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W.P.(MD)NO.12169 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.12169 of 2022 and
W.M.P.(MD)No.8658 of 2022

K.Mahesh Kumar,
Drawing Teacher,
Arunachalam Higher Secondary School,
Thiruvattar – 629 177,
Kanyakumari District.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.
3. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
Thiruvattar, Kanyakumari District.
5. The Correspondent,
Arunachalam Higher Secondary School,
Thiruvattar – 629 177,
Kanyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorarified



Mandamus, calling for the records relating to the impugned proceeding issued by the 3rd respondent Chief Educational Officer in Na.Ka.No.2108/ e2/2020 dated 14.12.2021 quash the same, further direct the 3rd respondent Chief Educational Officer herein to approve forthwith the appointment of petitioner as Drawing Teacher in the 5th respondent school namely, Arunachalam Higher Secondary School, Thiruvattar from the date of his appointment i.e., 12.07.2018 and disburse the grant-in-aid towards his salary and allowance with effect from the said date.

For Petitioner : Ms.A.Amala

For R-1 to R-4 : Mr.S.Shaji Bino,
Special Government Pleader.

For R-5 : Mr.S.Vashik Ali,
for Mr.R.Murugan.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as a Drawing Teacher in the fifth respondent school on 12.07.2018. One B.S.Sajeev, Drawing Teacher retired on 04.04.2018 and in the



resulting vacancy, the writ petitioner was appointed. There is no dispute regarding the writ petitioner's eligibility to be appointed to the said post. The management after appointing the writ petitioner submitted a proposal to the competent authority. The competent authority did not pass order immediately. Therefore, the petitioner filed W.P.(MD)No.4947 of 2020. Vide Order dated 09.03.2020, the competent authority was directed to pass order on the proposal. Pursuant thereto, the impugned order dated 14.12.2021 came to be passed. The proposal of the management has been rejected on the ground that the post in question has become surplus. Challenging the same, the present writ petition came to be filed.

3. The fourth respondent filed a counter affidavit and the learned Special Government Pleader took me through its contents.

4. The writ petitioner and the management are on the same page.



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

6. The status of the school as to whether the linguistic minority need not be gone into in this writ petition.

7. The learned Special Government Pleader would strongly urge that the post in question is that of vocational Instructor and that following the retirement of the earlier incumbent it had also lapsed. The learned counsel appearing for the writ petitioner on the other hand would argue that the post of Drawing Teacher cannot strictly be called as Vocational Instructor post.

8. The primary reason set out in the earlier order is that on account of fall in students strength, the writ petitioner's appointment cannot be approved.

9. My attention is drawn to an order dated **28.09.2022** made in **W.P.(MD)No.19074 of 2020 (T.Samson Amos V. The Chief Educational Officer, Ramanathapuram)**. The said case also pertains to seeking



approval of appointment of Drawing Teacher. Paragraph Nos.

5 and 6 of the said order are under:-

“ 5.The stand taken in the counter affidavit cannot be sustained, in view of the decision of the Hon'ble Division Bench reported in 2019 SCC Online Mad 29282 in the case of State of Tamil Nadu Vs. Y.Thangababy and another. The Hon'ble Division Bench in the said decision has held that the reduction of students' strength cannot be a reason to deny approval of the appointment of a teacher against the sanctioned post. As regards G.O.Ms.No.39, School Education (D1) Department, dated 21.03.2003, the issue has already been answered by the Hon'ble Division Bench in W.P. (MD). No.1569 of 2015, dated 20.02.2018. The said Hon'ble Division Bench was also concerned with the appointment of a Drawing Teacher in the vacancy caused by the retirement of the incumbent teacher. The Hon'ble Division Bench read down G.O.Ms.No.39, School Education (D1) Department, dated 21.03.2003. Paragraph Nos.4 and 7 of the said order in W.P. (MD).No. 1569 of 2015, dated 20.02.2018 read as



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follows:

“....

4.In our considered view, on a reading of G.O.Ms.No.39, one gets an impression that there is an absolute ban, however the object of the Government Order for restricting the conversion between two posts is not very clear. In any event, if the Government Order is read as a whole, it appears that the intention of the Government is to consider as to whether there is a need for conversion of the post in a particular institution. But, it has not been stipulated explicitly as the preamble of the Government Order says that conversion can be made only between Sewing and Music.

...

7.Therefore, we are of the firm view that the conditions stipulated in G.O.Ms.No.39, dated 21.03.2003 should be read down to mean that the predominant aspect which has been considered is the need for the particular branch



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of vocational instruction and this need should be decided by the Institution considering the demand of the students/parents etc. Thus, the stand taken in the impugned communication dated 30.07.2014 is not tenable.

...”

6.It is well settled that the impugned order will have to be rested only in the light of what has been stated therein. It is not open to the official respondents to add reasons at the time of argument. Since the twin stand taken by the respondents has been found to be without merit, I have no hesitation to set aside the impugned order in this writ petition. Accordingly, the order impugned in this writ petition is quashed. The Writ Petition is allowed. The official respondents are directed to approve the petitioner's appointment with effect from 03.10.2018 and disburse the grant-in-aid towards the writ petitioner's salary and other allowance forthwith, without any delay. No costs. Consequently, connected Miscellaneous Petition is closed. ”



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10. I propose to adopt the very same approach in this case also. The order impugned in this writ petition is set aside. The official respondents are directed to approve the petitioner's appointment with effect from 12.07.2018 and disburse the grant-in-aid towards the writ petitioner's salary and other allowance forthwith, without any delay. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2022

Index : Yes / No

Internet : Yes/ No

PMU

To:

1. The Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.
3. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
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G.R.SWAMINATHAN,J.

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