



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
1530.03.2022

Delivered on
30.03.2022

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CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.10265 of 2016

Vallalar Aided Primary School,
Neikuppai
Pandanalur-607 807
Thirupandal Range
Thanjavur Dt.
Rep.its Secretary
Tmt.M.Jayalakshmi
W/o.Masilamani(Late)

... Petitioner

versus

1 The State of Tamil Nadu
Rep.by its Principal Secretary to Government
School Education Department
Secretariat, Fort St.George
Chennai-600 009.

2 The Director of Elementary Education
DPI Campus College Road
Chennai- 600 006.

3 The District Elementary Educational Officer
Thanjavur District

4 The Assistant Elementary Educational officer
Thirupandal Range
Thanjavur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the Respondents to approve the appointment of Tmt.G.Karpagavalli as Secondary Grade Assistant in the Petitioner School from the date of initial appointment on 16.06.2015 with all consequential and other attendant benefits including payment of arrears of salary along with interest within a time frame to be fixed by this Honble Court.



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For Petitioner ... Mr.G.Sankaran
For Respondents ... Mr.L.S.M.Hasan Fizal,
Additional Government Pleader,
for respondents 1 to 4

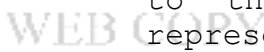
O R D E R

The petitioner school is a Government aided school receiving grant-in-aid from the State Government. Due to promotion of one Secondary Grade Teacher Mr.Sivakumar, as Headmaster on 01.06.2012, consequent vacancy arose in the grade of Secondary Grade Teacher. According to the petitioner school, the said Mr.Sivakumar had opted for voluntary retirement from the post of Headmaster on 01.04.2013. Thereafter, another Secondary Grade Teacher Ms.P.Inidira was promoted as Headmaster on 01.08.2013. As a result of the above development, one other vacancy in the post of Secondary Grade Teacher arose on 02.08.2013.

2. In order to fill-up the vacancy in the post of Secondary Grade Teacher that arose due to the promotion of the then incumbent on 02.06.2012, the school submitted representation to the respondent Department on 19.02.2014 seeking permission for filling up the vacancy. The school appeared to have also submitted a reminder. However, there was no response from the respondent Department. The non-filling up of the vacancy was causing severe dislocation, affecting the academic well-being of the students, studying in the school.

3. In the meanwhile, the petitioner school had come to know that there were orders passed by this Court in a number of matters that in terms of the scheme of the Private Schools Regulation Act, there was no requirement to obtain any prior approval for filling-up vacancies relating to the sanctioned posts. In the said circumstances, considering the urgency in filling-up the teaching post in the interest of the students undergoing education, the petitioner school conducted selection through open advertisement. One Tmt.G.Karpagavalli was eventually selected and appointed as Secondary Grade Teacher in the petitioner school on 16.06.2015. The appointment of the said Tmt.G.Karpagavalli was against the sanctioned post of Secondary Grade Teacher and she was also fully qualified to hold the post in terms of the rules.

4. After the appointment of the said Tmt.G.Karpagavalli, the petitioner school forwarded a proposal to the respondents for approval of her appointment with effect from 16.06.2015 by enclosing the order of appointment and the decision taken by the appointing committee as well as the staff fixation order and



5. While matter stood thus, it also transpired that prior to the appointment of the said Tmt.Karpagavalli, earlier, representations were submitted to the respondents seeking permission, and those representations were kept pending by the third respondent for more than two years. On 23.02.2016, the third respondent issued communication stating that there were surplus teachers working in different Government aided schools in the Thanjavur educational district and in such factual scenario, prior approval cannot be granted to the petitioner school to fill-up the post of Secondary Grade Teacher. The proceedings of the third respondent dated 23.02.2016 referring to the proceedings of the second respondent dated 11/2015 was in response to the proposal of the school seeking permission pending consideration. However, the vacancy itself was filled up by the petitioner school on 16.06.2015, ultimately, even before the rejection by the authority concerned.

7. Mr.G.Sankaran, learned counsel for the petitioner would submit that in terms of the scheme of the Tamil Nadu Recognized Private Schools Regulation Act and the Rules framed thereunder, there was no statutory requirement to obtain prior approval before filling up the post of teaching staff against the sanctioned vacancy. In this case, the appointment of Tmt.G.Karpagavalli was done in terms of regulations and the selection was done by following the procedure contemplated under the regulations. The School Committee was vested with the competency to make appointment of teachers and Tmt.G.Karpagavalli was appointed by the committee so constituted. Therefore, there was nothing illegal that could be attached to the appointment, for the authorities to deny approval to her appointment.

