



W.P.No.1207 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.1207 of 2019

and

W.M.P.No.1364 of 2019

T.Pavithra

...Petitioner

-Vs-

- 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 Chief Educational Officer,
Nagapattinam District,
Nagapattinam.
- 4.The District Educational Officer,
Mayiladuthurai – 609 001.
Nagapattinam District.
- 5.The Block Educational Officer,
Thirumarugal Block,



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Nagapattinam District.
6.The Secretary,
Sakthi Aided Primary School,
Panangattur, Thittaseri Via,
Nagapattinam District – 609 703.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 4th respondent in O.Mu.No.3007/Aa2/2018 dated 24.09.2018 (signed on 10.11.2018) and the subsequent impugned proceedings issued by the 4th respondent in O.Mu.No.1933/Aa2/2018 dated 09.2018 (signed on 10.11.2018) and to quash the same and consequently directing the respondents 1 to 5 to approve the appointment of the petitioner in the post of Secondary Grade Teacher in 6th respondent school from the date of appointment on 15.12.2017 with payment of salary with all consequential and other attendant benefits within a time frame.

For Petitioner	: Mr.S.Nedunchezhiyan
For R1 to R5	: Mr.M.Shahjahan Special Government Pleader
For R6	: No Appearance



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ORDER

Heard Mr.S.Nedunchezhiyan, learned counsel for the petitioner and Mr.M.Shahjahan, learned Special Government Pleader for the respondents 1 to 5. There is no representation on behalf of the sixth respondent.

2. The sixth respondent is a non-minority aided school with only two teachers. On 31.05.2014, a sanctioned vacancy arose for the post of Secondary Grade Teacher owing to the retirement of a Teacher, namely J.Kulandaivelu. The school management, through their letter dated 09.12.2016, had sought for permission to fill up the said post, which was forwarded to the District Elementary Educational Officer on 18.12.2016. However, since their request was kept pending for quite sometime, the petitioner herein was appointed as a Secondary Grade Teacher on 15.12.2017. Th petitioner has also qualified in the Teachers Eligibility Test in April, 2017. On 23.07.2018, the school management had forwarded a proposal to the fourth respondent herein seeking for approval of appointment of the petitioner. However, in the impugned order dated 10.11.2018, the fourth respondent had rejected the school's application



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seeking for approval of the petitioner's appointment, predominantly on the ground that there were surplus Teachers in the school for the year 2017-2018.

Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the reason adopted by the respondents for rejecting the school's application seeking for approval of the petitioner's appointment cannot be sustained, since the existence of surplus Teachers in the school cannot be a ground for rejection. In support of his claim, he had placed reliance on a decision of this Court in the case of *V.Mahalakshmi Vs. The Director of Elementary Education and others passed in W.P.No.2503 of 2020, dated 16.07.2021*.

4. On the other hand, the learned Special Government Pleader placed reliance on the counter affidavit filed by them and submitted that since the sixth respondent school had surplus Teachers for the year 2017-2018, the approval of appointment of the petitioner came to be rightly rejected and therefore, no interference is required to the impugned order.



5. The reason for rejection, on account of the existence of surplus

Teachers for the year 2017-2018, cannot be sustained for two reasons. Firstly, the vacancy for the sanctioned post of Secondary Grade Teacher arose on 31.05.2014, for which permission to fill up the post was sought for on 09.12.2016, which is during the academic year 2015-2016. The staff fixation during the year 2015-2016 did not reflect any surplus staff. The respondents ought to have considered the school management's application seeking for permission to fill up the sanctioned post during the year 2015-2016 itself when there were no surplus staff. However, they had chosen to wait till the academic year 2018-2019 and through the impugned order dated 10.11.2018, they have referred to the staff fixation made for the year 2017-2018 and had come to the conclusion that there is surplus staff. This reasoning cannot be sustained, since the belated consideration of the application seeking for approval of the petitioner's appointment cannot be put against the petitioner or the school. Secondly, when there is in existence of surplus staff in an aided school, the proper recourse available to the educational authorities is only to approve the appointment of a Teacher in the sanctioned post and thereafter re-deploy the said Teacher to some other needy schools.



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6. Furthermore, rejection on the ground that there are surplus Teachers in an aided school cannot be sustained, in view of catena of judgements of this Court. In the case of *V.Mahalakshmi (supra)*, which was relied upon by the learned counsel for the petitioner, this view was taken in the following manner:-

"8. A combined reading of Rule 26 of the Act, with the decisions of this Court, particularly in the case of S.Rasheetha (supra) as extracted above, lays down the proposition that, even in cases when there is a fall in the students strength and the post of Secondary Grade Teachers are rendered as surplus, the authorities are bound to grant approval for the appointments made to such teachers, who are absorbed in the approved vacancies and thereafter, either transfer them or re-deploy them to other needy schools. The official respondents have deviated from this legal proposition in the impugned order by rejecting the request for approval of appointment of the petitioner as Secondary Grade Teacher. As such, the impugned rejection order cannot be sustained."

This decision in *V.Mahalakshmi'* case also has been confirmed by the Hon'ble



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Division Bench of this Court in W.A.No.2907 of 2021, dated 29.04.2022.

Thus, the reasoning adopted by the respondents in the impugned orders cannot be sustained.

7. In the light of the above findings, the impugned orders passed by the fourth respondent in O.Mu.No.3007/Aa2/2018, dated 10.11.2018 and O.Mu.No.1933/Aa2/2018, dated 10.11.2018, are quashed. Consequently, there shall be a direction to the fourth respondent herein to forthwith pass orders, approving the appointment of the petitioner in the sanctioned post of Secondary Grade Teacher, with effect from 15.12.2017, which is the date on which she was appointed. Such orders of approval shall be passed within a period of four weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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To
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School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Director of Elementary Education,
DPI Campus, College Road,
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- 3.The Chief Educational Officer,
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M.S.RAMESH,J.

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