



WEB COPY

W.P.(MD)No.13970 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.12.2021**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P. (MD)No.13970 of 2018

and

W.M.P. (MD)No.12682 of 2018

R.Mary Stanly Rose Punitha

...Petitioner

/Vs./

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

2.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District - 629 001.

3,The District Educational Officer,
Nagercoil - 629 001,
Kanyakumari District.

4.The Correspondent,
St.Antony's Higher Secondary School,
Azhaappapuram - 629 401,
Kanyakumari District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the District Educational Officer to continue to disburse the pay and allowances due to the petitioner since 01/06/2009 onwards with all attendant benefits for her service as BT Assistant (History) in 4th respondent school.

For Petitioner	: Mr.H.Thayumanaswamy
For R1 to R3	: Mr.A.K.Manikkam Special Government Pleader
For R4	: Mr.Isaac Mohanlal Senior Counsel for M/s.Isaac Chambers

ORDER

There is a history to this matter, which has to be appreciated for proper consideration of the prayer of the petitioner for a mandamus directing the District Educational Officer/R3, to continue to disburse the pay and allowances due to the petitioner since 01.06.2009 with all attendant benefits for her service as BT Assistant (History) in R4 School.



2. The petitioner had sought appointment in the St.Antonys Higher Secondary School/R4, and was appointed in a vacancy caused by the promotion of one Emelda Mary to the post of PG Assistant, on 02.06.2008. A proposal was submitted by the School for approval of her appointment. No orders were passed by the State on the application of the School.

3.The order of staff fixation for academic year (AY) 2008-09 was made on 18.10.2008 fixing the number of posts as three instead of four and such fixation is stated to be in line with G.O.Ms.No.525, (School Education), dated 29.12.1997. The appointment of the petitioner was thus rendered surplus. Since R4 was of the view that the fixation was incorrect, it came to be challenged in W.P.(MD)No.11209 of 2008.

4.That writ petition was closed, by order dated 22.01.2009 directing the respondents to consider the application of the School. In compliance, an order came to be passed on 25.02.2009 once again rendering the post to which the petitioner had been appointed as surplus.

5.R4 resubmitted the proposal requesting review of the staff fixation. The staff fixation came to be made for AY 2009-10 reiterating the number of posts as three. However, for AY 2008-09, the number of posts as reflected in staff fixation for AY 2009-10, was four.

6.Writ Petition came to be filed yet again in W.P.(MD) No.11435 of 2009 seeking a quash of staff fixation of AY 2009-10 dated 02.09.2009 and the writ petition was disposed on 31.01.2011 and at para 22, the Court states as follows:

"I find substance in the above contention of the learned counsel for the petitioner. Therefore, this writ petition is disposed of with a direction to the first respondent to consider the proposal of the petitioner dated 12.06.2008, in so far the academic year 2008-09 and the approval thereto coupled with the monetary benefits. However, the petitioner institution has no right to claim the approval in respect of the subsequent period, where the post in question has been shown as surplus and as regards the right of the petitioner for reserving her right to challenge the above proceedings, it is open to the petitioner to challenge the same. Consequently, connected Miscellaneous Petitions are dismissed. No costs."

7.A factual error that appears to have crept in in the above order, was that while the order impugned in that writ petition relates to AY 2009-10, the Court approves the petitioner's



appointment for the previous year ie., 2008-09. There is also an observation in the concluding portion of the paragraph extracted above to the effect that the petitioner has no vested right to seek continuance of appointment for the subsequent years.

8.This observation is premised on rejection of staff strength for AY 2009-10, as per the impugned order dated 02.09.2009. Since there was no compliance of the direction, but instead, the respondents rejected her request for approval, proceedings were initiated for contempt and this Court, in Cont.P.(MD)No.1616 of 2014 by order dated 28.03.2017, quashed two orders passed on 06.03.2012 and 10.07.2014 directing the respondents to approve the staff fixation for AY 2008-09 of the petitioner.

9.The petitioner has been rendering duties as member of staff, since then. Though incumbent either upon the present petitioner, R4 or the State to have sought a clarification in regard to the order dated 31.01.2011, all parties allowed the matter to rest.

10.The present writ petition has been filed in 2018, wherein the petitioner seeks continuance of approval for all intervening years till retirement. Normally this Court would not be inclined to look into the aspect of staff fixation which is consequent upon the fixation of students strength and thus constitutes a pure question of fact and mathematics.

