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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.(MD)Nos.107, 566, 583, 594, 933, 1177 and 1273 of 2020
and
C.M.P.(MD)Nos.939, 3821, 3845, 3883, 5126, 6405 and 7238 of 2020
Against WP(MD)Nos.23392,21390,23876,22562,22964 of 2019
and 2055 of 2020 and 23024 of 2019

W.A.(MD)No.107 / 2020:-

1. The Chief Educational Officer,
   O/o. The Chief Educational Officer,
   Dindigul,
   Dindigul District.

2. The District Educational Officer,
   O/o. The District Educational Officer,
   Palani,
   Dindigul District.

3. The Headmaster,
   Government High School,
   Manoor – 624 618,
   Palani (Taluk),
   Dindigul District. ... Appellants/Respondents

Vs.

P.S.Rajavel Durai ... Respondent/Writ Petitioner

WA(MD)No. 566/ 2020:

1. The Director of School Education,
   College Road, Chennai-600 006.

2. The Chief Educational Officer,
   Kanyakumari District at Nagercoil,
   Kanyakumari District-629001.

3. The District Educational Officer,
   Kuzhithurai, Kanyakumari District.

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4. The Head Master,
   Government Higher Secondary School,
   Kollamcode-629160,
   Kanyakumari District. ...Appellant/ Respondents

- Vs. -

Anitha Kunju Thankom
B.T.Assistant,
Government Higher Secondary School,
Kollamcod-629160,
Kanyakumari District. ... Respondent/Petitioner

WA(MD)No.583/ 2020

1. The Director of School Education,
   DPI Complex, College Road,Chennai-600 002.

2. The Chief Educational Officer,
   Kanyakumari District,Nagercoil.

3. The District Educational Officer,
   Thuckalay,Kanyakumari District. ... Appellants/Respondents 1 to 3

- Vs. -

1. R.Mary Selvabai
   W/o.Gnana Robinson,
   Kozhikodevilai,Kulikodu Post,
   Kanyakumari District-629 161. ... Respondents/Petitioners

2. The Correspondent,
   Christucoil LMS Higher Secondary School, Palliyadi-629169,
   Kanyakumari District. ... Respondent/4th Respondent

WA(MD). 594/ 2020

1. The State of Tamil Nadu
   Rep. by its Principal Secretary,
   Department of School Education,
   Fort St.George, Chennai-9.

2. The Director of School Education,
   O/o. the Director of School Education,
   DPI Campus, Chennai-6.

3. The Joint Director of School Education (Higher Secondary),
   O/o.The Joint Director of School Education (Higher Secondary),
   DPI Campus, Chennai-6.

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4. The Chief Educational Officer
   O/o. the Chief Educational Officer,
   Sivagangai, Sivagangai District.

5. The District Educational Officer,
   O/o. the District Educational Officer,
   Sivagangai, Sivagangai District.

6. The Government Higher Secondary School,
   Rep. by its Headmaster, Ulagampatti,
   Sivagangai, Sivagangai District. ... Appellants/Petitioners

- Vs. -

K.Usha Suganthi Shanthini
W/o.R.M.Mohan, 58/3, Vilva Vilas,
Church 1st Street, Karaikudi,
Sivagangai District. ... Respondent/Petitioner

WA(MD). 933/ 2020

1. The State of Tmailnadu,
   Rep.By its Secretary,
   Department of School Education,
   Fort St.George, Chennai-600 006.

2. The Director of School Education,
   College Road, Chennai-6.

3. The Chief Educational Officer,
   Tirunelveli District, at Tirunelveli.

4. The District Educational Officer,
   Valliyur, Tirunelveli District.

5. The Headmaster,
   Government High School, Therku Karungulam,
   Tirunelveli District. ... Appellants/Respondents

- Vs. -

P.Bruno Revitin
B.T.Assistant Science,
Government High School, Therku Karungulam,
Tirunelveli District. ... Respondent/Petitioner

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WA(MD). 1177/ 2020

1. The Director of School Education,
   DPI Campus, College Road, Nungambakkam,
   Chennai- 600 006.
2. The Chief Educational Officer,
   Tirunelveli, Tirunelveli District.

