



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.8138 of 2018

WEB COPY

Belga

... Petitioner

vs.

- 1.The Secretary to the Government,
Department of School Education,
St. George Fort ,
Chennai.
- 2.The Director of School Education,
DPI Compound,
College Road, Chennai.
- 3.The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.
- 4.The Additional Assistant Elementary
Educational Officer,
Kalakkad, Tirunelveli District.
- 5.The Correspondent,
K.A.M.P. Meeraniya Middle School,
Kalakkad, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent in O.Mu.No.608/m2/2017, dated 04.07.2017 and quash the same and consequently, direct the respondents to approve the appointment of the petitioner as vocational instructor (sewing) with all other consequential service and monetary benefits with effect from 09.06.2017 within stipulated time.

For Petitioner : Mr.S.Chellapandian
For Respondents : Mr.P.Subbaraj,
Government Advocate for R1 to R4

ORDER

The petitioner has filed this Writ Petition challenging the order of the fourth respondent in O.Mu.No.608/m2/2017, dated 04.07.2017 and for a consequential direction to the respondents to approve the appointment of the petitioner as Vocational Instructor (Sewing) with all other consequential service and monetary benefits with effect from 09.06.2017.



2. According to the petitioner, the fifth respondent school is a Minority Aided Recognized school. The school is offering education from Standards I to XII. The medium of instruction is Tamil. In the fifth respondent school, a post of Vocational Instructor has become vacant on 01.06.2017, on account of retirement of one Vellammal, who worked in the said post from the year 1981. The petitioner applied for the said post and was selected and appointed as Vocational Instructor (Sewing) in the fifth respondent school on 09.06.2017. The total strength of the fifth respondent school is 1225 and the strength of the students from classes VI to VIII is 470. All the students studying in the fifth respondent school hail from poor and downtrodden families. Apart from education, they are in essential need of learning craft work, such as weaving, sewing, carpentry etc. Since the Parent-Teachers Association of the School requested the Management to fill up the Vocational Instructor post, which fell vacant on 31.05.2017, the fifth respondent Management appointed the petitioner in the sanctioned post. The petitioner is possessing requisite qualification as per Rule 8 Annexure III of Tamil Nadu Payment of Grant Rules (Minority Schools). The fifth respondent school forwarded the proposal to the third respondent through the fourth respondent for approval of appointment of the petitioner. The fifth respondent school was established in the year 1929 and later, recognized under Tamil Nadu Private Schools Regulation Act. The school was upgraded as Middle school in the year 1981. At the time of upgradation, the third respondent sanctioned additional secondary grade post along with part time Vocational Instructor. The fifth respondent school requested the official respondents to provide and sanction the Vocational Instructor by way of written request. On considering the students strength, the third respondent provided a full time Vocational Instructor by way of deployment from Maruthanikinaru Panchayat Union Primary School, which became surplus in the year 1995. The post was deployed without Teacher by the third respondent based on the requisition and on considering the student strength of the fifth respondent school. In the sanctioned post, the petitioner was appointed and the fifth respondent school sent a proposal for approval. The fourth respondent rejected the proposal by the impugned order dated 04.07.2017. Challenging the same, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the impugned order is illegal and arbitrary. The post, once sanctioned by way of deployment, shall not be termed as non-existence on the superannuation of the Teacher working in the deployed post. The post sanctioned by the competent authority, considering the strength of the students, shall not be surrendered by the Management, unless the students strength of the school was declined and went beyond the students ratio embodied in the relevant rules and prayed for allowing the Writ Petition.



4. The third respondent filed counter affidavit. The learned Government Advocate appearing for the respondents 1 to 4 submitted that the third respondent by the proceedings dated 18.12.1996, converted a Secondary Grade Teacher post in Panchayat Union Primary School, Marthanginaru, Tirunelveli District, as Pre Vocational Instructor (Sewing) post and transferred to the fifth respondent school with specific condition that the post now transferred lapsed automatically, when the above Teacher vacates the post on retirement or resignation. The incumbent retired, on attaining the age of superannuation on 31.05.2017. The fifth respondent or the petitioner did not challenge the above proceedings dated 18.12.1996. While so, the fifth respondent without prior permission, appointed the petitioner and sought approval of the appointment of the petitioner. The appointment of the petitioner on 09.06.2017, made by the fifth respondent without having sanctioned post, at his own risk, by overlooking the order passed by the third respondent dated 18.12.1996, and hence, the petitioner is not entitled for approval of appointment. Therefore, the impugned order is valid and prayed for dismissal of this Writ Petition.

5. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 to 4 and perused the materials available on record.

6. From the materials available on record, it is seen that the proposal sent by the fifth respondent was returned by the fourth respondent on the ground that, on retirement of incumbent Sewing Teacher, the post automatically lapsed and appointment of the petitioner cannot be approved. The reason given in the impugned order is erroneous, as it has been held in number of cases that retirement, resignation and death of a Vocational Instructor, the post will not lapse and the Department will not resume the said post. This issue was considered by the Division Bench of this Court in **W.A.Nos.887 and 888 of 2018 [The Government of Tamil Nadu Vs. P. Vivekanandan]**, dated **02.01.2019**. The relevant portion of the said judgment reads as follows:

'2. The writ petitioners were appointed as Vocational Instructors in Linguistic Minority school. Mr.P.Vivekanandan, was appointed on 11.08.2004 and Mr.C.Jose Waltine, was appointed on 02.06.2003 respectively, in the vacancies that arose due to retirement of the earlier appointees. The school approached the State to approve their appointment, as Vocational Instructors.

3. The approval sought for was rejected on the ground that the vacancies of Vocational Instructors which arise due to resignation or death, would be resumed by the Government and they cannot be appointed, to these posts. Vide Proceedings of the Tamilnadu Joint Director of Education, Tamilnadu Vocational Education,



Chennai, in Na.Ka.No.106533/V1/E3/2009, dated 22.12.2009, has rejected the application for approval of the writ petitioners, as under:-

"Thiru.P.Vivekananthan and Josewaltin were appointed as part time vocational Instructors by the school authorities of Arunachalam Higher Secondary School, Thiruvattar Kanyakumari District. They filed Writ Petition Nos.21508/09 and 21509/09 before the Madras High Court praying to issue directions to the second respondent Joint Director (Vocational Education) to consider their application dated 23.07.2009 and to approve their appointment. The writ petitions were allowed and in the order dated 22.10.2009, referred above as reference No.1 the Hon'ble High Court directed the second respondent, the Joint Director, (vocational Education) to consider the application of the writ petitioners and pass appropriate orders regarding their appointment.

The application of the petitioners dated 23.07.2009 was considered as per the directions of the Madras High Court and the notes of the Nagercoil Chief Educational Officer.

Thiru P.Vivekanthan and Thiru Josewaltin were appointed in the retired place of vocational instructors in the Arunachalam Higher Secondary School and vocational Education at Thiruvattar, Kanyakumari District. The Chief Educational Officer, Nagercoil in his Letter OMU No:3785/A2/05 dated 15.10.2005 categorically stated that the said appointment shall not be approved. The Chief Educational Officer, Nagercoil has also stated that for the said two appointments, prior permission was not obtained from the Director of School Education.

The vocational Instructor is to be appointed from the part time vocational instructors considering the state wide seniority and after obtaining prior permission from the Government.

The said posts not allotted to the school. If the instructor retires, resigns, dies or left for another job, the said post is to be surrendered to the Department. On any account the school authorities have no right to appoint a person in such posts and it was duly informed by the office as per Naka No:115506/W26/2002 dated 28.08.2003.

Hence for the reasons stated above, Thiru P.Vivekanathan and Jose Waltin appointed by the said



instructors cannot be approved and the Chief Educational Officer, Nagercoil in his letter dated 15.10.2005 has categorically stated in. So also as per the Proceedings Na.Ka.No:115506/W26/2002 dated 28.08.2003 the application to approve the posts of the vocational Teachers cannot be accepted and this is for your information."

4. The said order is challenged in W.P.Nos.18516 and 18517 of 2010.

5. The learned Single Judge by the impugned order dated 24.10.2017, in W.P.Nos.18516 and 18517 of 2010, allowed the writ petitions.

6. Being aggrieved by the same, instant writ appeals have been filed by the appellants.

7. The learned Single Judge relied on the Judgment of the Division Bench of this Court in W.A.(MD).No.652 of 2013 in State of Tamil Nadu and others vs. The Correspondent, St.Joseph's Malankara Shyrian Catholic Higher Secondary School, which held that nowhere it has been stated that the sanction posts, which have been declared surplus, on account of death or resignation of existing teachers, will be resumed by the Government.

