



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2021

CORAM:

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THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.20770 of 2016

and

W.M.P (MD)No.14842 of 2016

The Secretary,
Thiyagarajar Colony Primary School
Pasumalai-625 004
Madurai District.

.. Petitioner

Vs.

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

2.The District Elementary Educational Officer,
Madurai, Madurai District.

3.The Assistant Elementary Educational Officer,
Thirunagar, Madurai District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 1st respondent Director of Elementary Education in Na.Ka.No.8785/G3/2016 dated 11.08.2016 and the staff fixation settled by the District Elementary Educational Officer for the academic years 2014-2015 and 2015-2016 dated 30.01.2015 and 19.01.2016 respectively, quash the same in so far as it renders one post of Secondary Grade Teacher as surplus as against the minimum requirement of 5 teachers and denies approval to the appointment of D.Tamilarasi as Secondary Grade Teacher w.e.f 31.03.2010 and further direct the 2nd respondent District Elementary Educational Officer to approve forthwith the appointment of Tmt.D.Tamilarasi as Secondary Grade Teacher w.e.f 31.03.2010 and disburse the grant-in-aid towards her salary and allowances.

For Petitioner : Mr.Issac Mohanlal, Senior Counsel
for Mr.T.Cibichakraborty
For Respondents : Mr.M.Lingadurai
Government Advocate



O R D E R

This Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to quash the impugned order of the first respondent dated 11.08.2016 and the staff fixation settled by the District Elementary Educational Officer for the academic years 2014-2015 and 2015-2016 dated 30.01.2015 and 19.01.2016 respectively, and to direct the second respondent District Elementary Educational Officer to approve forthwith the appointment of Tmt. D. Tamilarasi as Secondary Grade Teacher w.e.f. 31.03.2010 and disburse the grant-in-aid towards her salary and allowance.

2. Brief facts which are necessary for the disposal of the Writ Petition are as follows:

The petitioner is a recognized and aided educational institution, established and administered by M/s.Thiagarajar Mills Private Limited, a company incorporated under the Companies Act.

3. It is stated that the school was established in the year 1959 and the school offers education from standard I to V. The petitioner school was sanctioned with one Headmistress and five Secondary Grade Teachers for the academic year 2009-2010. It is admitted that one post of Secondary Grade Teacher in the school fell vacant on 01.11.2005 due to the promotion of one Secondary Grade Teacher as Headmistress in the same school on 31.10.2005. In order to fill up the said vacant post of Secondary Grade Teacher, the petitioner school submitted a proposal for grant of permission to fill up the vacancy. It is also admitted that the second respondent granted permission to fill up the vacancy by order dated 09.02.2010. It is stated that the petitioner school invited applications to fill up the post by paper publication and thereafter following due selection process appointed a teacher by name D. Tamilarasi as Secondary Grade Teacher with effect from 31.03.2010. It is submitted that the said teacher joined duty on the same day. By proceedings dated 20.01.2010, the second respondent fixed the eligible sanctioned staff strength of the school as one Headmaster plus five Secondary Grade Teachers. Therefore, it is admitted that Tmt. D. Tamilarasi was appointed against regular vacancy.

4. It is submitted by the learned Senior Counsel appearing for the petitioner that the proposal for approval of appointment was submitted after certificate verification and other formalities and that therefore there was some delay in submitting proposal for the approval of appointment. It is submitted that the proposal was received by the second respondent on 21.06.2010.

5. It is also stated that at the time of staff fixation for the next academic year 2010-2011, the second respondent rendered one post of Secondary Grade Teacher as surplus after taking into account the appointment of Tmt.D. Tamilarasi. The petitioner school submitted a representation dated 28.03.2011 to the director to refix



the staff strength stating that the school is eligible for six teachers and to approve the appointment of Tmt. D.Tamilarasi. It is also stated that the Headmistress of the school retired on 30.09.2012 and thereafter no further appointment was made in the school. Even though there was no surplus after 30.09.2012, it is stated that the application for approval of appointment of Tmt. D. Tamilarasi was not considered and no salary was paid.