<https://hcservices.ecourts.gov.in/hcservices/>



06.01.2010, no prior permission was required from the Department to fill up the sanctioned vacant post. The decision was also followed by this Court in W.P.(MD) No.3772 of 2008 dated 25.07.2011 holding that as per Rule 15 of the Tamil Nadu Private School Regulation Rules, for appointment to the sanctioned post no prior approval is necessary nor it could be a ground to deny approval of appointment of a qualified person. Following the dictum, a number of decisions have been rendered on the subject-matter expressing similar views by this Court.

9. The learned counsel would also refer to a recent decision of this Court pronounced on 0230.03.2022 in W.P.No.17768 of 2020. This Court, in similar circumstances, considered the claim of the petitioner therein and allowed the writ petition by overruling the objections of the Department viz., prior approval was necessary for appointment of a teacher against a sanctioned post. This Court has also dealt with the surplusage issue in the said decision. The learned counsel would therefore submit that a direction may be issued to the respondent authorities to grant approval to the appointment of Tmt.G.Karpagavalli from the date of her appointment with all attendant benefits.

10. On behalf of the respondents, Mr.L.S.M.Hasan Fizal, Additional Government Pleader, entered appearance and a detailed counter-affidavit has been filed. In the counter-affidavit, it has been averred by the third respondent that there were surplus teachers in the Thanjavur educational district and while the Department was considering redeployment of service teachers to the petitioner school, the school has filled up the post without obtaining prior permission. However, in the counter-affidavit, it is admitted that the post of Secondary Grade Teacher was vacant with effect from 02.06.2012. It was also admitted that there was another vacancy available from 02.08.2013 in the same post of Secondary Grade Teacher. The only point of opposition to the relief claimed by the petitioner herein is that in terms of G.O.Ms.No.46, School Education Department dated 14.05.2015 and G.O.Ms.No.231 School Education dated 11.08.2010, permission was not granted since such posts were to be filled up only by way of redeployment of surplus teachers available in the district.

11. The learned Additional Government Pleader reiterated the above facts and also submitted that in view of the surplus teachers available in the Thanjavur educational district, the question of going for recruitment from the open market did not arise and the petitioner's school ought to have accommodated the surplus teachers available already in the district, in terms of the Government orders.

12. In fact, similar objections were raised, considered and



discountenanced by this Court, as contended by the learned counsel for the petitioner. For filling up the sanctioned vacancy, there was no prior approval required at all. Further, the crucial consideration of the authority was the date of vacancy which arose in a particular year and not dependent on the subsequent development viz., reduction of strength of the students or surplusage in the district concerned. In this regard, it is relevant to refer to the decision cited by the learned counsel for the petitioner as an answer to the objections raised herein on behalf of the respondents.

13. This Court, very recently in the case of J.Kanchana vs. Director of Elementary Education, Chennai and others, (W.P.No.17768 of 2020, dated 0230.03.2022) held as under:

It is useful to refer to the entire judgment from the paragraphs 2 to 12.

"2. The case of the petitioner is as follows:

(i) The petitioner was selected and appointed to the post of Secondary Grade Teacher in the fourth respondent School vide order dated 21.04.2017. The fourth respondent School is a Government Aided School, governed by the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act 1973 and the rules made thereunder. The petitioner joined the said post on the same day i.e., on 21.04.2017 and has been continuously working as such till the date of filing of the present writ petition.

(ii) According to the petitioner she was appointed in the regular sanctioned post of Secondary Grade Teacher by the fourth respondent School and the vacancy against which she was accommodated, arose due to the resignation of the then incumbent one Tmt.S.Tamilarasi on 01.04.2017. From the date of her appointment, she has been signing the Master Attendance Register, duly endorsed by the second and third respondents during their visit. The petitioner also claims to have been appointed within the sanctioned strength in terms of the staff fixation order for the year 2015-16, 2016-17.

(iii) After the appointment of the petitioner, a proposal was forwarded to the third respondent by the fourth respondent School, for grant of approval of appointment of the petitioner. As no orders were passed on the proposal, the petitioner was therefore constrained to file W.P.No.1813 of 2018, seeking direction to the educational authorities to pass orders on the proposal forwarded by the fourth respondent School for approval of her appointment. In the said writ petition, counter affidavit had been filed stating that there was no proposal submitted by



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the fourth respondent School and therefore, the question of consideration of the proposal did not arise at all. In view of the fact that her appointment has not been approved, the petitioner has been made to work without payment of salary ever since her date of appointment and till date.

