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W.P. No.28352 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.28352 of 2021

Dhaveethu

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. By its Secretary,
Education Department,
Fort George, Chennai – 600 009.
- 2.The District Elementary Educational Officer,
Cuddalore District, Cuddalore.
- 3.The Block Educational Officer,
Panruti, Cuddalore District.
- 4.The Central Manager and Chairman
D.M. Elementary and Higher Elementary Schools,
ALC Central Office 9,
ALC Campus, Cuddalore – 607 001.
- 5.The Correspondent
D.M. Elementary and Higher Elementary Schools,
Panruti, Cuddalore – 607 106.
- 6.The Headmaster,
D.M. Elementary and Higher Elementary Schools,
Panruti, Cuddalore District – 607 106.

... Respondents



W.P. No.28352 of 2021

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus directing the 2nd respondent to grant approval of the appointment of the petitioner as Secondary Grade Teacher in the 6th respondent School as requested by the 4th respondent Management in the light of the order passed by this Court in W.P.No.20047 of 2021 dated 21.09.2021.

For Petitioner : Mr.K.Thilageswaran

For Respondents : Mr.S.P.Karthick
Government Advocate (for R1 to R3)

: Notice not ready (for R4)

: No appearance (for R5 & R6)

ORDER

The prayer sought for herein is for a writ of mandamus directing the 2nd respondent to grant approval of the appointment of the petitioner as Secondary Grade Teacher in the 6th respondent School as requested by the 4th respondent Management in the light of the order passed by this Court in W.P.No.20047 of 2021 dated 21.09.2021.

2. The 5th respondent School is a recognised School and also aided by the State Government by way of teaching grant, it is a Primary School and also a stand alone School, where, according to the petitioner, the School was having the strength of one Headmaster and four Secondary Grade Teachers, out of these four Secondary Grade Teachers, one



W.P. No.28352 of 2021

Secondary Grade Teacher post has become vacant as the erstwhile incumbent one D.Prema Bai retired on 01.06.2016. Therefore, the vacancy caused from 01.06.2016 has to be filled up by another suitable candidate.

3. However, the 5th respondent Management having selected the petitioner and appointed in the said vacancy of Secondary Grade Teacher post in the 5th respondent School only on 19.01.2019.

4. As per 30.01.2019 attendance record as recorded in Educational Management Information System, in 1st standard 17 students, 2nd standard 23 students, 3rd standard 22 students, 4th standard 25 students and 5th standard 22 students totally 109 students were attending classes.

5. With regard to this pupils strength the 5th respondent School appointed the petitioner in the one Secondary Grade Teacher vacancy on 19.01.2019 and in the said proposal sent for approval by the School to the official respondents, however the same was rejected by order dated 04.05.2021 by the 2nd respondent. The reasons adduced by the 2nd respondent in rejecting the said proposal sent by the School was that,



W.P. No.28352 of 2021

since there are excess Teachers in the School based on the pupils strength, therefore the one more appointment made in 2019, by which the petitioner was appointed, cannot be approved and for the said reason the proposal has been returned/rejected. As against the said order of rejection, the petitioner in fact filed a writ petition in W.P.No.20047 of 2021 and the said writ petition was allowed by an order of this Court by a learned Judge dated 21.09.2021 where the following orders have been passed:

“The Impugned Order has been passed by placing the reliance on the Government Order in G.O.Ms.No.165, School Education [Primary Education (2)(1)] Department, dated 17.09.2019. The aforesaid Government Order was passed in a vogue. An interim order was passed by the Hon'ble Madurai Bench of Madras High Court.

2. However, in W.A.(MD).No.76 of 2019 etc., batch the Hon'ble Division Bench of the Madurai Bench of Madras High Court by its order dated 31.03.2021 has held that G.O.Ms.No.165, School Education [Primary Education (2)(1)] Department, dated 17.09.2019 is in operable. Considering the same, the impugned order cannot be sustained.

3.This writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.”



W.P. No.28352 of 2021

6. Subsequent to the said order passed by the Writ Court, the 5th respondent School once again forwarded the proposal to the official respondents for approval of the appointment of the petitioner as Secondary Grade Teacher and that proposal sent on 12.10.2021 is still pending with the official respondents. As no orders have been passed approving the appointment of the petitioner, the petitioner has approached this Court by filing the present writ petition with the aforestated prayer.

7. Heard Mr.K.Thilageswaran, learned counsel appearing for the petitioner who would submit that, constantly the pupils strength of the 5th respondent School was above 100 and for the relevant period i.e. in the year 2019, the student strength was 109 and therefore, based on which the four Secondary Grade Teacher Post should be filled up as the one Teacher post has become vacant as stated supra, where, the petitioner since was selected and appointed by the 5th respondent School, the reasons cited by the respondents in rejecting the proposal sent by the respondent at the earlier occasion since also was quashed or set aside and the re-submitted proposal of the appointment of the petitioner should be considered and approval should be given. As there has been no orders



W.P. No.28352 of 2021

passed by the official respondents especially the 2nd respondent, the petitioner has been made to come before this Court by filing the present writ petition, hence the learned counsel seeks issuance of a writ of mandamus by way of direction.