3. The District Educational Officer,
   Valiyoor, Tirunelveli District.

4. The Headmaster,
   Government High School,
   Shanmugapuram, Thisaiyanvilai Post,
   Tirunelveli-627 657 ... Appellants/Respondents

- Vs. -

C.Chellathai
B.T.Assistant (History),
Government High School,
Shanmugapuram, Thisaiyanvilai Post,
Tirunelveli Dist-627 657 ... Respondent/Petitioner

WA(MD). 1273/ 2020

1. The Director of School Education,
   DPI Campus, College Road,
   Nungambakkam, Chennai-600 006.

2. The Chief Educational Officer,
   Karur District.

3. The District Educational Officer,
   Karur District.

4. The Headmaster
   Government High School,
   Periyathirumangalam, Thennilai Post,
   Karur District-639 206 ... Appellants 1 to 4/Respondents 1 to 4

- Vs. -

K.Ramalingam
B.T.Assistant (Social Science) Govt High School,
Periyathirumangalam,
Thennilai Post,
Karur District-639 206. ... Respondent/Petitioner

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Common Prayer in WAs:

Writ Appeal Petitions filed under Clause 15 of Letters Patent against the order passed in W.P.(MD)No.23392 of 2019, dated 20.11.2019, WP(MD)No.21390/2019 dated 01.11.2019, W.P(MD)No. 23876 of 2019 dated 13-11-2019, WP(MD)No.22562 of 2019 dated 24.10.2019, W.P(MD).No.22964 of 2019 dated 31.10.2019, W.P.(MD).No.2055/2020 dated 09.03.2020, WP(MD). No. 23024 of 2019 dated 01.11.2019.

Prayer in WP(MD). 23392/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to Call for the records pertaining to the impugned order in Na.Ka.No.4377/Aa4/2019 dated 30.10.2019 on the file of the respondent No.2 and quash the same as illegal and consequently to direct the respondents to permit the petitioner to continue to work as BT Assistant (Social Science) for the period from 1.11.2019 to 31.5.2020 with all monetary and service benefits within the time stipulated by this Honourable court.

Prayer in WP(MD). 21390/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court Calling for the records relation to the impugned proceedings issued by the 2nd respondent CEO in Na.Ka.No.6485/E1/2019 dated 9.9.2019 quash the same and further direct the respondents herein to permit the petitioner to continue in service as BT Assistant (Science) under re-employment in the 4th respondent school till the end of the academic year 2019-2020 (i.e., upto 31.5.2020) with all attendant benefits w.e.f 01.08.2019.

Prayer in WP(MD). 23876/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court Calling for the records pertaining to the orders passed by the 3rd Respondent dated 29-08-2019, quash the same and consequently direct the 3rd and 4th Respondents to re-employ the petitioner from 01-12-2019 to 31-05-2020.

Prayer in WP(MD). 22562/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to call for the records pertaining to the impunged order in O.Mu.No.4876 / E3 / 2019 dt.22/07/2019 on the file of the respondent No.4 and quash the same as illegal and consequently directing the respondent No.4 to provide re-employment to the post of BT Assistant in Science till the end of the academic year ie., 31/05/2020 .

Prayer in WP(MD). 22964/ 2019 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court directing the respondents to permit the petitioner to continue in service as BT Assistant in Science in the 5th respondent school namely, the Government High School, Therku Karungulam, Tirunelveli district till the end of the academic year 2019-2020 ie., till 31/05/2020 with all attendant benefits.

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Prayer in WP(MD). 2055/ 2020 :
Writ Petition filed under Article 226 of the Constitution of India, praying this Court Calling for the records peratining to the impugned order passed by the 2nd respondent in O.Mu.No.9117/Aa2/2019 dated 29.1.2020 quash the same and direct the respondents 2 to 4 to grant re-employment to the petitioner from 1.2.2020 to till the end of academic year i.e., 31.05.2020.

Prayer in WP(MD). 23024/ 2019 :
Writ Petition filed under Article 226 of the Constitution of India, praying this Court to call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.no.6267/Aa5/2019 dated 30.6.2019 and the consequential order passed by the 4th respondent in Na.ka.no.50/2019/20 dated 30.6.2019 quash the same and direct the respondents 2 and 3 to grant re-employment to the petitioner from 1.07.2019 to till the end of academic year i.e.31.5.2020.

For Appellants : Mrs.S.Srimathy
Special Government Pleader
in all the Writ Appeals

For Respondent : Mr.S.Louis
in WA(MD)No.107 of 2020

For Respondent : Mr.Ragatheeshkumar for
M/s.Isaac Chambers
in WA(MD)No.566 of 2020

For Respondent : R1- Mr.J.Vincent Kumar
R2- No Appearance
in WA(MD)No.583 of 2020

For Respondent : Mr.T.Lajapathi Roy,
in WA(MD)No.594 of 2020

For Respondent : Mr.S.Xavier Rajini
in WA(MD)No.933 of 2020

For Respondent : No Appearance
in WA(MD)No.1177 of 2020

For Respondent : Mr.M.Saravanan for
Mr.V.R.Subramanian
in WA(MD)No.1273 of 2020

* * * * *

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This is an issue, which has been dealt with by the Court on numerous occasions. In G.O.(Ms)No.261, School Education (Pa.Ka.5