(iv) In the above circumstances, the petitioner was once again constrained to approach this Court in W.P.No.1356 of 2019, to direct the fourth respondent School to forward proposal to the educational authorities for approval of her appointment with further direction to direct the educational authorities to pass appropriate orders for approval of her appointment from the date of her initial appointment. Notice was ordered in the said writ petition. There was no response on behalf of the fourth respondent School. Therefore, the writ petition was disposed of on 12.03.2020, directing the educational authorities to call for the proposal from the fourth respondent School and thereafter, orders to be passed on the proposal.

(v) Thereafter, the second respondent who is the competent authority, on consideration of the proposal, rejected the same vide proceedings dated 23.09.2020, stating two reasons. First, no prior permission was obtained by the School before appointing the petitioner against the post of Secondary Grade Teacher and the other is that the student strength having witnessed reduction in the subsequent academic year 2017-18, the petitioner had been accommodated in the surplus post. Challenging the order of rejection of the proposal, the petitioner is before this Court.

3. Mr.G.Sankaran, learned counsel for the petitioner would submit that both reasons stated in the impugned communication dated 23.09.2020, cannot be countenanced in law and on facts. For filling up of the vacancy against the sanctioned post, no prior permission was required at all. Further, it is an admitted case that on the day when the petitioner was appointed during the relevant academic year i.e., 2016-17, there was sufficient student strength and the petitioner was, as a matter of fact accommodated only against the sanctioned vacancy. According to the learned counsel, merely because in the subsequent year, the student strength had come down, the petitioner cannot stated to be accommodated in the surplus post. According to him, this aspect has been considered and clarified by this Court in numerous decisions.

4. The learned counsel would therefore draw the



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attention of this Court to the decision passed in W.P.No.4310 of 2003, dated 09.07.2010. He would particularly place reliance on paragraph Nos.8, 9 and 10, which are extracted hereunder:

"8. Further as noted above, when the post was sanctioned, there was sufficient student strength in the school and even according to the department, when the staff fixation was done, after four years in 2002 it is stated that one post has become surplus. The petitioner having been appointed in the fourth post and the school having had sufficient strength on the relevant date, the reason assigned by the department for refusal to approve the petitioner-s appointment stating that 2002, the number of post got reduced cannot be countenanced and deserves to be rejected. That apart the Hon-ble Division Bench in G.Sahadevan Nair V. Government of Tamil Nadu reported in (2008) 4 MLJ 289, while disposing of batch of cases including the two writ petitions filed by the fifth respondent management in W.P.Nos.415 & 436/1998 issued the following directions:

29. For the aforesaid reasons, we allow the various writ petitions by giving the following directions:

(i) The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.

(ii) If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.



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(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher-pupil ratio applicable during any particular period.

(vi) If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal."

9. In an identical circumstances a writ petition came for consideration before the Madurai Bench of this Court in W.P.No.3206/2007 and this Court by order dated 13.12.2007, considering the facts as well as the law laid down allowed the writ petition by following above referred decisions and directed the approval of the appointment of the petitioner therein making it clear if the post in which, she was found working is found surplus, it is open to the department to deploy, the petitioner therein to a needy school in accordance with G.O.Ms.No.525 dated 29.12.1997 and the arrears of salary was directed to be disbursed. Against the said order, the Department filed W.A.(MD). No.617/2008 before the Honble Division Bench of the Madurai Bench and the Honble Division Bench by Judgment dated 25.09.2008, dismissed the writ appeal and held that the issue raised is already covered by the Judgments reported in The State of Tamilnadu and Ors Vs. Pallivasal Primary School 2004 (2) LW 591 and M.Sundersingh Vs. Government of Tamil Nadu and others (2006) 2 M.L.J. 784.



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10. Therefore, for all the above reasons, the petitioner is entitled to succeed and accordingly, the writ petition is allowed as prayed for and the respondents are directed to approve the petitioner's appointment and pay the arrears of salary within a period of eight weeks from the date of receipt a copy of this order. No costs."

5. The learned counsel would refer to another decision reported in (2012) 4 MLJ 198, in the case of S.Rasheetha Banu Vs. State of Tamil Nadu and others. He would particularly draw reference to paragraph No.7 of the decision which is extracted hereunder:

"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 01.02.2011, dismissed the said Writ Appeal.?"

