



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2021

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. (MD)No.5768 of 2018

and

W.M.P. (MD)No.5654 of 2018

WEB COPY

The Manger / Correspondent,
V.K.P.Higher Secnodary School,
Colachel, Kanyakumari District. ...Petitioner

/Vs./

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.
- 4.The District Educational Officer,
Thukalay,
Kanyakumari 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 proceedings issued by the 4th respondent District Educational Officer in O.Mu.No.4091/AA2/2017 dated 25/01/2018 and quash the same and further direct the 4th respondent DEO to approve forthwith the appointment of A.Sajitha Nair as BT Assistant in Social Science in the petitioner's school w.e.f., the date of her appointment viz 02/01/2017 and release salary and other benefits.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers
For Respondents : Mr.K.S.Selvaganesan
Counsel for State

ORDER

The petitioner is a Higher Secondary School, that challenges proceedings issued by the R3/District Educational Officer/DEO. *Inter alia*, a direction is sought to R4 to approve the appointment of one A.Sajitha Nair (employee) as BT Assistant in Social Science



with effect from the date of her appointment being 02.01.2007 and for her salary and all other benefits to be disbursed forthwith.

2.A.Sajitha Nair, was appointed in the petitioner School on 02.01.2017 in the vacancy caused by the retirement of one R.Vincent on 31.12.2016. She was fully qualified for the aforesaid post and as such, the petitioner sought approval of her appointment by way of an application filed before R4 on 21.07.2017.

3.The application was returned on the ground that the post in which she was employed had been rendered surplus in the order of staff fixation dated 31.10.2016 for the academic year 2016-17 and as such, approval, as sought, for is not liable to be granted.

4.The petitioner re-submitted the application pointing out that her appointment fell within academic year 2016-17, and that the post to which she had been appointed, was a sanctioned post. It was only in the subsequent academic year ie., 2017-18, that the strength of staff in the category of Social Science had been reduced from three to two and hence, there was no impediment for the approval to be granted as far as this candidate was concerned. The re-submitted application was once again returned, vide impugned order dated 25.01.2018 and hence, this writ petition.

5.My attention is drawn to the orders of staff fixation for academic years 2016-17 and 2017-18 dated 31.10.2016, wherein at serial No.6, the sanctioned strength for academic years 2015-16 and 2016-17 for the post of Teachers (Social Science) is stated to be three for each year. Contrasting this with the staff fixation for the year 2017-18, under order dated 01.08.2017, it is apparent that it is only in respect of academic year 2017-18 that the strength of staff in the aforesaid category has been reduced by one teacher.

6.Incidentally, learned counsel appearing for the petitioner would also submit that the reduction in staff strength was the subject matter of challenge in a writ petition in W.P.(MD)No.5767 of 2018 that came to be allowed by this Court, by this order dated 31.03.2021 restoring the number of staff to the original strength of three. This is only mentioned by way of completion of narration, since it does not directly touch upon the relief as sought for by the writ petitioner, which turns solely upon the staff strength for academic year 2016-2017.

7.As far as academic year 2016-17 is concerned, it has admittedly been fixed at three teachers and as such, the impugned order which proceeds on the basis that the strength of the staff is only two for that relevant year is factually incorrect. The counter at paragraph 4 perpetrates the mistake contained in the impugned order stating that for academic year 2016-17, the strength of the staff had been reduced, which has been found to be factually



8.I may, in this connection refer to a series of decisions circulated by the petitioner as follows:

(i) *S.Rasheetha Banu Vs. State of Tamil Nadu, Represented by its Secretary and others* [2012 4 MLJ 198]; and

(ii) *The Correspondent, Nehru Middle School, Attangudi, Kallal Union, Sivagangai District Vs. The Director of Elementary Education, Chennai* [2013 Writ L.R. 351];

(iii) *Secretary to Government and Others Vs. Iruthaya Amali and another* [2021 SCC OnLine Mad 1285];

(iv) *V.Mahalakshmi Vs. The Director of Elementary Education, Chennai and others* [W.P.(MD) No.2503 of 2020].

9.In *S.Rasheetha Banu Vs. State of Tamil Nadu, Represented by its Secretary and others* [2012 4 MLJ 198], a learned Single Judge of this Court, referring to earlier decisions, including one rendered by a Division Bench of this Court in W.A.1263 of 2001, dated 22.01.2004, held that where a candidate had been appointed against a sanctioned post, approval of appointment cannot be rejected merely on the ground of a subsequent reduction in staff strength.

10.For the aforesaid reasons, mandamus as sought for, stands achieved. A direction is issued to R4 to approve the appointment of the employee forthwith and as a consequence, pay over all employment benefits to her, within a period of eight weeks from today.

11.This Writ Petition is disposed as above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

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 Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.

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

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

4.The District Educational Officer,
Thukalay,
Kanyakumari District.

+1 CC to M/s.K.RAGATHEESH KUMAR, Advocate (ISAAC CHAMBERS) (SR-34358
[F] dated 12/11/2021)

+1 CC to M/s.SPL.GP (SR-34293[F] dated 12/11/2021)

Order made in
W.P. (MD) No. 5768 of 2018

Dated:
11.11.2021

TSK (CO)
GC (26.11.2021) 4P 7C