6. It appears that the respondent did not process the application for approval on the ground that the representation submitted by the petitioner school with regard to surrendering of one surplus post was pending consideration.

7. The teacher, Tmt. D. Tamilarasi, who was appointed by the petitioner school filed a Writ Petition in W.P.No.269 of 2015 for issuance of a Writ of Mandamus to direct the respondent to regularise her post of Secondary Grade Teacher from the date of her appointment, i.e., 31.03.2010 in the petitioner's school and sanction monetary benefits. The writ petition was disposed of in the following lines:

" 5. Taking note of the submissions of both sides, as the students strength has come down, a post of teacher has been declared as surplus and surrendered to the Government and that the school has filed an appeal before the first respondent/appellate authority. Since the appeal is pending, the first respondent is directed to pass appropriate orders on merits and in accordance with law within a period of two months from the date of receipt of a copy of this order."

8. Thereafter, the application submitted by the petitioner school was considered and by the impugned order dated 04.08.2016, the petitioner's application for approval was rejected only on the ground that as per G.O.(Ms).No.231, School Education (C2) Department, dated 11.08.2010, the petitioner school cannot appoint any teacher beyond the sanctioned strength. It is stated that the sanctioned strength for the school was only one plus four (One Headmistress plus four Secondary Grade Teachers) and that the appointment in respect of a surplus post cannot be approved. Challenging the order refusing to approve the appointment to the post of Secondary Grade Teacher that was made on 31.03.2010, the above Writ Petition is filed.

9. Learned Senior Counsel appearing for the petitioner after narrating the facts, submitted that the petitioner school appointed the petitioner in the sanctioned post for the academic year 2009-2010 by order dated 31.03.2010. The vacancy arose in the said post by the retirement of one teacher in 2005. It is stated by the learned Senior Counsel that though permission to appoint a teacher



in the vacancy was sought immediately after the vacancy arose, permission was granted only on 09.02.2010. Immediately thereafter the appointment was made on 31.03.2010 and the proposal was submitted after following certain formalities in June 2010. Since the post was sanctioned and the appointment was made against the sanctioned post after getting permission to fill up the post by order dated 09.02.2010, learned Senior Counsel for the petitioner submitted that appointment of teacher by order dated 31.03.2010 is perfectly valid and in order.

10. The learned Senior Counsel further submitted that the refusal to grant approval on the ground that the students strength fell in the next academic year is illegal and opposed to several precedents of this Court on similar circumstances. In other words it is submitted that the proposal for approval for appointment made during the academic year 2009-2010 cannot be rejected on the basis of students strength which was noted for the subsequent academic year. Referring to the staff fixation order for 2010-2011 the learned Senior Counsel pointed out that the appointment of Tmt.D.Tamilarasi was also taken note of while fixing the staff strength when one post was rendered surplus during the next academic year.

11. The learned Senior Counsel further submitted that Tmt.D. Tamilarasi was appointed in the sanctioned post. It is also submitted by the learned Senior Counsel that on 30.09.2012, the Headmistress of the School retired and therefore there was no surplus teacher in the school from the academic year 2012-2013.

12. It is submitted that as per G.O.(Ms)No.525 (School Education) dated 29.12.1997, which was in force in the relevant academic year 2010-2011 the petitioner school was entitled for one Headmistress and five Secondary Grade Teachers. It is stated that as per G.O.525 dated 29.12.1997 the Education department should take each class or section as single unit and fix the staff strength by allowing one teacher for each class or section irrespective of the strength of students. Right of Children to Free and Compulsory Education Act, 2009 came into effect on 01.04.2010. The appointment was made even before the Act came into force. It is admitted that by virtue of Section 21 (1) of the Right of Children to Free and Compulsory Education Act, 2009 appropriate Government having legal authority should ensure deployment of teachers as per pupil teacher ratio specified in the Schedule to be maintained in school because it is the statutory obligation of the State Government. Hence G.O. (Ms).No.231 dated 11.08.2010 was introduced wherein the following directions were issued.