6. Lastly, the learned counsel would refer to a recent decision of this Court rendered in W.P (MD). No.20770 of 2016, dated 01.10.2021. This Court's attention has been drawn to paragraph No.21, which is extracted hereunder:

"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



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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 i.e., 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.?

7. The learned counsel would submit that in view of the consistent ruling of this Court, the grant of approval must relate back to the date of appointment, it is not open to the authorities to take into consideration the subsequent development while considering grant of approval of the teacher concerned. He would therefore submit that the present case is fully covered by the ratio laid down in the above decisions of this Court.

8. Mr.Abishek Murthy, learned Government Advocate appeared on behalf of the respondents. On behalf of the official respondents, counter affidavit has been filed. In the counter, it is stated that the petitioner was appointed on the last day of the academic year 2016-17, by flouting the norms and the rules. In the subsequent academic year i.e., 2017-18,



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due to the fall in the strength of the students, some posts became surplus in the category of Secondary Grade Teacher, eventually resulting in accommodating the petitioner in the surplus post.

9. The learned Government Advocate despite the above pleading in the Courts, fairly submitted that as far as the academic year 2016-17 was concerned, there was a sanctioned vacancy against which the petitioner was accommodated. However, immediately thereafter in the subsequent year, due to the reduction in the strength of the students, the post became surplus. The learned counsel would also have no quarrel with the consistent rulings of this Court in the above referred decisions.

10. In the light of the above factual narrative and also the decisions as extracted supra, this Court is of the considered view that the petitioner herein has made out a case for grant of relief. The Courts have consistently held that the approval of the educational authorities must relate back to the date of appointment, but, it cannot depend on the contingencies and developments that might happen subsequent to the appointment of the teacher concerned. In this case, the petitioner was appointed on 21.04.2017, well within the sanctioned strength in respect of the academic year 2016-17. In the said circumstances, the authorities cannot deny the grant of approval to the petitioner by taking into consideration the subsequent fact of reduction of students- strength in the following academic year in the fourth respondent School. Such view taken by the authorities is opposed to the consistent rulings of this Court over the years as reflected in the above referred decisions.

11. The Courts have held that once a staff is accommodated in the sanctioned vacancy, an approval has to be mandatorily accorded and in case of any subsequent reduction of the strength of the students, resulting in surplusage, it is always open to the authorities to redeploy the staff elsewhere. However, it is not open to the authority to deny approval on that account in respect of the appointees who had been accommodated in the sanctioned strength at the time of their original appointment. The decisions relied on by the learned counsel for the petitioner would clinch the case in favour of the petitioner on all fours.

12. For the above said reasons, this writ petition stands allowed and the impugned order in Na.Ka.No.1932/A4/2020 dated 23.09.2020, of the second respondent, is hereby set aside. Consequently, the



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second respondent is directed to grant approval of the appointment of the petitioner in the post of Secondary Grade Teacher in the fourth respondent School from the date of her initial appointment i.e., 21.04.2017, if her appointment was otherwise in order."

14. The above decision of this Court rendered very recently would demonstrate that the Courts have been consistently holding such views for several years now, but despite the same, the authorities have been rejecting the proposals or not taking any action seeking approval by adopting the very same stand which had been discountenanced by the Courts time and again. The intransigent stand of the respondent Department in the teeth of the numerous decisions holding in favour of the schools viz., no prior approval was required for filling up the sanctioned post and the crucial consideration of the Department must relate to the date of vacancy while applying the principle of surplusage, is per se illegal, arbitrary and cannot stand the test of judicial scrutiny.

15. For the above stated reasons, the writ petition is allowed and there shall be a direction to the respondents to grant approval to the appointment of Tmt.G.Karpagavalli from the date of her initial appointment on 16.06.2015 with all consequential and attendant benefits, including payment of arrears of admissible salary.

16. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

17. The writ petition is allowed. There will be no order as to costs. Consequently, W.M.P.No.2190 of 2020 is closed.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To

- 1 The Principal Secretary to Government
School Education Department
Secretariat, Fort St.George
Chennai-600 009.



2 The Director of Elementary Education
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Thanjavur District

4 The Assistant Elementary Educational officer
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Thanjavur District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.215501

+1cc to the Government Pleader, S.R.No.21794

W.P. No.10265 of 2016

SU(CO)
SB(06/04/2022)