



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.12.2021**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P. (MD)No.2313 of 2018

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Andan Helena

...Petitioner

/Vs./

1.The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

2.The Correspondent,
St. Antony Higher Secondary School,
Kalyanipuram, Karuthapillaiyur,
Tirunelveli District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 1st respondent dated 12.06.2017 in O.Mu.No.5241/A4/2016, Quash the same and further direct the 1st respondent to give approval for the appointment of the petitioner as sewing teacher in the 2nd respondent school with effect from 17.10.2016.

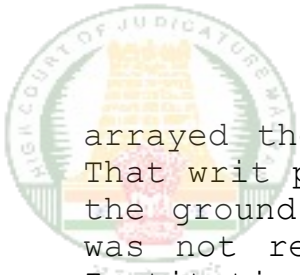
For Petitioner	: Mr.D.Venkatesh
For R1	: Mr.D.Sadiq Raja Additional Government Pleader
For R2	: No appearance

ORDER

The petitioner has obtained Technical Teachers' Certificate for the craft of sewing in 1990. She was appointed as a Sewing Teacher in the St.Antony Higher Secondary School/R2, by order of appointment dated 15.10.2016 in a vacancy caused by retirement of the erstwhile incumbent, one M.Mariagnanam on 30.11.2015. She jointed duty on 17.10.2016. R2 being a recognized private school has forwarded a proposal to the District Educational Officer/R1 seeking approval of her appointment in the aforesaid post.

2.Mr.D.Sadiq Raja, learned Additional Government Pleader for R1 does not dispute the fact that the proposal dated 10.11.2016 has admittedly been received, as it is mentioned as reference 01 in the impugned order rejecting the request for approval.

3.The petitioner had earlier approached this Court in WP(MD) No.6461 of 2017 seeking a direction to the official respondents



arrayed therein to grant approval for the post of Sewing Teacher. That writ petition came to be decided in favour of the petitioner on the ground that the requirement of Teachers Eligibility Test (TET) was not required for a Teacher working in a Minority Educational Institution, and the approval sought was directed to be granted.

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4.As against the aforesaid order, the State has filed a writ appeal in W.A(MD)No.48 of 2018, projecting its case mainly to the effect that while TET does not constitute mandatory eligibility, the post was itself unsanctioned. That writ appeal is stated to be pending.

5. The challenge to order dated 12.06.2017 rejecting the proposal for approval is liable to be rejected straight away as the only ground of rejection is that for academic year 2015-16, the post of sewing Teacher was unsanctioned.

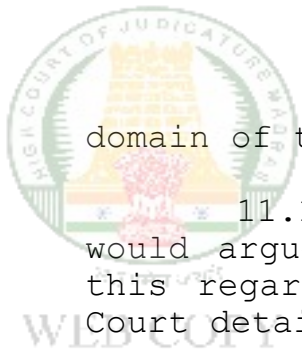
6.The date of appointment of the petitioner is 15.10.2016, which corresponds to academic year 2016-17. Thus, reference to academic year 2015-16 is wholly irrelevant and is liable to be eschewed.

7.Be that as it may, both learned counsel have advanced detailed submissions on the eligibility or otherwise of the petitioner to be granted approval and I thus, at request of both learned counsel proceed to dispose the matter of eligibility, on merits.

8.The case of the respondent is that though the post in question is sanctioned, G.O.No.132, School Education Department, dated 27.04.1998 imposes a ceiling of 250 female students in one batch year for the sanctioned post to be filled in. According to them, it is for this reason that the post of sewing teacher, though sanctioned, was not filled in.

9.That apart, they rely upon a staff fixation order dated 19.09.2016 for the period 2016-17 that makes a distinction between a 'vacant sanctioned post' and a 'filled-in sanctioned post' as on 01.08.2016. The heading for the column states 'உயர் பணியிடங்கள்' and the sub-headings read 'ஆசிரியருடன்' and 'ஆசிரியரின்றி'. As against the aforesaid columns, the latter reads '01.நிரப்பக் கூடாது' and this restriction is said to arise from the restriction placed in G.O.No.132, dated 27.04.1998.

10.It is thus the case of the respondents that though sanctioned, the post was vacant as on 01.08.2016 and since the petitioner was appointed only in October 2016, the question of approval does not arise. They would also argue that the petitioner has no locus to seek grant of approval, since this falls within the



domain of the school management.

11. Per contra, learned counsel appearing for the petitioner would argue that a post once sanctioned must be filled in and in this regard, he draws attention to a series of decisions of this Court detailed below:

- (i) *The State of Tamil Nadu vs. Y.Thangababy and another*, in W.A.No.108 of 2019 dated 31.01.2019 (Division Bench of this Court);
- (ii) *The Correspondent, St.Joesph's Middle School, Sarugani, Sivagangai District vs. The Director of Elementary Education and others* in W.P.(MD)No.1352 of 2015, dated 11.04.2018;
- (iii) *St.Antony's R.C.Middle School vs. The Director of Elementary Education and others* in W.P.(MD)No.11753 & 11754 of 2011 dated 05.12.2019;
- (iv) *S.Anurebecca vs. The Secretary to Government and others* in W.P.(MD)No.13361 of 2018, dated 23.07.2021.

12. The aforesaid decisions, have, according to him, brushed aside the mandate in G.O.No.132, proceeding to approve the appointment of Sewing and other craft Teachers to sanctioned posts irrespective of the number of students for a particular year.

13. Having heard the learned counsel, I am of the view that the petitioner must succeed. Adverting to the issue of the maintainability, I believe there could be no person more interested in grant of approval than the concerned employee himself/herself, subject of course to such approval having been sought by the school management.

14. In the present case, admittedly, the management has forwarded such proposal as it is referred to in the impugned order. Once the management takes the initiative and forwards the same for approval, it is irrelevant, in my considered view, as to whether the rejection of the same is challenged by the school or by the employee concerned. This Writ Petition is maintainable.

15. On the merits, the approval sought for by the petitioner is liable to be granted, seeing as R2 has 90 female students for academic year 2016-17, when the petitioner was admittedly, an employee. The necessity for a qualified teacher to impart training in art and craft including sewing, need hardly be emphasized. In fact, it is in recognition of this that such a post has been identified and sanctioned in the first place.

16. In my considered view, it does not stand to reason that the State impose a condition of 250 students as a minimum condition for sanction for the post of sewing teacher. The necessity for this post is well underscored simply by virtue of the fact that the post



continues to be in existence from year to year, even if the number of students falls below the limit fixed and sanction has not been accorded.

17. In other words, the post is not removed from the list of sanctioned posts and in those years when the number of female students falls below the requisite number, the post is simply left unfilled. This creates an artificial surplus for that year(s) till such time the minimum number is achieved once again when the post is filled-in or revived. This modus operandi can only cause confusion and being a sanctioned post, it is incumbent upon the State to approve the appointment of a teacher for the same.

18. In this view of the matter, the appointment of the petitioner shall be approved and necessary orders be passed within a period of six weeks from today. In concluding as aforesaid, I draw support from the series of decisions referred to by the petitioner, specifically that of the Division Bench of this Court in the case of *State of Tamil Nadu vs. Y.Thangababy and another* and learned Single Judge in the case of *the Correspondent, St.Joesph's Middle School, Sarugani, Sivagangai District vs. The Director of Elementary Education and others*.

19.This Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Correspondent,
St. Antony Higher Secondary School,
Kalyanipuram, Karuthapillaiyur,
Tirunelveli District.

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+1 CC to M/s.SPL GP (SR-38323[F] dated 13/12/2021)

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KB(28.01.2022) 5P 4C