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(2)) Department, dated 20.12.2018, a policy decision was once again taken by the Government to the effect that the teachers, who retired during the academic year by reaching the age of superannuation, are not entitled for re-employment when there are surplus teachers available. It appears that notwithstanding the aforesaid Government Order, orders have been passed by the Court, granting relief to the teachers, who reached the age of superannuation during the academic year. This is for both Government and Government Aided School teachers working in Primary School, Middle School, High School and Higher Secondary School, respectively. In some of the cases, this Court considered the Government Order, nonetheless allowed the Writ Petitions.

2.The learned Special Government appearing for the appellants submitted that there is no right vested on a teacher, who reached the age of superannuation during the academic year to continue thereafter. Such a right is a qualified one, provided there is no surplus teacher post available. In other words, when there is a vacancy caused due to the superannuation having been attained, then, in the interest of Students, such a teacher will be allowed to continue. In the Government School as well as the Government Aided School, the surplus teachers will have to be re-deployed. Either the Management or the Headmaster will have to give due intimation at the earliest and without obtaining permission, such an act cannot be done. If the Management is of the view that Students' interest would be affected by deploying the excess teachers available, it is for them to make payment, as the appellants cannot be directed to make such payment due to teachers and the same logic will apply for the Government School Teachers as well.

3.In support of her contention, the learned Special Government Pleader appearing for the appellants placed reliance upon the judgment of the Division Bench of this Court in ***K.Ramachandran Vs. The District Elementary Education Officer, Madurai and others [W.A(MD)No.910 of 2020, dated 15.02.2010].***

4.The learned counsels appearing for the respondents submitted that orders have been passed by taking into consideration the interest of the Students. Rule 22 of Right of Children to Free and Compulsory Education Rules, 2010, mandates re-deployment. Without doing re-deployment, a teacher working in re-employment cannot be denied the salary, once such surplus would mean only those who are working in the surplus post nor in the regular establishment.

5.The learned counsel appearing for the respondents submitted that there is a difference between the Government Schools and the Private Aided Schools. In the Government Schools, the Government, which have to take steps, despite the recommendations made, no steps

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have been taken and therefore, the writ petitioners cannot be made to suffer.

6.In support of their contentions, the learned counsels made reliance upon the following decisions:-

(i) Reynold Jayasekaran Vs. Director of School Education (Elementary Schools), Chennai – 600 006 and others reported in ***2015 (4) MLJ 571.***

(ii) Correspondent, Secretary and Managing Trustee, Salem Vs. M.Rajagopalan and others reported in ***2008 (1) MLJ 312.***

(iii) V.Manogaran Vs. The State of Tamil Nadu, Rep. by its Secretary to Government, School Education Department, Chennai and others [W.P.No.2772 of 2020, dated 06.02.2020].

7.Heard the learned Special Government Pleader appearing for the appellants and the learned counsels appearing for the respondents.

8.Re-employment is not a matter of right. The fundamental issue is that, the appellants did not prevent or prohibit re-employment. Rather, the question is to the payment of salary for such re-employment. The Management or the Head of the Institution certainly knows about the situation, which might arise during the academic year. Therefore, they have to make a request either for re-deployment or re-employment, as the case may be, at the starting of the academic year. If no action is forthcoming, they must pursue their request. Therefore, if the Management is interested in the welfare of the Students, it could have approached the authorities to give aid for re-employment or to take a decision on the request made for re-deployment. They cannot either make re-employment or make a mere request and thereafter, undertake the said exercise.

9.When a policy decision is taken, this Court cannot either interpret in a different way or go contrary to that. We have already held that re-employment is not a matter of right. The Moment, a teacher attains the age of superannuation, the relationship between Master and Servant gets terminated. Re-employment is a fresh employment. When a permission is either sought for a Government teacher or aid is sought for an aided Institution, post axiomatic conditions attached will have to be followed. In fact, it will be appropriate, no such explanation shall be given while seeking salary or aid for the institution without due approval.

