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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2022
Pronounced on : 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.2907 of 2021
and
C.M.P.No.19643 of 2021

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.
2. The Chief Educational Officer,
Villupuram District,
Villupuram.
3. The District Educational Officer,
Kallakurichi,
Villupuram District.
4. The Block Educational Officer,
Chinnasalem, Villupuram District.

...Appellants/Respondents
1 to 4 in WP.No.2503 of 2020
Vs.

1. V.Mahalakshmi
2. The Secretary,
Azath Middle School,
Mettupalayam, Chinnasalem Union,
Chinnasalem Taluk, Villupuram District.

... Respondents/Petitioner &
5th Respondent in WP.No.2503 of 2020

Prayer:Writ appeal is filed under Clause 15 of the Letter Patents Act praying to set aside the order of this Court in W.P.No.2503 of 2020 dated 16.07.2021.

Prayer in WP.No.2503 of 2020:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the



1st respondent in Na.Ka.No.020973/H2/2019 dated 03.01.2020 and quash the same and consequently directing the respondents 1 to 4 approve the appointment of petitioner in the post of Secondary Grade Teacher in 5th respondent school from the date of appointment on 17.10.2018 will all consequential and other attendant benefits within a time frame.

For Appellant : M/s.Mythreya Chandru
Special Govt. Pleader

For Respondent 1 : Mr.G.Sankaran

For Respondent 2 : No appearance

JUDGMENT

S.VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.

This intra court appeal has been filed against the order of the learned Single Judge in W.P.No.2503 of 2020 dated 16.07.2021 on the premise that the direction to the appellants to grant approval of the appointment of the 1st Respondent is unjustified and contrary to the directions of this Court in the batch of matters in W.A.(MD) Nos.76, 225, 341 of 2019 etc.,

2. Brief facts:

i) The 1st Respondent was appointed as Secondary Grade Teacher in the 2nd Respondent / Aided Minority School (hereinafter referred to as "2nd Respondent/ School) on 17.10.2018, in view of the vacancy that arose due to the retirement of Tmt.C.Poongodi on 31.05.2018. Admittedly, the post to which the 1st Respondent was appointed was a regular sanctioned post. The 1st Respondent was qualified for the post of Secondary Grade Teacher.

ii) The 2nd Respondent/ School sought the approval of the appointment of the 1st Respondent as Secondary Grade Teacher, however, the 3rd appellant viz., District Educational Officer, Villupuram District vide order dated 17.05.2019 rejected the approval on the ground that the said post has been rendered surplus in view of the reduction in the strength of the students and thus taking into account the student-teacher ratio, the post having become surplus cannot be approved.

iii) Aggrieved by the same, the 1st Respondent had filed a writ petition before this Court in W.P.No.12004 of 2019 seeking approval of her appointment. This Court vide order dated 03.09.2019 without expressing any opinion on merits was pleased



to direct the 1st respondent to dispose the proposal of the School Management forwarded by the 3rd respondent.

Pursuant thereto, the 1st Respondent herein vide order dated 03.01.2020 by placing reliance on the opinion of the Government Pleader and the Children Right to Free and Compulsory Education Act-2009 in particular Sections 19 and 25 rejected the approval stating that there was no scope of approval of the Secondary Grade Teacher in view of the provisions of the aforesaid Act and taking into account the strength of students in the 2nd Respondent / School the eligible post was only five (5) Secondary Grade Teachers and one (1) Head Master. Thus, there was no scope for an additional Secondary Grade Teacher. Consequently, the request for approval of the appointment of the 1st Respondent was rejected.

3. Order of the learned Single Judge:

Against the said rejection for approval, the 1st Respondent filed the writ petition on the premise that the rejection of approval was contrary to the decision of the Division Bench of this Court in W.A.No.1263 of 2001 dated 22.01.2004 and the order in W.A.(MD).Nos.703 of 2009 dated 01.02.2011 and also contrary to Section 26 of the Tamil Nadu Recognised School Regulation Act. The learned Single Judge was pleased to quash the impugned order dated 03.01.2020.

The learned Single Judge on considering the orders of the Division Bench of this Court as well as Section 26 of the Tamil Nadu Recognised School Regulation Act, directed the Respondents 1 to 4 in the writ petition to grant approval of appointment to the 1st Respondent and further stated that if the authorities were of the view that there were surplus teacher posts in the 2nd Respondent/School, they shall re-deploy the 1st Respondent to such needy schools, where her services may be required.

4. Aggrieved by the order of the learned Single Judge, the Respondents 1 to 4 in the writ petition have preferred this appeal primarily on the premise that the direction of the learned Single Judge is contrary to the direction of the Division Bench of the Madurai Bench of this Court in W.A.No.76 of 2019 and etc., batch case, dated 31.03.2021.