"1. The Director of School Education and the Director of Elementary Education are directed to undertake the initial process of rationalizing the deployment of existing teachers as per the Pupil



Teacher Ratio specified in the Schedule to the Act.

2. The Director of School Education and the Director of Elementary Education are also directed to do a complete survey of the students enrolled and teachers working in elementary sections as on 1.09.2010 based on the pupil teacher ration specified in the Act.

3. The Director of School Education and the Director of Elementary Education are requested to initiate steps thereafter to rationalize the deployment of existing teachers to address the problem of imbalances in teacher placements. Rationalizing the deployment of teachers should be done in respect of both the Government controlled and aided schools."

It is only after the issuance of G.O.(Ms).231 dated 11.08.2010, the petitioner school was found to have a surplus teacher.

13. The learned Senior Counsel appearing for the petitioner relied upon several precedents to support his first argument that the approval of appointment which was against the sanctioned post cannot be rejected on the ground that there was a fall in strength of students in the subsequent academic year.

14. A learned Single Judge of this Court in the case of **"Correspondent, Nehru Middle School, Attangudi, Kallal Union, Sivagangai District vs Director of Elementary Education and two others reported in 2013 Writ L.R page 354"** has held as follows:

" 13. Admittedly, the petitioner's School was sanctioned with six teachers posts, out of which four are Secondary Grade Teachers at the relevant point of time. When an appointment was made within the sanctioned strength, which also was made in pursuant to the permission granted by the 2nd respondent, the same cannot be held as an invalid appointment on the ground that the staff fixation done subsequently for the academic year 2008-2009 declared two Secondary Grade posts as surplus. In effect, the approval is rejected taking note of the fall in the student strength in the subsequent academic year. Even the counter affidavit filed by the 2nd respondent also indicates that the rejection was made only on the ground that the management appointed the said person without analysing as to whether sufficient strength will be continued in the next academic year.

14. In my considered view, the contention of the second respondent is totally unjustifiable on



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the simply reason that when the petitioner's School has appointed the said teacher within the sanctioned strength that too after getting permission from the second respondent, the approval of such appointment cannot be denied on the ground that there was a fall in strength in the subsequent years.

15. At this juncture, the unreported judgment of the Hon'ble Division Bench made in W.A.No.1263 of 2001, dated 22.01.2004 is relevant to be quoted, wherein, it has been held as follows:

"The fall or reduction in the students strength for the subsequent year/years cannot be a ground to deny the right of the appellant to appoint a teacher as against the sanctioned strength for the previous years. What has been done in the case, by the impugned order, is exactly the reliance placed on the subsequent re-fixation of the sanctioned strength of teachers for the academic year 2000-2001 which in our considered view, is impermissible in law, when the Government being the funding authority, is entitled to consider the average attendance of students before sanctioning the teachers, equally the management is also entitled to appoint the teachers as against the sanctioned strength based on the average attendance of students taken during August, 1999."

15. Following the Division Bench judgment which was followed in the above judgment and another judgment of Division Bench of this Court in W.A.No.703 of 2009, a learned Single Judge of this Court had occasioned to deal with the same issue in the case of **S. Rasheetha Banu vs State of Tamil Nadu, represented by its Secretary to Government, Chennai, reported in (2012) 4 MLJ 198**, and has held as follows:

"7. The issue involved in this Writ Petition was already considered by a Division Bench of this Court in W.A.No.1263 of 2001, dated 22.01.2004. In the said judgment, it is held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred/deployed to a needy school. The said judgment of the Division Bench was followed in W.P.(MD).No.11353 of 2008, dated 11.09.2009. As against the said order dated 11.09.2009, the department preferred W.A.(MD).No.703 of 2009. A Division Bench of this Court, by



judgment dated 1.2.2011, dismissed the said Writ Appeal."

