



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) No.13361 of 2018

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S.Anurebecca

... 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 Chief Educational Officer,
Tirunelveli,
Tirunelveli District.
4. The District Educational Officer,
Tenkasi,
Tirunelveli District.
5. The Secretary,
Rukmani High School,
Mangalapuram,
Tirunelveli District.

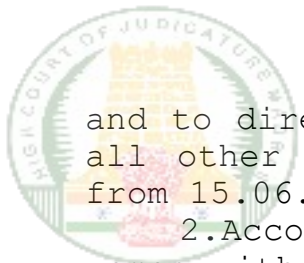
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fourth respondent in 858/A3/2018, dated 02.05.2018 and quash the same and consequently direct the fourth respondent to approve the appointment of the petitioner with all other consequential service and monetary benefits with effect from 15.06.2011.

For Petitioner	: Mr.S.Chellapandian
For RR 1 to 4	: Mr.P.Subbaraj
	Government Advocate

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned order passed by the fourth respondent, dated 02.05.2018



and to direct the fourth respondent to approve her appointment with all other consequential service and monetary benefits with effect from 15.06.2011.

2. According to the petitioner, she is a physically challenged woman with ailment of deaf and dumb with 90% disability and she is qualified to be appointed as Sewing teacher. A vacancy arose in the fifth respondent School as the earlier incumbent has attained the age of superannuation. The fifth respondent School is a recognized non-minority aided School and receiving grant-in-aid from the Government. The fifth respondent School, after following the procedure, on 15.06.2011 appointed the petitioner as Sewing teacher. The fifth respondent School, after appointment, submitted the proposal to the fourth respondent for approval of appointment of the petitioner. The fourth respondent returned the proposal for production of G.O, which enable the fifth respondent School to appoint physically challenged person. The fifth respondent School re-submitted the proposal in the year 2014 itself. The fourth respondent, for obvious reasons, did not receive the proposal. Finally, on repeated requests of the petitioner, the fourth respondent received the proposal on 05.03.2018. The fifth respondent, by the impugned order, dated 02.05.2018, again rejected the proposal on the ground that the post is surplus and there was a delay in re-submitting the proposal. Challenging the same, the petitioner has come out the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner is fully qualified to be appointed as Sewing teacher and as per G.O.Ms.No.619, Education (M2) Department, dated 23.06.1993, a physically challenged person, like the petitioner is eligible to be appointed as Sewing teacher in the fifth respondent School. The reasons given by the fourth respondent were that the post of Sewing teacher was declared as surplus and the proposal was re-submitted after delay are not valid. The post of Sewing teacher is a sanctioned post and it will not lapse on retirement of incumbent.

4. In support of his contention, the learned counsel appearing for the petitioner relied on the Judgment of the Division Bench of this Court in **W.A (MD) No.1207 of 2016, dated 23.08.2016 [The Secretary to Government, School Education Department Vs. S.Renganayagi]**, wherein it has been held as follows:-

"11. Therefore, we have absolutely no hesitation whatsoever to dismiss the Writ Appeal. We may take this opportunity to add one other reason. Admittedly, there are large number of girl students pursuing various courses in the School concerned. My be their strength my have fallen short of the number of 250 prescribed, as necessary for sanction of a post. But however, the State, as a wise policy, has sanctioned such posts to the Schools, so that, the vocational skills can be imparted to the girl students. In the instant case, the vocation



training sought to be imparted related to tailoring an avocation which better suits the girl students to enhance their employment capabilities in the later part of life."

5.The learned counsel appearing for the petitioner further submitted that the petitioner will forego the monetary benefits from the date of appointment till re-submission of the proposal, dated 05.03.2018 and prayed for allowing the Writ Petition.

6.The respondents 1 to 4 filed counter-affidavit.

7.Mr.P.Subbaraj, learned Government Advocate appearing for the respondents 1 to 4 submitted that the post of Sewing teacher has become surplus in the year 2010-11 and therefore, the appointment of the petitioner is not valid. The staff strength was fixed, as per the students strength and therefore, the impugned order passed by the fourth respondent is valid and legal. The learned Government Advocate further submitted that the proposal sent by the fifth respondent School was returned on 01.03.2013. The fifth respondent School re-submitted the proposal only on 05.03.2018, after the delay of 5 years and prayed for dismissal of the Writ Petition.

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

9.On a perusal of the entire materials available on record, it is seen that the petitioner was appointed as Sewing teacher in the fifth respondent School on 15.06.2011. The proposal sent by the fifth respondent School was returned on 01.03.2013, directing the fifth respondent School to furnish the Government Order, which enables the fifth respondent School to appoint physically challenged person, like the petitioner and also stated that the post of Sewing teacher is shown as surplus in the staff strength fixed for the year 2010-2011 and the certificate of the Correspondent of the fifth respondent School shows that there is no surplus teacher is contrary to the staff fixation. It is not in dispute that the post of Sewing teacher was sanctioned to the fifth respondent School.

10.According to the fourth respondent, the said post has become surplus on the staff strength as the incumbent retired from service. The contention of the learned counsel for the petitioner is that there are number of girl students in the fifth respondent School and Sewing teacher is necessary for the benefit of girl students. The sanctioned post is a single post and therefore, the appointment of the petitioner is valid, has considerable force and it is acceptable.

11.As per the ratio in the Judgment referred to above in **W.A (MD) No.1207 of 2016, dated 23.08.2016 [The Secretary to Government, School Education Department Vs. S.Renganayagi]**, when there are number of girl students, a Sewing teacher is necessary for the benefit of girl students.

12.The petitioner has stated that she has taught girl students embroidery work and the students, who learnt embroidery work, are now Tailors by profession in their locality and are earning considerable amounts by doing their embroidery work.



13. Considering the above facts, the reason given by the fourth respondent that the post is surplus is not a valid reason. Accordingly, the impugned order, dated 02.05.2018, passed by the fourth respondent is liable to be set aside and is hereby set aside. The fifth respondent School is directed 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 consider the proposal submitted by the fifth respondent School and grant approval for the appointment of the petitioner, if she is otherwise eligible, within a period of four weeks thereafter.

14. Further, it is the case of the petitioner that the fifth respondent School re-submitted the proposal in the year 2014 itself, but the fourth respondent did not accept the same. In the counter-affidavit, the respondents 1 to 4 have stated the fifth respondent School re-submitted the proposal only on 05.03.2018.

15. From the materials available on record, it is seen that the fifth respondent School has not taken any steps to send the proposal by registered post with acknowledgement due or approached this Court for a direction to the fourth respondent to receive the proposal. Further, the learned counsel appearing for the petitioner, on instructions, submitted that the petitioner will not claim any monetary benefits from the date of her appointment till the date of re-submission of the proposal.

16. In view of the same, as and when the fourth respondent approved the proposal, the fifth respondent School will be entitled to receive grant-in-aid only from 05.03.2018, when the proposal was re-submitted.

17. With the above directions, the Writ Petition is partly allowed. No costs.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar (CS)

ps

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

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4. The District Educational Officer,
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Tirunelveli District.

+1 CC to M/s.S.CHELLAPANDIAN, Advocate (SR-23794[F] dated 23/07/2021)

+1 CC to M/s. SPL GP (SR-23874[F] dated 26/07/2021)

W.P (MD) No.13361 of 2018
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RC (03.08.2021) 5P-7C