



W.P.(MD)No.11297 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11297 of 2022

and

W.M.P(MD)No.8061 of 2022

M.S.Sreedhar,
Physical Education Teacher,
V.K.P.Higher Secondary School,
Colachel,
Kanyakumari District.

... Petitioner

Vs

- 1.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 2.The District Educational Officer,
Thuckalay,
Kanyakumari District.
- 3.The Correspondent,
V.K.P.Higher Secondary School,
Colachel,
Kanyakumari District.

... 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 proceeding issued by the first respondent CEO in Na.Ka.No.5534/A1/2020 dated 16.12.2021 quash the same, further direct the



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first respondent / Chief Educational Officer herein to approve forthwith the appointment of petitioner as Physical Education Teacher in the third respondent school, namely, V.K.P Higher Secondary School, Colachel from the date of his appointment i.e. 01.06.2018 and disburse the grant-in-aid towards his salary and allowance w.e.f the said date.

For Petitioner : Mr.A.Amala

For Respondent : Mr.S.Shaji Bino
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as Physical Education Teacher in the third respondent School with effect from 01.06.2018. Proposal for approving his appointment was rejected by the impugned order dated 16.12.2021 passed by the first respondent. Challenging the same, this writ petition has been filed.

3. The learned counsel appearing for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition and contended that the impugned order has to be set aside and the petitioner's appointment has to be approved. The respondents 1 and 2 filed a detailed counter affidavit.

4. The learned Special Government Pleader appearing for the respondents submitted that the students strength had fallen to 381 and that



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therefore, Classes 6 to 8 will be entitled to only one post of Physical Education teacher. Therefore, the petitioner's appointment cannot be approved. He also added that for deciding the issue, the students studying in English Medium section cannot be included. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. Two issues arise for consideration. The first issue is what should be the reckoning date. The second issue is whether the respondents are justified in taking the stand that the students studying in English Medium section should not be included while computing the overall student strength. The first issue does not pose any difficulty at all. The writ petitioner was appointed as Physical Education teacher on 01.06.2018. The position that obtained on the date when the petitioner was appointed alone can be taken into account. The students strength might have fallen subsequently. But that cannot be the deciding factor. The Hon'ble Division Bench in W.A(MD)No.604 of 2022 dated 15.07.2022 had held that the status of the appointee has to be considered only with reference to the date of appointment and not with reference to the date on which the approval is being sought for. The crucial cut-off date for recording the students strength so as to decide whether teachers have become surplus is the month of August every year. The impugned order was passed in December



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2021. The appointment was made in 2018. One has to go by the position that prevailed in August 2018 and subsequent fall in the students' strength cannot have any bearing.

7. The learned Special Government Pleader would submit that in view of the interim order granted by the Hon'ble Supreme Court in SLP No. 22575 of 2021 dated 20.09.2021, the students studying in English Medium section will have to be excluded. He pointed out that the Hon'ble Division Bench in W.A(MD)No.76 of 2019 dated 31.03.2021 had held that the School should be considered as a single unit and that students studying in the English Medium section also should be taken into account. But this part of the Division Bench order has been stayed in the aforesaid SLP. This contention again does not appeal to me. V.K.P.Higher Secondary School is said to have been started wayback in the year 1918. It has been having an English Medium Section all along. Interestingly, the English Medium Section is getting aid from the Government. In the impugned order itself, while computing the students strength the first respondent has included the students studying in the English Medium Section also. Therefore, it is not open to the respondents to now take a contra stand before me. When the Government is granting aid even for English Medium Section, obviously the students studying in the said section also will have to be included.



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8. The second issue also has to be answered in favour of the writ petitioner. None of the grounds set out in the impugned order are sustainable. It stands quashed. The respondents 1 and 2 are directed to approve the appointment of the writ petitioner as Physical Education Teacher in the third respondent School with effect from the date of his appointment i.e., 01.06.2018. Granting aid towards writ petitioner's the salary and allowances shall be disbursed without any delay. The writ petition is allowed.

9. The students strength as in August 2018 was 699; 231 students were studying in Tamil Medium Section and 468 students in English Medium Section. Therefore, the third respondent was entitled to have two Physical Education Teachers. Since the students' strength has now fallen to 381 including both the sections, obviously one post has become surplus. It is open to the official respondents to redeploy the writ petitioner to someother needy school. Consequently connected miscellaneous petition is closed. No costs.

20.09.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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