



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.30363 of 2019
and W.M.P.No.30352 of 2019

1.R.L.Bennet Singh
2.C.Reju
3.D.Santhakumari

...Petitioners

Vs

1.The Government of Tamil Nadu
rep.by its Secretary, School Education Department
Fort St.George, Chennai - 600 009.

2.The Director of Elementary Education
College Road, DPI Campus
Chennai - 600 006.

3.The District Elementary Education Officer
Kanniyakumari Dist. Nagarcoil - 629 001.

4.The Assistant Elementary Education Officer
Munchirai Range, Pudukadai Post, Vilavancode TK,
KK Dist - 629 171.

5.The Correspondent, St. Stephen's Primary School, (South)
Palavilai Velayudha Nadar,
Kollamcode Post, KK Dist-629 160.

...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 order passed by the 1st respondent in G.O.Ms.No.54 School Education Department dated 12.03.2015 and the order passed by the 3rd respondent in Na.Ka.No.2651/B3/2017, dated 21.11.2017 and quash the same and consequently direct the respondents 1 to 4 to approve the appointment of the petitioners and pay their salary from the date of appointment and consequently deploy them to a school where there is shortage of teachers.

For Petitioners : Mr.Ebenezer Paul

For Respondents : Mr.K.V.Sajeev Kumar

Counsel for Government for RR1 to 4
Mr.K.Sathish Kumar for R5



O R D E R

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

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2.This Writ Petition has been filed to call for the records pertaining to the order passed by the 1st respondent in G.O.Ms.No.54 School Education Department dated 12.03.2015 and the order passed by the 3rd respondent in Na.Ka.No.2651/B3/2017, dated 21.11.2017 and quash the same and consequently direct the respondents 1 to 4 to approve the appointment of the petitioners and pay their salary from the date of appointment and consequently deploy them to a school where there is shortage of teachers.

3.All the three petitioners herein were appointed in the sanctioned vacancies that arose in the 5th respondent, Aided Minority School. While, the 1st petitioner herein was appointed on 30.04.2011, in the vacancy, which arose due to the retirement of one Lizi Dani on 30.04.2011, the 2nd and 3rd petitioners were appointed in the vacancies of E.A.Rexeline on 31.05.2012 and R.Joseph Renso on 13.01.2011, respectively.

4.When the 5th respondent herein had sought for approval of the appointment of these three petitioners as Secondary Grade Teachers, the Chief Educational Officer and District Elementary Education Officer, Kanyakumari District, had by his order dated 21.11.2017, rejected the approval application on the ground that, among the five approved teacher posts, two teachers were allowed to continue and three Secondary Grade Teachers were rendered as surplus, which required to be surrendered to the general list. The impugned order placed reliance on the G.O(Ms). No.54, School Education Department order dated 12.03.2015.

5.Mr.Ebenezer Paul, learned counsel for the petitioners submitted that the action of the respondents in rejecting the request for approval of the appointment of the petitioners is opposed under Rule 26 of the Tamil Nadu Private School Regulation Act and also to various decisions rendered by this Court including the Judgment in S.Rasheetha Banu Vs. State of Tamil Nadu, rep. by its Secretary to Government, Chennai and others, Reported in (2012) 4 MLJ 198. The contention of the learned counsel for the petitioners was reiterated by the counsel for the 5th respondent School also.

6.On the other hand, the learned counsel for the Government placed reliance on the counter statements and submitted that three posts in the 5th respondent School have been rendered as



surplus and only two posts were allowed to be retained by taking into account of the students - teacher ratio. Hence, approval to the posts cannot be granted in view of the fall in the students strength.

7. 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 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."

8.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].

9.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 respondent's have deviated from this legal proposition in the impugned order by rejecting the request for approval of the appointment of these three Secondary Grade Teachers. As such the impugned rejection order cannot be sustained.

10.In the light of the above discussions, the impugned order dated 21.11.2017 in Na.Ka.No.2651/B3/2017, on the file of the the 3rd respondent is hereby quashed, consequently, the respondents 1 to 4 are directed to grant approval to the appointment of these petitioners from their respective dates of appointment and thereafter if the authorities are still of the



view that there are surplus teacher posts in the 5th respondent School, they shall re-deploy the petitioners herein to such needy schools, where their services may be required.

11. The respondents shall endeavor to grant the approval orders at the earliest, in any case, within a period of six weeks from the date of receipt of a copy of this order. Accordingly, this Writ Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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1. The Secretary,
Government of Tamil Nadu,
School Education Department
Fort St. George, Chennai - 600 009.

2. The Director of Elementary Education
College Road, DPI Campus
Chennai - 600 006.

3. The District Elementary Education Officer
Kanniyakumari Dist. Nagarcoil - 629 001.

4. The Assistant Elementary Education Officer
Munchirai Range, Pudukadai Post, Vilavancode TK,
KK Dist - 629 171.

+1cc to M/s. Ebenezer Paul, Advocate SR.No. 33642
+1cc to M/s. K. Sathish Kumar, Advocate SR.No. 33823

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and W.M.P.No.30352 of 2019

PMK (CO)
B.VC(10.08.2021)