10.Much reliance has been made on the judgment of the Division Bench of this Court in ***Reynold Jayasekaran Vs. Director of School Education [cited supra].*** In our considered view, the Division Bench of this Court has taken note of the earlier orders

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passed by this Court. As stated by us earlier, we are dealing with the case of policy decision made. The Government Order passed in G.O.(Ms)No.261, School Education (Pa.Ka.5(2)) Department, dated 20.12.2018, was not available at the relevant point of time before the learned Single Judge, who passed an order dated 06.02.2020, in W.P.No.2772 of 2020. The relevant clause governing has not been placed. The Government Order does not say that the question of surplus teachers will have to be reckoned within the same School. For example, in a Government School if surplus teachers are available, the other Government Schools cannot be allowed to indulge in re-employment without undertaking the process of re-deployment. Similarly, if an aided Private School is having number of institutions, a duty is imposed upon them to see to it that the surplus teachers available in the other Institutions are transferred to the Institution, in which, the teacher attains the age of superannuation during the academic year. It is for them to adopt anyone, but they cannot seek aid for both the posts. The same logic applies to the Government School teachers as well. After all, the Government is not expected to make payment for two teachers for imparting education for one set of Students.

11.Mr.S.Xavier Rajini, learned counsel appearing for the respondent in W.A.(MD)No.933 of 2020 submitted that the order passed by the learned Single Judge of this Court has been given effect to and therefore, the Writ Appeal has become infructuous.

12.We are afraid that the said proposition of law cannot be accepted. Compliance of an order appealed against is the discretion of a party, who files the said appeal. Therefore, compliance or non-compliance will not have an effect on the order under challenge. We are also not inclined to accept the submissions made that without complying the mandate of Rule 22 of Right of Children to Free and Compulsory Education Rules, 2010, a re-employment cannot be stopped. Both stand on a different footing, as discussed by us already. For non-compliance of one, the other would not go automatically. If there is non-compliance, the concerned authorities will have to pursue the compliance, but for the alleged default, they cannot seek some other reliefs. In any case, we have already stated that steps ought to have been taken either by the Management or by the Headmaster at the earliest point of time to avoid this situation, particularly, when they have stated the interest and welfare of the Students. Similarly, the contentions that re-employment cannot be given only to those teachers, who attained the age of superannuation while working in a surplus post, cannot be accepted in the light of our discussion as above, as the relationship gets terminated on attaining the age of superannuation and thereafter, it is re-entry for the teacher and therefore, the fact as to whether one was working in an existing sanctioned post or excess post will not make any difference.

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13.In such view of the matter, the impugned orders passed by the learned Single are set aside and the Writ Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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 Chief Educational Officer,
   O/o. The Chief Educational Officer,
   Dindigul, Dindigul District.

2. The District Educational Officer,
   O/o. The District Educational Officer,
   Palani, Dindigul District.

3. The Headmaster,
   Government High School,
   Manoor – 624 618,
   Palani (Taluk),
   Dindigul District.

4. The Director of School Education,
   O/o. the Director of School Education,
   DPI Campus, Chennai-6.

5. The Chief Educational Officer,
   Kanyakumari District at Nagercoil,
   Kanyakumari District-629001.

6. The District Educational Officer,
   Kuzhithurai, Kanyakumari District.

7. The Head Master,
   Government Higher Secondary School,
   Kollamcode-629160, Kanyakumari District.

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8. The District Educational Officer,
   Thuckalay,Kanyakumari District.

9. The Principal Secretary,
   State of Tamil Nadu
   Department of School Education,
   Fort St.George, Chennai-9.

10. The Chief Educational Officer,
    Tirunelveli District, at Tirunelveli.

11. The District Educational Officer,
    Valliyur, Tirunelveli District.

12. The Headmaster,
    Government High School, Therku Karungulam,
    Tirunelveli District.

13. The Joint Director of School Education (Higher Secondary),
    O/o.The Joint Director of School Education (Higher Secondary),
    DPI Campus, Chennai-6.

14. The Chief Educational Officer
    O/o. the Chief Educational Officer,
    Sivagangai, Sivagangai District.

15. The District Educational Officer,
    O/o. the District Educational Officer,
    Sivagangai, Sivagangai District.

16. The Headmaster,
    Government Higher Secondary School,
    Ulagampatti, Sivagangai, Sivagangai District.

17. The Headmaster,
    Government High School,
    Shanmugapuram, Thisaiyanvilai Post,
    Tirunelveli-627 657

18. The Chief Educational Officer,
    Karur District.

19. The District Educational Officer,
    Karur District.

20. The Headmaster
    Government High School,
    Periyathirumangalam, Thennilai Post,
    Karur District-639 206.

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+1cc to M/S.ISAAC CHAMBERS, in SR.No.11679
+1cc to Mr.S.XAVIER RAJINI, Advocate in SR.No.12363
+1cc to THE SPECIAL GOVERNMENT PLEADER IN SR.Nos.12014 TO 12020

Common Judgment made in
W.A.(MD)Nos.107, 566, 583, 594, 933, 1177 and 1273 of 2020
16.03.2021

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