was accommodated, arose due to the resignation of the then incumbent one Tmt.S.Tamilarasi on 01.04.2017. From the date of her appointment, she has been signing the Master Attendance Register, duly endorsed by the second and third respondents during their visit. The petitioner also claims to have been appointed within the sanctioned strength in terms of the staff fixation order for the year 2015-16, 2016-17.

(iii) After the appointment of the petitioner, a proposal was forwarded to the third respondent by the fourth respondent School, for grant of approval of appointment of the petitioner. As no orders were passed on the proposal, the petitioner was therefore constrained to file W.P.No.1813 of 2018, seeking direction to the educational authorities to pass orders on the proposal forwarded by the fourth respondent School for approval of her appointment. In the said writ petition, counter affidavit had been filed stating that there was no proposal submitted by the fourth respondent School and therefore, the question of



consideration of the proposal did not arise at all. In view of the fact that her appointment has not been approved, the petitioner has been made to work without payment of salary ever since her date of appointment and till date.

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(iv) In the above circumstances, the petitioner was once again constrained to approach this Court in W.P.No.1356 of 2019, to direct the fourth respondent School to forward proposal to the educational authorities for approval of her appointment with further direction to direct the educational authorities to pass appropriate orders for approval of her appointment from the date of her initial appointment. Notice was ordered in the said writ petition. There was no response on behalf of the fourth respondent School. Therefore, the writ petition was disposed of on 12.03.2020, directing the educational authorities to call for the proposal from the fourth respondent School and thereafter, orders to be passed on the proposal.

(v) Thereafter, the second respondent who is the competent authority, on consideration of the proposal, rejected the same vide proceedings dated 23.09.2020, stating two reasons. First, no prior permission was obtained by the School before appointing the petitioner against the post of Secondary Grade Teacher and the other is that the student strength having witnessed reduction in the subsequent academic year 2017-18, the petitioner had been accommodated in the surplus post. Challenging the order of rejection of the proposal, the petitioner is before this Court.

3. Mr.G.Sankaran, learned counsel for the petitioner would submit that both reasons stated in the impugned communication dated 23.09.2020, cannot be countenanced in law and on facts. For filling up of the vacancy against the sanctioned post, no prior permission was required at all. Further, it is an admitted case that on the day when the petitioner was appointed during the relevant academic year i.e., 2016-17, there was sufficient student strength and the petitioner was, as a matter of fact accommodated only against the sanctioned vacancy. According to the learned counsel, merely because in the subsequent year, the student strength had come down, the petitioner cannot stated to be accommodated in the surplus post. According to him, this aspect has been considered and clarified by this Court in numerous decisions.

4. The learned counsel would therefore draw the attention of this Court to the decision passed in W.P.No.4310 of 2003, dated 09.07.2010. He would particularly place reliance on paragraph Nos.8, 9 and 10, which are extracted hereunder:



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"8. Further as noted above, when the post was sanctioned, there was sufficient student strength in the school and even according to the department, when the staff fixation was done, after four years in 2002 it is stated that one post has become surplus. The petitioner having been appointed in the fourth post and the school having had sufficient strength on the relevant date, the reason assigned by the department for refusal to approve the petitioner's appointment stating that 2002, the number of post got reduced cannot be countenanced and deserves to be rejected. That apart the Hon'ble Division Bench in G.Sahadevan Nair V. Government of Tamil Nadu reported in (2008) 4 MLJ 289, while disposing of batch of cases including the two writ petitions filed by the fifth respondent management in W.P.Nos.415 & 436/1998 issued the following directions:-

29. For the aforesaid reasons, we allow the various writ petitions by giving the following directions:-

(i) The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.

(ii) If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.

(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and



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payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher- pupil ratio applicable during any particular period.

(vi) If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal."

9. In an identical circumstances a writ petition came for consideration before the Madurai Bench of this Court in W.P.No.3206/2007 and this Court by order dated 13.12.2007, considering the facts as well as the law laid down allowed the writ petition by following above referred decisions and directed the approval of the appointment of the petitioner therein making it clear if the post in which, she was found working is found surplus, it is open to the department to deploy, the petitioner therein to a needy school in accordance with G.O.Ms.No.525 dated 29.12.1997 and the arrears of salary was directed to be disbursed. Against the said order, the Department filed W.A.(MD). No.617/2008 before the Hon'ble Division Bench of the Madurai Bench and the Hon'ble Division Bench by Judgment dated 25.09.2008, dismissed the writ appeal and held that the issue raised is already covered by the Judgments reported in The State of Tamilnadu and Ors Vs. Pallivasal Primary School 2004 (2) LW 591 and M.Sundersingh Vs. Government of Tamil Nadu and others (2006) 2 M.L.J. 784.

10. Therefore, for all the above reasons, the petitioner is entitled to succeed and accordingly, the writ petition is allowed as prayed for and the respondents are directed to approve the petitioner's appointment and pay the arrears of salary within a period of eight weeks from the date of receipt a copy of this order. No costs.''