8. However, Mr.S.P.Karthick, learned Government Advocate appearing for the respondents 1 to 3 has relied upon the following averment made in the counter affidavit:

“6.This respondent denies the further allegations levelled in the ground as false frivolous and unsustainable in law or on facts. This respondent submits that the petitioner was appointed in a surplus post kept vacant since 01.06.2017. Further there are already two teachers working in, excess. On the whole only 67 pupils are studying in the school. As per G.O.Ms.No.231 SE dated 11.08.2010 for an enrollment between 61 & 90, only 3 teachers are eligible, whereas 5 teachers were in position excluding the petitioner. The 4th respondent had made this appointment without following the norms prescribed regarding teacher pupil ratio. Further he had filled the surplus post which was held vacant from 01.06.2017 and remain unfilled as it was excess. Therefore the appointment of the petitioner deserves rejection on the following



W.P. No.28352 of 2021

grounds:

a) The present enrollment of the school is just 67. For which as per GO.Ms.No.231 SE dated 11.08.2010, only 3 teachers are eligible But 5 teachers are already working.

b) In the School, there are already 2 excess teachers working and are facing retrenchment.

c) In W.A.(MD)No.76 of 2019 etc., batch the Hon'ble Division Bench of the Madurai Bench of Madras High Court by its order dated 31.03.2021 has held that vacancies shall not be filled up unless the excess staff identified shall be exhausted fully.”

9. The learned Government Advocate also relied upon a written instruction dated 05.09.2022 where the 3rd respondent has stated that, the student strength of the School concerned as on 19.01.2019 was only 67 students, therefore for that strength only 3 Teachers are permissible, therefore the petitioner since was appointed in the 5th vacancy or 4th vacancy such an appointment cannot be approved as per G.O.Ms.No.231 SE dated 11.08.2010.

10. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed



W.P. No.28352 of 2021

before this Court.

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11. Insofar as the earlier reason given by the respondents with regard to the excess Teachers, the issue has already been given a quietus by a decision of the Division Bench of this Court in W.A.(MD).No.76 of 2019 etc. batch dated 31.03.2021, where, the Government Order G.O.Ms.No.165 School Education Department dated 17.09.2019 has been declared to be inoperative. Following the said decision, the learned Judge set aside the order of rejection of the approval application sent by the School in the earlier occasion in the first round of litigation by order dated 21.09.2021 as indicated supra.

12. Subsequently when the application was re-submitted for getting approval by the School, the same should have been considered in the light of the law declared by this Court.

13. However, now a new reason has been brought in before this Court by the respondents by way of counter affidavit. The written instruction stating that, as per 2019 record, the student strength i.e. pupils strength of the School was totally only 67 students, whereas the petitioner has filed additional typed set of documents where the EMIS



W.P. No.28352 of 2021

statement i.e. Educational Management Information System i.e.,

attendance system of the total students strength should have been given in the said system for all purposes including for getting the teaching guide etc. discloses that, the students strength was 109 for the relevant point of time i.e. the relevant academic year and the class wise students list have also been annexed in the EMIS record dated 19.07.2019. Therefore during the relevant point of time i.e. 2019, the students strength was more than 100, hence the statistics given by the respondents cannot be accepted by this Court and moreover, from which source such a statistics was obtained by the 3rd respondent since also was not disclosed, it cannot be taken into account for denying the direction to the respondents to approve the appointment of the petitioner as the earlier stand taken by the respondents has already been set aside by this Court. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That there shall be a direction to the official respondents especially the 2nd respondent to pass necessary orders by considering the re-submitted proposal of the 5th respondent School with regard to the appointment of the petitioner as Secondary Grade Teacher with effect from



W.P. No.28352 of 2021

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01.09.2016 in one of the Secondary Grade Teacher post at the 5th respondent School and pass orders giving approval for such appointment with effect from the said date and also sanction the consequential service benefits like the salary etc. to the petitioner. The needful as indicated above shall be undertaken by the 2nd respondent within a period of eight weeks from the date of receipt of a copy of this order.

14. With this direction, this Writ Petition is ordered accordingly.

No costs.

08.09.2022

Index : Yes / No

Speaking Order : Yes / No

Sgl



W.P. No.28352 of 2021

To

WEB COPY

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Fort George, Chennai – 600 009.
2. The District Elementary Educational Officer,
Cuddalore District, Cuddalore.
3. The Block Educational Officer,
Panruti, Cuddalore District.



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W.P. No.28352 of 2021

R.SURESH KUMAR, J.

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W.P. No.28352 of 2021

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