



W.A. (MD) No. 604 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2022

PRONOUNCED ON: 15.07.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.A(MD).No.604 of 2022 and
CMP(MD).No.5111 of 2022

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

...Appellants/Respondents

Vs

The Secretary
Thiagaraja Colony Primary School
Pasumalai
Madurai 625 004

...Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 01.10.2021 in WP(MD).No.20770 of 2016.



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For Appellants : Mr.S.Shaji Bino
Special Government Pleader
For Respondent : Mr.P.Muthuvel
For M/s.Isaac Chamber

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J U D G M E N T

(Made by **R.VIJAYAKUMAR, J.**)

The respondents in the writ petition are the appellants herein.

2.The present Writ Appeal has been filed challenging an order passed by the learned Single Judge wherein the order passed by the respondents rejecting the appointment of one D.Tamilarasi, a Secondary Grade Teacher, on the ground that the post for which she has been appointed has already become a surplus post.

3.The writ petitioner School is an aided non-minority institution which was established in the year 1959. According to the writ petitioner, as per norms, the petitioner School was sanctioned with 1 Headmistress and 5 Secondary Grade Teachers for the academic year 2009-2010. One of the Secondary Grade Teachers post fell vacant on



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01.11.2005 due to the promotion of one Tmt.Subbulakshmi as Headmistress in the School. For filling up the said post, a proposal was submitted to the District Elementary Education Officer. The said authority has granted permission to fill up the said vacancy by his proceedings dated 09.02.2010. Thereafter, the School has made a paper publication inviting applications from the eligible candidates for the post of Secondary Grade Teacher under O.C.Category. The petitioner School has also sought for list of eligible candidates from the District Employment Office, Madurai for conducting a selection process.

4.On 24.03.2010, one D.Tamilarasi was found to be the most suitable candidate and she was appointed as Secondary Grade Teacher w.e.f.31.03.2010 and she joined duty on the same day. The petitioner School had submitted a proposal to District Elementary Educational Officer for approval of her appointment and disbursement of grant-in-aid.

5.The petitioner had contended that the District Elementary Educational Officer had fixed the staff strength for the academic year 2010-2011 vide proceedings



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dated 13.12.2010 wherein one post of Secondary Grade Teacher rendered as surplus. Immediately, the School had submitted an objection on 28.03.2011 to the Director of Elementary Education seeking to refix it as six teachers.

6.The petitioner had further contended that all the teachers were appointed in the sanctioned post after obtaining a prior permission from the Educational Authorities. The District Elementary Educational Officer had passed an order on 30.01.2015, fixing the staff strength of the School as four teachers for the academic year 2014-2015. Finally, the Director passed an order on 28.03.2011 rejecting the petitioner's request seeking approval for appointment of the said Tamilarasi on the ground that as per the available student strength, the School is only eligible to have only one Headmistress + 3 Secondary Grade Teachers and the appointment of D.Tamilarasi in the 5th place cannot be approved for want of post. The said order was challenged in the writ petition.



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7. Before the learned Single Judge, the learned Government Advocate had contended that though the appointment of Tamilarasi was made on 31.03.2010, the proposal for approval was sent by the School only on 21.06.2010 i.e., during the next academic year 2010-2011. The student strength had fallen down in the academic year 2010-2011 and hence, one of the Secondary Grade Teachers had been rendered as surplus and the request of the petitioner School for approval of the appointment of Tamilarasi could not be considered.

8. The learned Government Advocate had further contended that though permission was granted for filling up the post and appointment orders were made for the academic year 2009-2010, the request for approval was received only in the next academic year namely 2010-2011 in which the students strength had fallen down. Hence, the School will not be entitled to get approval for appointment of the said Tamilarasi.

9. The learned Single Judge after considering the submissions made on either side, referred to various



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judgments cited by the learned Senior Counsel appearing for the writ petitioner and arrived at a finding that 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 learned Single Judge had further held that the approval appointment is a procedure to be followed after the appointment and the approval makes the appointment valid with effect from the date of appointment. However, the learned Single Judge further held that the appointment has to be approved by the Educational Authorities whether she is rendered surplus for the subsequent academic year or not. The learned Single Judge has directed to disburse the grant-in-aid in favour of D.Tamilarasi with effect from the date of her appointment namely 31.03.2010 and other attendant monetary benefits. The said order is under challenge in the Writ Appeal.