5. The learned counsel would refer to another decision reported in (2012) 4 MLJ 198, in the case of S.Rasheetha Banu Vs. State of Tamil Nadu and others. He would particularly draw reference to paragraph No.7 of the decision which is extracted hereunder:

"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



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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."

6. Lastly, the learned counsel would refer to a recent decision of this Court rendered in W.P (MD). No.20770 of 2016, dated 01.10.2021. This Court's attention has been drawn to paragraph No.21, which is extracted hereunder:

"21. The stand taken by the respondent in the counter affidavit is unacceptable, in view of the precedents cited on behalf of the petitioner. The status of a person appointed earlier on 31.03.2010, and the rights or benefits accrued to the teachers or the management cannot be deprived on the basis of an event that happened much later and the date of application of proposal for approval may not have any relevance or affects the rights of the teacher, who got appointment on 31.03.2010. The approval of appointment is a procedure to be followed after the appointment and the approval makes the appointment valid with effect from the date of appointment. The eligibility of the school to have a teacher should be tested with reference to the date of appointment. The submission of the learned Government Advocate and the stand taken by the respondent cannot be approved by this Court. The impugned order of the first respondent in Na.Ka.No.8785/G3/2016, dated 11.08.2016, relates to the denial of approval of appointment is quashed. Accordingly, this writ petition is allowed in part. Learned Senior Counsel appearing for the petitioner did not make any submission regarding the staff fixation for 2014-15 and 2015-16 by order dated 30.01.2015 and 19.01.2016, respectively. Hence, no relief is granted. It is open to the respondents to pass any appropriate order regarding surrender or deployment of surplus teachers, as may be permissible in law. The second respondent is directed to accord approval to the appointment of G.Tamilarasi, in the post of Secondary Grade Teacher with effect from the date of appointment



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i.e., 31.03.2010 and disburse the grant-in-aid to the teacher concerned and other monetary benefits if any, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

7. The learned counsel would submit that in view of the consistent ruling of this Court, the grant of approval must relate back to the date of appointment, it is not open to the authorities to take into consideration the subsequent development while considering grant of approval of the teacher concerned. He would therefore submit that the present case is fully covered by the ratio laid down in the above decisions of this Court.

8. Mr. Abishek Murthy, learned Government Advocate appeared on behalf of the respondents. On behalf of the official respondents, counter affidavit has been filed. In the counter, it is stated that the petitioner was appointed on the last day of the academic year 2016-17, by flouting the norms and the rules. In the subsequent academic year i.e., 2017-18, due to the fall in the strength of the students, some posts became surplus in the category of Secondary Grade Teacher, eventually resulting in accommodating the petitioner in the surplus post.

9. The learned Government Advocate despite the above pleading in the Courts, fairly submitted that as far as the academic year 2016-17 was concerned, there was a sanctioned vacancy against which the petitioner was accommodated. However, immediately thereafter in the subsequent year, due to the reduction in the strength of the students, the post became surplus. The learned counsel would also have no quarrel with the consistent rulings of this Court in the above referred decisions.

10. In the light of the above factual narrative and also the decisions as extracted supra, this Court is of the considered view that the petitioner herein has made out a case for grant of relief. The Courts have consistently held that the approval of the educational authorities must relate back to the date of appointment, but, it cannot depend on the contingencies and developments that might happen subsequent to the appointment of the teacher concerned. In this case, the petitioner was appointed on 21.04.2017, well within the sanctioned strength in respect of the academic year 2016-17. In the said circumstances, the authorities cannot deny the grant of approval to the petitioner by taking into consideration the subsequent fact of reduction of students' strength in the following academic year



in the fourth respondent School. Such view taken by the authorities is opposed to the consistent rulings of this Court over the years as reflected in the above referred decisions.

11. The Courts have held that once a staff is accommodated in the sanctioned vacancy, an approval has to be mandatorily accorded and in case of any subsequent reduction of the strength of the students, resulting in surplusage, it is always open to the authorities to redeploy the staff elsewhere. However, it is not open to the authority to deny approval on that account in respect of the appointees who had been accommodated in the sanctioned strength at the time of their original appointment. The decisions relied on by the learned counsel for the petitioner would clinch the case in favour of the petitioner on all fours.

12. For the above said reasons, this writ petition stands allowed and the impugned order in Na.Ka.No.1932/A4/2020 dated 23.09.2020, of the second respondent, is hereby set aside. Consequently, the second respondent is directed to grant approval of the appointment of the petitioner in the post of Secondary Grade Teacher in the fourth respondent School from the date of her initial appointment i.e., 21.04.2017, if her appointment was otherwise in order.

13. The second respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.
2. The District Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.



3. The Block Educational Officer,
Chengam Block, Thiruvannamalai District.

4. The Correspondent,
Aided Primary School,
Paliyapattu, Chengam Taluk,
Thiruvannamalai District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.7198

+1cc to the Government Pleader, S.R.No.14579 (21/03/2022)

W.P.No.17768 of 2020 and
W.M.P.Nos.22026 & 22027 of 2020 and
W.M.P.No.6233 of 2021

NMI (CO)
RLP (10/03/2022)