8. Even though the learned Single Judge has quoted a relevant portion of the said judgment, at the risk of repetition, few paragraphs are once again been quoted, as hereunder:-

"4.The issue as to whether a person appointed in a sanctioned post by a minority school can be denied approval of appointment was considered by a Division Bench of this Court in W.A.(MD) No.16 of 2011, dated 25.1.2011, wherein in paragraph Nos.(3) to (5), it is held thus:-

3) Learned counsel appearing for the first respondent submits that one of the special teacher post (Sewing) became vacant and in the said vacancy, the first respondent was appointed from 15.7.2004 and she is serving in the second respondent school all these years. Learned counsel for the first respondent also submitted that the said sanctioned post is in existence and the appellants neither declared the said post as surplus nor resumed the post till date from the second respondent school. To prove the availability of the post, the staff fixation orders of the school is filed. The reason stated by the District Elementary Educational Officer for rejecting the request for approval was



that there is reduction of student strength. The very same issue was considered by the Division Bench in W.A.No.1263 of 2001, by order dated 22.1.2004, wherein this Court has held that if a person is appointed in a sanctioned post, the approval cannot be rejected and if there is a fall in strength and the post become surplus after granting approval to the post, the said teacher along with the post could be transferred/deployed to a needy school. The same is the view taken by the learned Single Judge in this case by relying upon the various other judgments.

(4) The learned counsel for the first respondent also submitted that an identical case was allowed by the learned Single Judge in W.P.No.7218 of 2008 by order dated 4.8.2009 and without filing an appeal against the said order, the said order was implemented by the very same second appellant in this appeal by order dated 18.9.2009.

(5) The said fact is also not disputed by the learned Special Government Pleader appearing for the appellants."

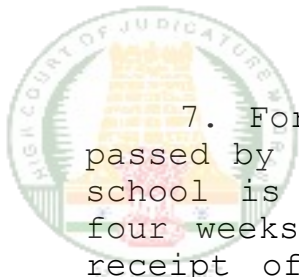
5. Applying the said judgment to the facts of the present case, there is no error in the order passed by the learned Single Judge."

9. *It has been brought to our notice that Special Leave Petition has been filed against the said judgment, being Special Leave to Appeal (C)No.-----/2014 in CC.No (s).13000/2014, and that the same has been dismissed by the Hon'ble Supreme Court, by the order dated 25.08.2014.*

10. *It is also brought to our notice that the School Education Department, for the years 2003 - 04 and 2008 - 09, has sanctioned two posts of Vocational Instructors in Accountancy and Auditing, been held by the writ petitioners, as the sanctioned strength for the Arunachalam Higher Secondary School, Thiruvettar, Kanyakumari District.*

11. *In view of the fact that there are two sanctioned posts and that the issue is settled by the judgment of the Hon'ble Division Bench of this Court, as quoted supra, there is no merit in the instant writ appeals and the same stands dismissed. No Costs. Consequently, the connected civil miscellaneous petitions are closed."*

The ratio in the said judgment is squarely applicable to the facts of the present case.



7. For the above reasons, the impugned order dated 04.07.2017 passed by the fourth respondent is set aside. The fifth respondent school is permitted to re-submit the proposal within a period of four weeks from the date of receipt of a copy of this order. On receipt of the proposal, the respondents 1 to 4 are directed to approve the appointment of the petitioner, taking into account the judgment of this Court dated 02.01.2019, made in W.A.Nos.887 and 888 of 2018 [The Government of Tamil Nadu Vs. P. Vivekanandan], within a period of four weeks thereafter.

8. With the above direction, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

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 to the Government,
Department of School Education,
St. George Fort ,Chennai.
 - 2.The Director of School Education,
DPI Compound,College Road, Chennai.
 - 3.The District Elementary Educational Officer,
Tirunelveli,Tirunelveli District.
 - 4.The Additional Assistant Elementary Educational Officer,
Kalakkad, Tirunelveli District.
- +1 CC to M/s.S.CHELLAPANDIAN, Advocate (SR-23943[F]dated 27/07/2021)