16. The learned Senior Counsel again referred to an unreported Division Bench judgment of this Court dated 31.07.2013 in **W.A.No.652 of 2013**, in the case of **The State of Tamil Nadu and three others vs Correspondent St. Joseph's Malankara Shyrian Catholic Higher Secondary School**, whererin the earlier view of Division Bench of this Court in W.A.No.(MD).No.16 of 2011 dated 25.01.2011 was reiterated and the same preposition was laid.

17. Few more judgments of this Court taking consistent view in tune with the previous judgments above referred to are listed below:

a) in a judgment dated 31.07.2014 by the Hon'ble Division Bench in W.A.(MD) No.844 of 2014 in the case of The Chief Educational Officer, Tirunelveli, Tirunelveli District.

b) a judgment dated 16.07.2021 in W.P.No.2503 of 2020 in the case of V.Mahalakshmi vs The Director of Elementary Education.

c) in a judgment dated 07.12.2020 in W.P.(MD).No.20358 of 2020 in the case of Correspondent, VKP Higher Secondary School vs The State of TamilNadu and three others.

18. The learned Government Advocate appearing for the respondents relying upon the counter affidavit filed by the second respondent submitted that the application for approval was submitted only on 21.06.2010, and therefore the issue was considered rightly with reference to the strength of students for the academic year 2010-2011.

19. The learned Government Advocate further submitted that as per G.O.Ms.231 dated 11.08.2010, the petitioner School was eligible only to have five teachers. Therefore, when the petitioner school appointed an additional teacher ie., Tmt.D.Tamilarasi, appointment could not be approved as it is against G.O.Ms.No.231 School Education Department dated 11.08.2010.

20. In the counter affidavit also it is stated that appointment of D.Tamilarasi was held up due to the subsequent developments. Although she was appointed on 31.03.2010, proposals for approval of her appointment was received only on 21.06.2010, when one post of Secondary Grade Teacher was rendered surplus for the academic year 2010-2011. It is reiterated that the appointment of D.Tamilarasi could not be approved as the strength of pupil was decreased and as per G.O.Ms. No.231, the post in which D.Tamilarasi was appointed had to be surrendered, as surplus.

21. The stand taken by the respondent in the counter affidavit is unacceptable, in view of the precedents cited on behalf of the petitioner. The status of a person appointed earlier on 31.03.2010, and the rights or benefits accrued to the teachers or the management



cannot be deprived on the basis of an event that happened much later and the date of application of proposal for approval may not have any relevance or affects the rights of the teacher, who got appointment on 31.03.2010. The approval of appointment is a procedure to be followed after the appointment and the approval makes the appointment valid with effect from the date of appointment. The eligibility of the school to have a teacher should be tested with reference to the date of appointment. The submission of the learned Government Advocate and the stand taken by the respondent cannot be approved by this Court. The impugned order of the first respondent in Na.Ka.No.8785/G3/2016, dated 11.08.2016, relates to the denial of approval of appointment is quashed. Accordingly, this Writ Petition is allowed in part. Learned Senior Counsel appearing for the petitioner did not make any submission regarding the staff fixation for 2014-15 and 2015-16 by order dated 30.01.2015 and 19.01.2016 respectively. Hence no relief is granted. It is open to the respondents to pass any appropriate order regarding surrender or deployment of surplus teachers, as may be permissible in law. The second respondent is directed to accord approval to the appointment of G.Tamilarasi, in the post of Secondary Grade Teacher with effect from the date of appointment ie., 31.03.2010 and disburse the grant-in-aid to the teacher concerned and other monetary benefits if any, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar(CS)

MNR/Ns

To

- 1.The Director of Elementary Education,
College Road, Chennai-600 006.
- 2.The District Elementary Educational Officer,
Madurai, Madurai District.
- 3.The Assistant Elementary Educational Officer,
Thirunagar, Madurai District.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-31038[F] dated 04/10/2021)



+1 CC to M/s.SPL.GP (SR-31185[F] dated 05/10/2021)

W.P. (MD) No.20770 of 2016
01.10.2021

SRK (CO)
KB(15.11.2021) 9P 6C