11.At the insistence of Mr.Mohanlal, perhaps rightly, I peruse the staff fixation orders for all intervening years, which indicate to me gross flaws in the manner and method of fixation.

12.For instance, order of staff fixation for AY 2009-10 dated 02.09.2009 that was challenged before the learned Single Judge sets out the student strength for classes 9 & 10 at 111 & 84 respectively. The fixation of staff is to be as per G.O.Ms.No.525, (School Education), dated 29.12.1997 and the norms thereunder. The staff fixation is stated to be three which, by itself, appears incorrect.

13.Then again, the staff fixation for AY 2008-09 is stated to be four. This, when compared with the staff fixation for AY 2008-09 dated 18.10.2008 is itself incorrect, as the staff strength fixed is three as against four mentioned in the staff fixation for AY 2008-09. Identical mistakes have transpired in the orders of staff fixation for the subsequent periods as well.

14.To reiterate and for the purpose of clarity, the student strength has fluctuated, sometime in excess of 100 and sometimes dipping to the 70s. The norms set out in G.O.Ms.No.525, (School Education), dated 29.12.1997, do not appear to have been applied correctly.



15. That apart, while passing the order of staff fixation for the subsequent year, the staff fixation for the previous year varies with the number of staff fixed as per the original order passed for the previous year. In all cases, the number stands increased by one.

16. A perusal of the staff fixation orders of various dates for the period from 2008-09 to 2013-2014 do not inspire the confidence of this Court that there has been application of mind or of the relevant norms fixed for staff fixation.

17. That apart and seeing as the appointment of the petitioner has been as against the sanctioned post for AY 2008-09, G.O.Ms.No.525, (School Education), dated 29.12.1997, specifically, paragraph No.8 ought to have been complied with. The relevant portion of para 8 of the norms are extracted below:

"8. A Fresh assessment of grant for posts as per these orders shall be done on the basis of average attendance. The staff strength shall be fixed by the District Educational Officer concerned for High & Higher Secondary Schools and by District Elementary Educational Officer in respect of Elementary-Middle School. Those who may be rendered surplus due to application of these norms, shall, as far as possible be redeployed to the needy schools. The redeployment of staff in schools shall be done by Director of School Education and Director of Elementary Education or the officers to be authorized by them. This will be in super session of the orders issued in G.O.Ms.No.392, Education dated 24.06.96. In cases where such deployment is felt difficult, the surplus staff shall be allowed to continue in the same school till their retirement and then the staff strength fixed as per norms"

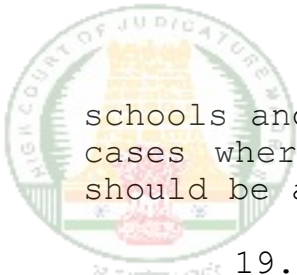
III. HIGH SCHOOLS (Standards IX to X)

(a) The teacher-pupil ratio of 1:40 will be followed. On this basis the following norms will be followed:

Average attendance	No. of posts
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Upto 80	1 Head Master and 2 B.T.Assistants.

The third post will be given when the strength exceeds 60 and additional section will be permitted in the slab of 40."

18. Para 8 states that once appointed validly, those who have rendered good services, shall, as far as possible be re-deployed to needy



schools and such re-deployment is to be done by the authorities. In cases where the deployment raises difficulties, then surplus staff should be allowed to continue in the same school till retirement.

19. In the present case, the appointment of the petitioner is as against a sanctioned post for AY 2008-09 and this position is beyond doubt. Thus and for the subsequent years, the norms prescribed in G.O.Ms.No.525 dated 29.12.1997 would be called into play.

20. In the light of the above discussion, the mandamus sought for by the petitioner stands achieved, the representation of the petitioner shall be considered and suitable orders be passed, refixing the staff for the intervening periods, in the light of the errors noticed and pointed out above, with all consequential benefits. Let the benefits once computed be paid over to the petitioner, within twelve weeks from the date of such computation.

21. This Writ Petition is ordered as above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /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 Director of School Education,
College Road, Chennai - 600 006.
2. The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District - 629 001.
- 3, The District Educational Officer,
Nagercoil - 629 001,
Kanyakumari District.



+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-40188[F] dated 23/12/2021)

+1 CC to M/s.H.THAYUMANASWAMY, Advocate (SR-40192[F] dated 23/12/2021)

+1 CC to M/s.SPL GP (SR-40214[F] dated 23/12/2021)

W.P. (MD) No.13970 of 2018

Dated:

22.12.2021

RD(02/02/2022) 6P 7C