5. The question as to whether appointment of the teacher to a sanctioned post can be denied approval on the basis that there is a reduction in the strength of the students, had arisen for consideration before the Division Bench of this Court in W.A.No.1263 of 2001 dated 22.01.2004 wherein it was held as under:

"6. The issue to be decided in this Writ Petition



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is as to whether the petitioner was appointed in a sanctioned post. Admittedly, on 01.04.1998, the post of Secondary Grade Teacher became vacant and the petitioner was appointed in the sanctioned post. The only objection raised is that the fifth respondent school was not declared as a Minority Institution. On a perusal of the records, it is seen that the Civil Suit filed by the fifth respondent school was dismissed and the Judgment and Decree passed by the Lower Court was reversed in the appeal filed by the fifth respondent school, which was confirmed in the said Second Appeal filed by the department. The Government also sanctioned arrears of salary payable to the petitioner. The fall in strength of the students took place in the year 2003-2004, which cannot be a ground to reject the approval of appointment of the petitioner from 01.04.1998.

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."

In this regard, it may be relevant to refer to Section 26 of the Tamil Nadu Recognised School Regulation Act, which reads as under:

"26. Absorption of Teachers or other persons on retrenchment - Where any retrenchment of any Teacher or other person employed in any private school is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, [or consequent on the reduction in strength of the pupils studying in any such private school] it shall be competent for the Government or the School Committee of any private school to appoint such Teacher or other person in any school or institution maintained by the Government or in such private school, as the case may be."

It appears to us that once the appointment is made to a



sanctioned post, and there is a reduction in the student's strength in a private school, the course that appears to be open is not to refuse approval but to appoint such teacher or other person in any School or Institution maintained by the Government or such private school, as the case may be.

The reliance on the directions of this Court in W.A.(MD). No.76, 225, 341 of 2019 and others, appears to be wholly misconceived. This Court was pleased to issue a set of guidelines, which reads as under:

"6. While protecting the interest of aided institutions viz., both non-minority and minority, in order to protect the interest of the State Exchequer and Public Exchequer, this Court would like to issue the following directions:

(i) Since there is a likelihood of boosting the students strength of the Aided Schools for the purpose of getting more teachers, the Government is directed to implement the bio-metric attendance of the students studying in the Aided schools as well as the teachers employed in Aided Schools;

(ii) There shall not be any fresh appointment from today in Private Aided Schools, till surplus teachers in other schools coming under the same Management are exhausted;

(iii) The Government shall not approve any appointment made by the Private Aided Schools, till the surplus teachers in the schools coming under the same Management are exhausted;

(iv) Insofar as the matters in which the issues have been decided finally either by the learned Single Judge or the Division Bench, the appellants are not at liberty to reopen the issue;

(v) There is no prohibition for approval of teachers, where concerned teachers or management obtained orders from this Court which reached finality for grant of approval;

(vi) In case, an appeal or review has been preferred as on date, it is open to the appellants to contest the cases on merits;

(vii) Wherever, there is no dispute with regard to existence of surplus teachers, it is open to the



appellants to deploy those teachers, wherever, it is required viz., in other aided schools.

(viii) In cases, where the minority school is a Single School and there is no question of getting surplus teachers from other schools in the same Management, it is open to the school authorities to approach the Educational Authority well in advance, so that, the Educational Authority will be able to deploy the eligible teachers. Such deployment of eligible teachers from any other school should satisfy the eligibility criteria as prescribed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973."

A reading of the above guidelines would indicate that there is no departure from the earlier decisions in W.A.No.1263 of 2001 nor has Rule 26 been examined muchless being explained as enabling refusal of approval in the event of reduction in the students strength. To the contrary, it appears to suggest that the guidelines were meant to remedy the mischief of boosting the students strength of Aided Schools for the purpose of getting more teachers and consequentially enhanced aid.

It was in that context, a slew of guidelines were issued and importantly, a reading of the above set of guidelines issued by this Court does not appear to suggest that it provides for refusal to approve an appointment made to a sanctioned post. To the contrary, Clause 2 and 3 of the aforesaid guidelines appears to indicate that there was a restriction on fresh appointments till surplus teachers in other schools coming under the same Management are exhausted. It further records that there is no dispute that surplus teachers can be deployed in other aided schools, there is no suggestion even remotely about refusal of approval of a sanctioned post.

6. In view of the same, we concur with the reasoning of the learned Single Judge and we see no reason to interfere with the order of the learned Single Judge and the writ appeal stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.
2. The Chief Educational Officer,
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Villupuram.
3. The District Educational Officer,
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4. The Block Development Officer,
Chinnasalem,
Villupuram District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.30789

+1cc to the Government Pleader, S.R.No.30980

W.A. No.2907 of 2021
and
C.M.P. No.19643 of 2021

VBM(CO)
SU(10/05/2022)