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10. The learned Special Government Pleader appearing for the appellants/Educational Authorities had contended that though the said Tamilarasi was appointed on 31.03.2010 namely in the academic year 2009-2010, the approval sought for by the School was made only on 21.06.2010 namely in the next academic year 2010-2011. The learned Special Government Pleader had further contended that when a proposal to approve the appointment is received for the academic year 2010-2011, the same has to be considered only based upon the staff fixation for the academic year 2010-2011 and the same cannot be considered in the light of the previous academic year namely 2009-2010. He had further contended that though the School was eligible to have 5 Secondary Grade Teachers for the academic year 2009-2010, it got reduced to 4 in the next academic year namely 2010-2011. Hence, when the proposal for approval was considered by the Educational Authorities, one Secondary Grade Teacher has already been rendered surplus and hence, the appointment of D. Tamilarasi could not be approved in view of the legal impediment. Hence, he prayed for allowing the writ appeal.



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11. Per contra, the learned counsel for the respondent had contended that the School had appointed the said Tamilarasi only after obtaining prior permission from the District Elementary Educational Officer on 08.02.2010. Hence, the Educational Authorities cannot be heard to contend that the said appointment is in a surplus post. He had further contended that whether a particular post is surplus or not, has to be considered only based upon the date of appointment and not based upon the date on which a proposal is received by the authorities for approval. In case, if the appointment is considered to be a surplus for the next academic year, the authorities can very well redeploy the appointee, but they have no power to reject the approval which was made during the eligible academic year. Hence, he prayed for dismissal of the writ appeal.

12. We have considered the submissions made on the side of the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the respondent.



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13.As per the staff fixation order dated 20.01.2010 for the academic year 2009-2010, the petitioner School was eligible to have 5 Secondary Grade Teachers. The petitioner School has approached the District Elementary Educational Officer seeking permission for appointment of a Secondary Grade Teacher in the vacancy created by promotion of one Secondary Grade Teacher by name Tmt.K.Subbulakshmi. The Educational Authorities have granted permission for the same on 09.02.2010. A paper publication has been made for selection of the eligible candidates and thereafter, one D.Tamilarasi was appointed as a Secondary Grade Teacher on 31.03.2010. After verifying the original certificates, the School had sent a proposal for approval to the authorities on 21.06.2010. The said request for approval was rejected in the impugned order dated 11.08.2016 on the ground that the students strength had come down in the academic year 2010-2011. Pursuant to the lesser student strength for the academic year 2010-2011, the Secondary Grade Teacher posts were reduced from 5 to 4 resulting in rendering of one Secondary Grade Teacher post as surplus.



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14. The issue that arises for consideration is what is the crucial date for deciding the surplus post in a particular School for approval of any appointment. In the present case, admittedly, the appointment order has been issued on 31.03.2010 falling in the academic year 2009-2010. The proposal for approval has been sent by the School to the Educational Authorities on 21.06.2010 falling under the next academic year 2010-2011. As rightly held by the learned Single Judge, any approval for appointment relates back to the date of original appointment. Status of the appointee has to be considered only on the date of appointment and not on the date on which the approval is being sought for. That apart, the crucial cut off date for fixing the students strength and to decide the surplus teacher is the month of August of every year. In the present case, the approval for appointment of Tamilarasi has reached the Educational Authorities on 21.06.2010 much before August 2010. That apart, the staff fixation order for the academic year 2010-2011 has been passed only on 13.12.2010 i.e. 6 months after proposal was received by the Educational



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Authorities. Therefore, it is clear that the authorities have kept the approval application pending for nearly six months and thereafter, attempted to hold that the petitioner School is entitled to only 4 Secondary Grade Teachers.

15. When the appointment and the approval application were submitted during the non-surplus period, the Educational Authorities cannot contend that a particular post had been rendered as surplus six months thereafter. Hence, the learned Single Judge was right in directing the Educational Authorities to approve the appointment of Tamilarasi in the petitioner School w.e.f. 31.03.2010. The learned Single Judge has given liberty to the authorities to consider whether the post has been rendered surplus in the subsequent academic year or not. However, the said portion of the order has not been challenged before this Court.

16. In view of the above said discussions, we do not find any infirmity or irregularity in the order passed by the learned Single Judge and the Writ Appeal is devoid of



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any merit and the same is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

(P.N.P.J.,)

(R.V.J.,)

15.07.2022

Index :yes
Internet :yes
msa

To

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R.VIJAYAKUMAR, J.**

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Pre-delivery Judgment made in
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